

Before the
Federal Communications Commission
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Review of the Commission's Regulations) MM Docket No. 91-221
Regarding Television Broadcasting)
)
Television Satellite Stations)
Review of Policy and Rules)
)
To: The Commission)

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COMMENTS

Kentuckiana Broadcasting, Inc. ("KBI"), by its attorney, hereby submits Comments in response to the Commission Further Notice of Proposed Rule Making, FCC 94-322 (Jan. 17, 1995) in this proceeding. With respect thereto, the following is stated:

1. KBI is licensee of Station WFTE, Salem, Indiana. For the last year, it has been brokering time pursuant to a Time Brokerage Agreement to Independence Broadcasting Company, licensee of Station WDRB-TV, Channel 41, licensed to Louisville, Kentucky. Station WDRB(TV)'s service area is substantially duplicative of that of Station WFTE. For the reasons stated below, KBI (1) supports retention of the Commission's policies which permit local area stations to broker time to other area stations in all instances (regardless of the existence of the overlap of the stations' contours), as long as control and oversight over the station is retained by the station's licensee; and (2) supports the Commission's proposal to relax the local multiple ownership rule, to allow the ownership of two television stations as long as their Grade A contours do not overlap; but (3) suggests that the Commission should not allow outright ownership of two television facilities serving the same market in instances where Grade A overlap occurs except in extraordinary circumstances. KBI believes

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that adoption of the rules as it proposes herein will allow certain existing stations to enjoy the economies of scale it may seek to enjoy with respect to advertising sales efforts and program acquisition, while accelerating the ability of certain unbuilt to stations to begin operations and increasing competition (through allowing such stations to enter into joint ventures such as LMAs), but at the same time will not result in the abandonment of the Commission's policy of promoting maximum diversity of station ownership and the number of "voices" in the marketplace in the process. By allowing stations to enter into LMAs but not allowing outright ownership, it is believed that the proper balance can be obtained by allowing (1) efficiencies and profit to flow to the station acquiring time upon another station, while at the same time (2) requiring that the station brokering its time retain a degree of independence, which will result in the station promoting distinct local programming based upon its licensee's own conception of the local needs and interests, and will thereby provide a distinct local "voice" to the local marketplace, in furtherance of the public interest.

Discussion

2. Ownership of local television broadcast stations is much more restricted and limited than is local radio ownership. This is true for several reasons. First, there are fewer television frequencies available. Second, a "freeze" has been placed on grant of new television frequencies pending the adoption of an Order authorizing High Definition Television ("HDTV") service. Third, the capital expenditures needed to construct a television station far outdistance that needed for a local radio station. Finally, the programming costs for a television station also greatly exceed that of a television station. While after construction a true "local" radio facility could conceivably be operated using

local talent which, with the right format, could achieve sufficient listenership to succeed, for even a "local" television station to succeed the station typically needs to obtain either movies or pre-recorded programming which has been produced with high production values and which can be obtained only at a cost of thousands of dollars per show, or else would need to invest in an expensive news and/or public affairs staff to attempt to engage in locally-produced production. Even then, depending upon the whims of the local viewing audience, the station may not achieve sufficient ratings to survive.

3. Under the current rules, an attributable interest-holder generally cannot own two television stations whose Grade B contours overlap. However, an existing local television station owner can legally purchase time and provide programming on another local television station through a time brokerage agreement, otherwise known as a Local Marketing Agreement ("LMA"). While radio LMAs typically have been entered into as a precursor to possible outright ownership of a facility by another entity (which ownership would be consistent with the multiple ownership rules), television LMAs have served a different purpose. While radio LMAs have permitted licensee to enjoy economies of scale inherent in dual ownership (while not resulting in outright ownership), television LMAs have been used predominantly (1) to allow existing stations to assist owners with silent stations the ability to commence operations after being faced with an uncooperative lending market; and (2) to provide a place for the existing station to utilize their existing overflow programming which it has acquired or seeks to acquire, by providing additional programming time and the programming and advertising staff to program and promote *two* stations, thus achieving an economy of scale.

4. In the case of KBI, its 100% stockholder, James T. Ledford, applied for the Salem, Indiana, construction permit in 1987, and was granted a construction permit in 1990, as a result of a settlement that was entered into following the designation of the application for hearing. Mr. Ledford is a Salem resident who has been civically involved in the community for years, and was best qualified to obtain grant of the permit through the comparative hearing process had the case gone to hearing. Although he had the financial qualifications to construct and operate the station throughout the comparative hearing process, it was determined afterwards that in order for the station to effectively compete and survive financially in the local television marketplace well *beyond* the "three months" required by the Commission's "reasonable assurance" financial qualifications standard, access to a significantly larger source of financing would be required. Such additional financing was sought from private investors, venture capital groups, and traditional financial institutions, but was not available under commercially reasonable terms.

5. Independence Broadcasting Corp., however, contacted KBI, and proposed and negotiated the LMA under which the station has been build and is operating. Due to its affiliation with Fox, IBC no longer had sufficient broadcast time to allow for the broadcast of certain quality independent programming available to local stations. Its joint venture with KBI remedies that problem. IBC assisted KBI in its acquisition of financing to construct the station, and purchases the majority of programming time upon the station. KBI receives a fee for the programming time, maintains control over determining what is acceptable programming on the Station, and engages in the production of local and public affairs programming. KBI has reserved certain amounts of programming time for its own regular

use upon its station.

6. In the event the Commission changes its rules and treats LMA arrangements as the functional equivalent of "ownership," KBI believes that it will destroy the ability of stations to forge synergies such as this, and also will close off a important mechanism by which stations have been able to acquire financing to construct new television facilities. While LMA ownership in radio has been used to promote efficiencies of scale in existing stations, LMA ownership in TV has been used to promote the establishment of *new* voices -- voices which, due to the far fewer number of existing television stations that exist, each have a far greater impact on diversity and availability of programming. Allowing LMAs in the same manner as they have existed before, thus allows stations to (1) more easily commence operations, (2) acquire quality programming from an existing station's inventory (rather than that forcing it to obtain only the sub-standard programming which has not otherwise been contracted-for from syndicators) for presentation to the public, (3) make use of an existing station's expertise, and (4) allows the stations' future viewers to enjoy a greater range of local sports, a fuller range of syndicated programming, and greater amounts of locally-based programming. Eliminating same-market LMAs will (a) eliminate the ability of many stations to commence operations; or (b) force many stations that do succeed in commencing new operations to engage in substandard programming without access to the programming sources, expertise, physical plant, or economies of scale that currently exist from existing local stations.

7. Under the Commission's proposal, the only means by which same-market LMAs would be allowed would be if the Commission relaxes its multiple ownership rules to allow

television duopolies, e.g., VHF/UHF combinations, or UHF/UHF combinations.

Presumably if such occurs, existing station owners will insist on owning the second station rather than being satisfied only with brokering time on the second station, effectively calling an end to the majority of existing LMA arrangements. Relaxing the local multiple ownership rules to allow outright ownership of two television stations, however, will not provide the same benefits to the public as restricting participation in a second local station only through LMAs (as is currently the case), nor would it be prudent from a regulatory standpoint.

8. First of all, by removing the requirement of separate ownership from dual station participation, rather than requiring and encouraging corporation *individuality* between competing stations, the Commission would be simply allowing and promoting the *duplication* of existing stations' corporate "voice" in the local marketplace onto a second channel. This consequence would have a much greater negative impact than in the case of radio LMAs due to the limited number of local television broadcast voices that exist in the majority of television markets.

9. Moreover, such a proposal (allowing ownership of two television stations locally) would make no sense in light of the current regulatory uncertainty surrounding the commencement of HDTV. Under current plans, each television broadcaster *already* will receive a "second" channel (namely, a tentatively "free" channel on which it may commence HDTV programming) for a period of fifteen years before they will be required to "turn in" their original channels of operation. On that additional channel, existing broadcasters already will be able to provide multiple services, once operation commences. At the present time, a great deal of controversy exists concerning whether even that channel should be assigned to

broadcasters, and if so, whether it should be for free. By allowing duopoly multiple ownership, the Commission potentially would be allowing for future ownership of four television broadcast stations by individual owners for at least the next fifteen years, and a doubling of the number of services (competing video or otherwise¹) that could be provided on the two HDTV digital frequencies. If controversy exists concerning the free award of one digital frequency, the concerns (from a budgetary as well as diversity standpoint) are doubled in the event the ownership of two stations were to be allowed. Until a decision is reached concerning the fate of the second channel that already is being contemplated for award to existing television broadcasters, the Commission should not confuse and compound the negative impact that event will already potentially have on the local marketplace by providing local broadcasters with the right to potentially obtain two digital channels and to operate temporarily with four channel (two analog and two digital) in the immediate future.

10. Moreover, in a related vein, the proposal calls for allowing dual ownership where the end result would be only VHF/UHF or UHF/UHF combinations, claiming that while these combinations would not cause undue harm, VHF/VHF combinations should remain generally prohibited as having too great a potential to harm the local marketplace.

11. This distinction, if adopted, would be arbitrary and capricious. While it may be true that in the largest television markets it is the VHF stations that dominate viewership, due

¹ As reported recently in Broadcasting & Cable Magazine, "[s]uddenly, there was the possibility of broadcasting perhaps 10 signals where one had been before... Overnight, there was new life in HDTV, the chance to cram something like 27 megahertz into six." Broadcasting & Cable, April 10, 1995, at 22. As Chairman Hundt has been quoted as noting, a digital 6 mhz channel "can deliver simultaneously... a live sports event, a kids television show, [a] conference, 10 radio shows, a movie, and the Dow Jones tape into the handheld pager in the vest pocket of your three-piece pin-striped suit." Id. at 24.

both to their channel position and their affiliation with one of the three oldest television networks (ABC, NBC, and CBS), in many other markets, station ownership and network affiliation is mixed, with VHF stations having a much less hold on viewership and market share. For example, in the Louisville market, station location and network affiliation are as follows:

WAVE	Channel 3	NBC
WHAS-TV	Channel 11	ABC
WKPC-TV	Channel 15	etv
WBNA	Channel 21	ind
WKZT-TV	Channel 23	etv
WDRB-TV	Channel 41	FOX
WKLY-TV	Channel 32	CBS
WFTE-TV	Channel 58	UPN
WKMJ	Channel 68	etv

Thus, although two major networks are VHF stations, the other two major networks are on UHF frequencies. In such markets, UHF/UHF or UHF/VHF ownership is potentially just as harmful from a competitive standpoint as is VHF/VHF multiple ownership in the largest markets. Making a broadly-worded rule whereby a line is drawn to simply allow multiple local television ownership in cases just because a "UHF" station is involved ignores the competitive situation which exists in a vast number of markets throughout the country.

12. Moreover, again, when the Commission looks at its own plans for the future of television, the proposed rule becomes even less supportable. Under the Commission's current HDTV plans, all "VHF" stations will become "UHF stations" over the course of time, thereby eliminating the "VHF advantage" that arguably exists currently. It has been reported that Chairman Hundt:

is eager to retrieve stations' original channels after consumers are given a "reasonable time" to upgrade to digital sets and put them on the auction block

for other spectrum users. By clearing the VHF channels, the FCC could create a seamless national 72 mhz band, ideal for mobile communications. "The auction I'm talking about -- perhaps to be called the mobile video auction -- may be to the PCS auction what the Louisiana Purchase was to the Gadsden Purchase."

Broadcasting & Cable, April 10, 1995 at 24. Thus, because plans already call for the elimination of the "UHF disadvantage" over the course of time, for the Commission to base new regulation on a distinction which already is in its sunset would be arbitrary and capricious.

13. KBI's approach, allowing flexible cooperation but not outright ownership, strikes the proper balance between the need for economies of scale and diversity of voices in the local marketplace. It eliminates possible conflict with plans that are being formulated in the HDTV area, allowing existing business relationships to continue and flourish, allows new stations to commence operation and provide competitive service to the public, and enhances the ability of new entrants to the television marketplace to participate in the ownership and operation of television stations in partnership and under the tutelage of existing owners in the market.

14. In the event the Commission adopts KBI's proposal, the Commission also should make clear that LMA agreements are renewable beyond their present term, and that the existence of an LMA arrangement will have no affect on the station's renewability as long as the station otherwise is fulfilling its responsibility to present adequate amounts of programming aimed at serving the needs and interests of the local community. In this respect, the Commission should adopt a rule similar to that application to ITFS "brokerage agreements," whereby "the existence of a lease in no way affects the duration of that license

or the licensee's future use of the frequency..." Amendment of Part 74 of the Commission's Rules With Regard to the Instructional Television Fixed Service, FCC 95-51, ¶ 38 (Feb. 7, 1995). In this respect, the Commission also should allow LMA lease agreements to extend beyond the license term, with such extension being contingent upon renewal of the broker's license. Id. This policy would thereby also become similar to that governing full-service television stations and their network affiliation agreements.

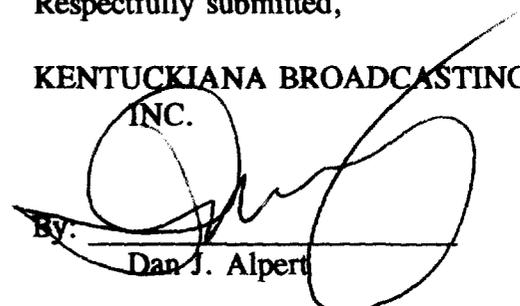
Conclusion

15. The television marketplace differs from the radio marketplace. Allowing television LMA arrangements to continue, even where they involve another local owner, provide valuable benefits to the public, while allowing for the creation of certain economies of scale. Allowing outright ownership, however, will destroy certain of those benefits, and may wreak havoc on the ownership dynamics that will exist after each broadcaster is assigned a "second" channel for digital use and/or operation on VHF frequencies are abandoned. For all of these reasons, KBI's proposed "middle ground" approach, consisting of assistance and participation through joint ventures which fall short of outright ownership, and relaxation of the local multiple ownership restrictions to allow for ownership in instances where Grade A contours do not overlap, should be adopted.

WHEREFORE, it is respectfully requested that the Commission consider the foregoing Comments and adopt the proposals contained therein.

Respectfully submitted,

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