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April 13, 1995

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Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

91-221

RE: Comments
MM Docket No. ~~94-322~~
Regulations Governing Television Broadcasting

DOCKET FILE COPY ORIGINAL

Dear Chairman and Fellow Commissioners:

Enclosed please find an original and nine (9) copies of comments submitted by the American Federation of Television and Radio Artists, New York Local (AFTRA) on the above Further Notice of Proposed Rule Making.

Respectfully submitted

Stephen Burrow
Executive Director/House Counsel

No. of Copies rec'd 0+9
List A B C D E

COMMENTS OF AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS
New York Local

I. INTRODUCTION

The AFTRA New York Local is a labor organization representing 24,000 members employed in the news and broadcast, entertainment, commercial and recording industries as newscasters, sportscasters, announcers, disk jockeys, professional actors, singers, dancers, specialty acts and stuntpersons. Our members are seen and heard on television and radio stations in New York and across the United States on broadcast, cable and syndicated television programming, and on network and syndicated radio. Our organization negotiates approximately 40 staff and freelance collective bargaining agreements covering our members employed in New York by all three networks, Fox Broadcasting and other independent and group-owned TV and radio stations. Nationally, AFTRA is comprised of locals and chapters that negotiate similar agreements. Based upon our experience in the radio and television industries, we feel well qualified to comment on the impact of the Federal Communications Commission (FCC) Further Notice of Proposed Rulemaking (FNPRM) regarding relaxation of existing television ownership rules and related policies.

II. BACKGROUND

AFTRA respectfully recognizes the purpose of the FCC in its exploration of the further relaxation of television ownership limits. Further we recognize that from its earliest stated mission --to encourage the diversity of ownership in order to foster the expression of varied viewpoints and programming, and to safeguard against undue concentration of economic power-- the FCC has attempted to exercise diligence in maintaining the soundness of the free airwaves.[1] Notwithstanding this recognition, we do not agree with some of the actions that have been taken by the Commission.

While AFTRA agrees with some of the observations made in the Commission's Office of Plans and Policy 1991 report, which concluded that the market had undergone tremendous changes and that the policies of the FCC and Federal Government had generated new competition to broadcast services in the form of increased viewer choices, we do believe that many of regulatory changes both before and after the 1991 report have not served the public interest.[2] Beginning with the relaxation and elimination of requirements and guidelines on acceptable levels of public interest programming, the so-called direct technique for achieving diversity, an environment has been created which, contrary to the Commission's intentions, does

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[1]FNPRM paragraph 2.

[2]FNPRM paragraph 6.

not encourage licensees to increase the level of public interest programming they produce.[3]

To compound this problem, the current relaxation and/or elimination of ownership restrictions, the so-called indirect technique for achieving diversity, has allowed many broadcast owners to purchase new outlets.[4] In markets such as New York, where clearance is essential for aspiring mini-networks, TV station prices are often in the hundreds of millions of dollars and sales are consequently often completed through highly leveraged transactions. Under pressure to bring costs into line, broadcast owners look to cut locally produced and aimed community affairs programming, which is expensive to produce relative to the advertising dollars it can generate.

III. DISCUSSION

Based upon these observations, AFTRA is greatly concerned that loosening the current ownership limits will only further erode the existing level of locally produced and aimed community affairs programming. Further, it is AFTRA's belief that the actions currently under consideration by the FCC are premature and unnecessary given the economic state of the broadcast television industry. To quote Commissioner Susan Ness,

> "The past two years have been among the best ever. Acquisition cash flow multiples are at record levels. The fourth network has risen dramatically in popularity and a fifth and sixth network have been launched. Broadcasters have even added new revenue streams through strategic partnerships."[5]

In seeking comment regarding the economic impact of relaxing the national television station ownership limit, the Commission has cited as part of the rationale in originally increasing the limit from seven to twelve stations, that "group ownership might foster news gathering, editorializing and public affairs programming, and the development of independent programming by regional or national ad hoc networks."[6] While the increase in the station limit from seven to twelve may have contributed in part to the development of independent programming, perhaps even the creation of one or more ad hoc networks, it is AFTRA's opinion that, contrary to the Commission's hypothesis, viewpoint diversity will be sacrificed with respect to news and public affairs programming which will be "recycled" through commonly owned stations as broadcast companies take advantage of certain economies of scale. The tendency to reduce staffs and consequently budgets in local news gathering operations is currently evidenced in the increasing

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[3]FNPRM paragraph 58.

[4]FNPRM paragraph 60.

[5]Separate Statement of Commissioner Susan Ness, Re:TV Ownership (Docket No. 91-221, 87-8).

[6]FNPRM paragraph 92.

use of news feeds from outside sources, regardless of common ownership. Such material is obtained through cooperative news gathering ventures sometimes based upon network affiliation. Thus it is our belief that raising the national ownership limit will only further reduce the amount of locally produced news and public affairs programming. It is AFTRA's opinion that increasing the national ownership limitations will not serve the public interest by preventing stations from failing, but will render their news and public affairs programming devoid of local identity as large broadcast companies attempt to increase profit margins. The current ownership limits do not prevent financially sound broadcast companies from acquiring failing stations, they merely prevent one company from owning an excessively large concentration of stations.

With respect to the effect of relaxing national television station ownership limits on the rate of incorporation of technological innovation into television broadcasting, it is AFTRA's opinion that, particularly in markets such as New York, where TV station prices are quite high, a station acquisition would most likely require a huge debt service which may adversely impact the rate of incorporation of technological innovation as it has the production of news and public affairs programming.[7]

With respect to the impact of relaxing the national television station ownership limits on the prices of broadcast TV stations, it is AFTRA's belief that the competition for independent stations and even for other group owned stations will become keener resulting in the diminished ability of new entrants including minorities to acquire TV stations. Our belief that the competition will increase is based in part upon the recent realignment of network affiliate TV stations in the wake of the switch of NFL Football telecasts from CBS to FOX. Wanting to ensure sufficient network clearance of programming which is critical to the sale of network advertising time, we believe that the current major and mini-networks will pursue additional stations. These companies have a decided financial advantage over new entrants in their ability to acquire TV stations as the prices for stations rise. Further, it is AFTRA's opinion that this will negatively impact the pool of independent TV stations available for affiliation with nascent broadcast networks.

With respect to the various proposals for relaxation of national TV station ownership rules under consideration, AFTRA does support those small, incremental de-regulatory measures that specifically aim to increase the level of TV station ownership of traditionally excluded groups, including women and minorities. We believe that this would positively impact viewpoint diversity in the broadcast marketplace.

In seeking comment on the impact of relaxing the current local television station ownership limits the Commission has stated,

> "relaxing other local ownership rules (i.e., radio ownership and the "one-to-a-market" waiver standard), joint ownership of stations in the same market permits

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[7]The City of New York is currently exploring the sale of its UHF station (which is licensed as a commercial outlet) in order to close a budget gap. The price has been widely reported to be in the range of $200-300 million.

cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production (such as news and public affairs programming). We believe the cost savings from these economies could then be used to provide better programming to the public."[8]

While AFTRA agrees with the Commission that certain economies have been realized from the relaxation of certain local ownership rules, we respectfully submit that, based upon our observations of the radio industry, such cost savings have not resulted in better news and public affairs programming. It does not necessarily follow that a consolidated news and public affairs operation will provide improved news and public affairs programming, rather, there is a net reduction in diversity of perspectives when the same operation provides news and public affairs programming for multiple outlets. We do not believe that the interests of the local community are served by such a reduction.

With respect to the effect of relaxation of local television station ownership limits on the potential for increased prices of broadcast TV stations, it is AFTRA's opinion that efforts to take advantage of certain economies of scale will drive up the levels of competition for available local stations. The resulting increase in station prices will make it more difficult for new entrants, including minorities, to finance the purchase of broadcast TV stations. In markets such as New York, where TV station prices are already perhaps the highest in the United States and where all of the major networks currently own one station. the effect would be most pronounced.

With respect to the question of whether maintenance of the current television duopoly prohibition is essential to the preservation of viewpoint diversity, it is AFTRA's opinion that the Commission should not use the growth of cable to measure the level of diversity of programming available to the public. The Commission has cited that "more than half of all viewing hours in cable households during the 1992-93 season were of retransmitted broadcast signals. In addition, more than one-third of all households that could subscribe to cable elect not to do so."[9] Thus, our reasons for excluding the use of the growth of cable as a measure are twofold. Current viewing patterns indicate that broadcast television, perhaps because of its distinctly local identity relative to cable networks, which are focused on national audiences, accounts for the majority of cable television viewing. Secondly, there is insufficient analysis to determine whether the one-third of households eligible but failing to receive cable television are shut out because of economic reasons. Until it can be demonstrated otherwise, it is AFTRA's belief that the government should ensure that the only "free" medium accessible to the poor and disadvantaged remains the most diverse possible.

With respect to the various proposals for relaxation of local TV station ownership rules under consideration, AFTRA does support those small, incremental de-regulatory measures that specifically aim to increase the level of TV station ownership of traditionally excluded groups, including women and minorities. We believe that this would positively impact viewpoint diversity in the broadcast marketplace.

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[8]FNPRM paragraph 107.

[9]FNPRM paragraph 26.

With respect to the Commission's current rule on radio-television cross-ownership, it is AFTRA's opinion that the rule has operated effectively and should be retained, as long as the FCC continues to have the ability to grant waivers where they serve the public interest.

With respect to Local Marketing Agreements in television, AFTRA believes that, as with duopolies, there is a threat to viewpoint diversity as LMAs are used to take advantage of certain economies of scale through shared programming. While we do not believe that LMAs in television should be allowed to continue, we recognize the appropriateness of allowing those agreements currently in place to remain in effect. At a minimum, we believe that television LMAs should be subject to the same regulations as apply in radio, or to regulations which are no less stringent.

IV. SUMMARY

As stated earlier, AFTRA respectfully submits that it agrees with certain stated observations of the FCC regarding changes in the broadcasting marketplace. However, it is our belief that the de-regulatory actions which have been taken so far have allowed the erosion of news and public affairs programming and have therefore not been in the public interest. Further, any additional steps to relax ownership limits in television will, in AFTRA's opinion, contrary to the intent of the Commission, exacerbate the current state of news and public affairs programming. We believe that this will occur unless small, incremental de-regulatory measures are tied to public interest programming or are aimed at enhancing the ability of traditionally excluded groups to enter the television broadcast industry thereby enhancing viewpoint diversity. Should the FCC allow such limited expansion of television ownership limits either nationally or locally, AFTRA believes that the broadcasting company seeking to expand should be required to fully document its past record and future plans regarding programming and service in the public interest.

We thank you for the opportunity to present our comments.