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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

NOTICE OF PROPOSED RULE MAKING,
MM DOCKETS 94-150, 92-51, 87-154

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FURTHER NOTICE OF PROPOSED RULE MAKING
MM DOCKETS 91-221, 87-8

COMMENTS OF BIG HORN COMMUNICATIONS, INC.

RE: LMA'S
TIME BROKERAGE AGREEMENTS
ATTRIBUTION
CROSS INTEREST POLICY

Big Horn Communications, Inc. is a small market television licensee in the state of Montana. As the Commission reexamines its policies in the referenced issues, we urge that the impact on small markets not be overwhelmed by the more high profile and "weighty" concerns of big market television. Over and over in the Commission's need to adopt nationally applicable rules, the policies that may make sense in New York or Cleveland end up with a perverse and sometimes opposite impact in the more rural and underserved parts of this great country.

The Commission issued two separate but integrally related notices of proposed rule making on December 15, 1994. Because the issues cannot really be separated on a policy level, these comments address both notices and are being filed in both proceedings.

1. LMA's and Time Brokerage Agreements allow cost efficiencies in small markets that <u>increase service</u> to small markets.

2. The traditional concern over number of broadcast "voices" in an underserved community actually insures the people get fewer broadcast options. The benefits of addition financially viable stations far outweighs the purely theoretical concerns over concentration of economic power.

3. Duopoly should be permitted in small markets and the UHF/VHF distinction is arbitrary and counterproductive.

4. Whatever changes are made, grandfathering of existing LMA's and Time Brokerage Agreements is essential.

THE WONDROUS IMPACT OF LMA'S AND TIME BROKERAGE AGREEMENTS

In small markets, the result of allowing LMA's and Time Brokerage Agreements is that stations will exist and provide access to programming that would not otherwise be available. Throughout small market America off-air free television is limited by the economics of running a television station. Through LMA's, operating costs can be dramatically reduced and stations not otherwise viable can provide truly valuable services.

Our situation is Billings, Montana is a perfect example. The Billings market is small in population (market 172 with 87,000 household) but covers a vast geographic area. It is roughly 285 miles east to west and 240 miles north to south. There are currently three television stations in Billings. Even though there are vacant allocations available, the advertising market is simply too small to support a fourth stand alone station.

However, by the operating efficiencies of joint operations, we have been able to facilitate the emergence of a fourth station. Big Horn Communications has entered into a time brokerage agreement that allows the total operating costs of the new station to be half what would otherwise be required. Thus its economic viability is possible and the people of Billings will gain dramatically. They will for the first time have the option of viewing a full Fox Affiliate carrying a wide range of syndicated programming heretofore unavailable. Moreover, the licensee of the new station is a minority company (100% Native American) who will now be able to broadcast programming specifically directed at the Native American population.

Put simply, small market LMA's and Time Brokerage Agreements create economies of scale that make new stations possible in some cases and save some existing stations from oblivion. The past ten years of real world experience in radio proves this beyond any doubt. There are hundreds of radio stations on the air today solely because of the benefits of LMA's and duopolies. These stations are primarily in rural america where the additional outlets are of immense value. Diversity of choices is what the public really wants. LMA's and duopoly clearly increase that diversity.

CONCERN OVER THE NUMBER OF "VOICES" IN A COMMUNITY

The primary reason LMA's were limited for so many years was a stated policy of increasing the number of broadcast "voices" in a given community. Commission rules prior to LMA's did not increase voices in small markets. They served instead to limit the number of outlets or channels.

The assumption has always been made that the number of "voices" was the same thing as the number of station owners. Thus each owner's influence was scrupulously limited to one television station or two radio stations. In small markets that means the listening and viewing option of the public were artificially limited. The economics of stand alone stations prevented the emergence of additional stations. LMA's ended that by creating the opportunity for more stations.

If we look at radio and television as primarily an entertainment medium (which is what the public perceives it as), the benefits of additional stations is obvious. But the benefits are even more significant in the prism of public service programming. The cold fact is that a station can do little in the way of public affairs programming and local service if it can barely keep its doors open. The financial economies from an LMA make fiscally strong stations more likely and create a much better environment for local service and pubic affairs programming.

Our Time Brokerage Agreement in Billings, Montana is prime example. Because of the economies it presents, the licensee of the new station will be able to offer programming and services directly designed to serve the areas Native American population. With the TBA, the station might never get on the air. And if it did, the economic realities of this rural area would seriously limit its public affairs abilities.

Some might argue that LMA's give an advantage to strong stations, allowing them to grow stronger. While that is certainly one possibility, the opposite is also true. In Billings, our station is the newest and the weakest of the three existing stations. The other two stations are licensed to group owners who have tremendous advantages in terms of joint program acquisition, shared engineering expertise, news gathering, etc. In Billings, our TBA may help make the weakest station more competitive.

There is no reason to assume that the strongest stations will be more likely to institute LMA's or TBA's. Instead the benefits will flow to whichever station sets up the joint operation. And the public gains regardless of which stations are involved.

The Notices discuss this issue in terms of "concentration of media influence" versus "diversity of media influence". To rephrase my point in that context; in small, economically limited markets, LMA's do not necessarily change the concentration of influence. But they definitely have the potential to increase the number of choices, outlets and services to the public without increasing the concentration. When a cable television system increases its number of channels, it is viewed as a public good, not an increase in undesirable concentration. The same should be true for a television licensee.

The Notices express some concern about the impact of duopolies or LMA's on the advertising market and on the program syndication market. These concerns are unfounded.

Advertising: neither the advertising community nor the other television stations need protection from the FCC. In even the smallest markets today, the advertising salesperson faces more competition every day. In Billings, we sell not only against the other television stations but against cable television, radio, direct mail, newspaper, etc. Today's advertiser needs no help from Washington to "protect" it. The advertising market is more competitive today than ever before. As for the competing television stations, they all have advantages and disadvantages against each other based on a myriad of factors, some within their control and some beyond it. No nationwide edict or artificial constraint will make everyone "equal". More importantly, any "harm" to the other broadcasters comes from the introduction of a new competitor rather than from a concentration of power. One of the clearest lessons from radio duopolies is that radio ad sales are most effective if the jointly run stations have separate sales staffs. Attempts at joint sales and package deals have generally been failures. There is simply no evidence that a station can demand a premium based on control of two stations advertising sales. In fact the advertisers are so effective as demanding <u>discounts</u> from joint sales that duopolies have almost universally abandoned that approach.

Program acquisition: The television program syndication market is a vibrant, intensely sophisticated market. Duopolies and LMA's do not change that fact, particularly in small markets. I will not even address the insane implication that Big Horn Communications could exercise improper power over Paramount or Warner Communications. The Notice asks whether there is any concern over the possibility of a duopoly or LMA's enhanced negotiating position compared with its competitors in the market. In truth, any advantage boils down to the fact that a station is buying more programs than it s competitors. But the same is true in many other situations. My group owner competitors in Billings buy for multiple stations in different markets. I can attest from personal experience that they benefit from that position. Independent stations have the same power because they have to buy more programs than a network affiliate. All stations have advantages and disadvantages in program acquisitions. For example, stations with stronger ratings have an enhanced bargaining position because syndicators want to place their product where it will get the most viewing. The program marketplace is not a level playing field. It is constantly changing and reacting. The fact of LMA's and duopolies are part of that ever changing vista. Artificial restriction on the players can only harm that marketplace.

THE FALLACY OF THE UHF/VHF DISTINCTION

The Further Notice of Proposed Rule Making discusses the possibility of allowing duopoly for UHF/UHF combinations and UHF/VHF combinations but not for 2 VHF stations. The rationale is apparently that all VHF licensees are too strong and all UHF licensees are too weak. Once again this is not necessarily true in small markets, particularly in the west.

Getting specific, we can point to our experience in Billings, MT. A fourth station is economically viable only through an LMA or a duopoly. There are 2 vacant UHF allocations in the market and a dark VHF. Using the UHF/VHF distinction, a proposed LMA or duopoly would have to use a UHF frequency, making any use of the dark VHF even more unlikely. Yet the public is clearly better served by allowing use of the VHF which can provide a better signal over a larger portion of this vast market. Moreover, a UHF transmitter is significantly more expensive to buy and to operate.

My point is simply that a nationwide use of the UHF/VHF distinction has an unintended negative affect in markets such as Billings. If the commission ultimately adopts such a distinction, it is imperative that an express waiver procedure be adopted to assure that the public in small markets are well served by the rule instead of limited by it.

GRANDFATHERING

The Commission's rules and policies as now in effect clearly permit properly structured and implemented LMA's and Time Brokerage Agreements. Commission policy has traditionally been to grandfather situations which were lawful before a rule change. This policy was adopted when the radio ownership attribution rules were changed. Moreover, the Notice specifically states that such a grandfathering policy is contemplated. In reliance on history, that statement, and fundamental fairness Big Horn and other licensees have invested substantial sums and taken significant marketplace risks. More importantly, the public has benefitted from our reliance. Billings will finally have a fourth station and the commissions goals on minority ownership will have been furthered. If the Commission adopts any changes in the present policies regarding LMA's, Time Brokerage Agreements, duopolies, or cross interests, it is imperative that existing lawful arrangements be expressly grandfathered.

SUMMARY

LMA's TBA's and duopoly bring diversity and options to small television markets. The resulting economies are substantial and make possible both a wider choice for the public and the opportunity for better public service. My concern is that the Commission could marginalize these very real and demonstrable benefits in its balancing of competing policy goals. The "danger" to the other goals (diversity of voices, concentration of influence) is theoretical and ignores the marketplaces ability to adjust and react. I am also concerned that the rules designed for big markets will run amuck in smaller markets. The number one goal in smaller markets should be to increase the number of off air television channels. Unfortunately, rules designed for the country as a whole are likely to have the opposite effect in rural America.

It is respectfully urged that the best policy for television viewers in smaller markets is to permit the broadest possible joint operations. This means full LMA's and Time Brokerage Agreements as well as complete duopoly. This will mean (a) more stations available to the public and (b) improved public service due to the cost savings from joint operations.

Respectfully submitted,

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