The notion that owners of a majority of the licensee's stock may abdicate control of the operation of their station is contrary to the statement in the majority opinion that the minority incentive was for the benefit of "minority owned and controlled" broadcast stations quoted in ¶43. And, the notion that owners of a majority of the licensee's stock may abdicate control of the operation of their station is belied by Commission actions taken in 1985 shortly after adoption of the rule change and in 1989, while Trinity continued its assault on the de facto control laws without abatement.

D.
Commission actions in 1985 and 1989 after the rule change belied any notion that there was a de facto control exception

45. Four months after this rule change (in February 1985), the Commission issued a notice of proposed rulemaking (in June 1985), as it had promised to do when it adopted the rule change, to consider (a) this newly adopted provision, allowing investors in the two extra minority-controlled full power television stations to have "cognizable interests" in those stations, in relation to (b) an earlier provision of general application allowing investors to hold up to a 49% stock interest in broadcast companies controlled by a single 51% stockholder, but not allowing them to have any "cognizable interests" in the licensee. Reexamination of the "Single Majority Stockholder" and "Minority Incentive" Provisions of Section 73.3555 of the Commission's Rules and Regulations, 50 F.R. 27629 (1985).

46. In the June 1985 rulemaking notice, the Commission

described its action four months earlier as allowing investors to hold corporate office and a board position in minority-controlled licenses as "...a means short of majority stock control by which to ensure the continued viability of their investment." 50 F.R. 27629 at ¶7. Commissioner Rivera, a strong supporter of the minority incentive provision who was likely to give it the broadest possible interpretation, stated, in a matter of fact way, that the provision "...exempts officers and directors from attribution where its standards are otherwise met." Separate Statement of Henry M. Rivera dated June 7, 1985 at 1.

47. If the Commission had just created an exception to the de facto control laws allowing the more than 50% owners of minority-controlled licensees to abdicate control of programming and station operations to investors, as Commissioner Patrick had said in his dissenting statement, neither the Commission nor Commissioner Rivera would have spoken this way -- the Commission referring to the investors' ability to hold corporate office and a board position to protect their investment short of "majority stock control" and Commissioner Rivera referring, without further comment or elaboration, to the ability of sources of funding to hold corporate office and a board position.

48. If the Commission had just created an exception to the de facto control laws allowing the more than 50% owners of minority-controlled licensees to abdicate control of programming and station operations to investors, the Commission and Commissioner Rivera would have said so. The Commission would

have said that the minority incentive offered the fullest protection to encourage investments because the investors would have unfettered legal power to control station programming and operation.

49. Of course, the Commission did not say anything like that. From the notice, it was clear that the Commission had made no such exception to the de facto control laws relative to the two additional television stations that could be funded with the assistance of a 12-station owner. Indeed, throughout the years in the factual analysis of de facto control cases, the Commission has been called upon to draw a line between a funding source protecting its investment through security interests, guarantees, "restricted" stock pledges[6] and other lawful ways, and a funding source asserting control over the station personnel, programming and financial operations in an unlawful way. Here, in order to encourage investment in minority-controlled licensees, the Commission granted an additional measure of lawful protection of the investors, i.e., the opportunity to hold corporate office and a board position -- nothing less and nothing more.

50. In 1989, the Commission issued a notice of inquiry seeking to refine its policies regarding control issues relative

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[6] Requiring stock pledges to provide that (a) voting rights will remain in the licensee, even in the event of default on the obligation secured by the pledge, (b) in the event of default, there will be a private or public sale of the pledged stock, and (c) prior to exercise of stockholder rights by the purchaser at such sale, the prior consent of the FCC under Section 310(d) of the Act will be obtained. See, FCC Form 314, Assignee's Legal Qualifications, Question 16; FCC Form 315, Transferee's Legal Qualifications, Question 16.

to non-stock licensees. Transfers of Control of Certain Licensed Non-Stock Entities, 4 FCC Rcd 3403. Since Trinity and NMTV are non-stock entities, this notice would have been of special interest to Trinity-NMTV and its counsel. This document set forth a comprehensive discussion of the history and status of control issues pertaining to non-stock licensees. If four years earlier in 1985 the Commission had declared an unprecedented exception to the de facto control laws for minority-controlled television stations, the Commission would have included this aberration from the regulatory mosaic which it summarized and concerning which it called for comment. Indeed, such an aberration would have stuck out like a sore thumb.

51. There is no such discussion of any de facto control exception, of course. To the contrary, the Commission summarized and examined the de facto control laws and in full force and effect. Before addressing control issues regarding non-stock corporations, the Commission recited its regulatory mosaic for stock corporations:

> Particularly when dealing with cases involving de facto control, there can be no hard and fast rules because corporate control varies from company to company, and each case may present unique complexities....in some cases no one person or entity holds a majority of the stock, or for various reason, de facto control is held and exercised by non-majority stocholders or by others. Because of such possibilities, the Commission does not confine itself to an analysis of changes in legal control, but also will look beyond stock ownership to determine whether actual working control of a traditional corporation has been transferred. In determining the locus of actual control, we look primarily to the "power to dominate the management" of the licensee's affairs. As we have stated, "[g]enerally, the principal indicia of control examined to determine whether an unauthorized transfer of control has occurred are control

> of policies regarding: (a) the finances of the station; personnel matters; and (c) programming." [Citations and footnotes omitted]

4 FCC Rcd at 3403-04 (¶5).

52. The Commission then addressed the de facto control situation regarding non-stock licensees, saying that since the non-stock licensee's structure is less defined than stock-structured licensees, in the case of non-stock licensees the Commission must rely <u>even more</u> on a review of the individual facts and circumstances of each particular case, rather than any hard and fast rule. It stated:

> We do not now, in fact, propose to formulate conclusive or all-inclusive guidelines as to the locus of control of non-stock entities or the circumstances that will constitute a transfer of control. Even with stock companies, we have not created such rigid guidelines for assessing de facto control, <u>because each case will turn to a large degree on its own unique factual circumstances</u>. Accordingly, we do not propose inflexible guidelines for non-stock entities. [emphasis supplied]

4 FCC Rcd at 3404 (¶9). This was unmistakable notice to Trinity-NMTV and its counsel that Trinity-NMTV's course of conduct would be a disaster if it ever came to light.

IV.
<u>No interpretation of any FCC rule or policy could conceivably allow the massive domination of NMTV by Trinity and Mr. Crouch, which Trinity and its counsel concealed from the Commission</u>

53. Trinity-NMTV and its counsel were content to only fill out the application form, answer questions asked by the Commission's staff and furnish information requested by the staff. They did not provide to the Commission a description of the relevant facts and circumstances of Trinity/NMTV's particular

case from which the Commission could have evaluated the de facto control issues and advised the applicant how to proceed. Nor did they disclose to the Commission their theory of an exception to the de facto control laws. They remained silent about a course of conduct which no interpretation of any Commission rule, policy, application form, adjudication or other pronouncement could conceivably sanction.

54. At the time Trinity-NMTV and its counsel were preparing and filing applications to acquire Trinity's two extra full power television stations in 1986-1987, many of the facts and circumstances set forth in the passages that follow had already transpired. The remainder of the facts and circumstances were a continuation of the conduct of Trinity under its established modus operandi which continued unabated until a petition was filed against it in May 1991. The following passages are the words of Judge Chachkin based on the evidentiary record compiled in his hearing room:

55. It is beyond question that Trinity has exercised de facto control over NMTV. This determination is based on the overwhelming evidence of record which establishes that at all relevant times, NMTV has marched in absolute lockstep with Trinity. Trinity has controlled NMTV insofar as NMTV's purpose, corporate composition, programming, personnel and finances are concerned. Furthermore, and equally significant, Trinity has held out to the public that NMTV is a mere operating division of Trinity with no plans or incentive to break away. ID Conclusions

at ¶304.

56. On September 9, 1980, the Commission adopted a Notice of Proposed Rulemaking in BC Docket 78-253 which, among other things, proposed giving a preference to low power television and translator applicants with 50% or greater minority ownership and control. Two days later, in anticipation of the proposed changes, Trinity founder Paul Crouch conceived of a way to take advantage of the Commission's proposal to award a minority preference. NMTV was created. NMTV, claiming a minority preference, would apply for construction permits for new television translators to rebroadcast Trinity programming and for low power television stations, while Trinity would acquire unbuilt and existing stations. That policy directive changed when the Commission in 1985 created the minority-controlled exception to its multiple-ownership rules, permitting Trinity to use NMTV to acquire a 13th and 14th full power TV station. Like Trinity, NMTV was organized as a nonprofit, non-stock California corporation. NMTV's Articles reflect religious purposes which, in Crouch's view, are very similar to that of Trinity; namely, to preach the gospel. The Articles do not provide that the corporation was to be minority owned or controlled and the issue of minority control was not discussed with Trinity's FCC counsel. NMTV was incorporated on September 16, 1980, seven days after the FCC rulemaking notice. ID Conclusions at ¶305.

57. Thus, from its inception and throughout the existence of NMTV, Crouch always intended for NMTV to be nothing more than

another vehicle to carry out Trinity's mission of spreading the gospel over the airways. Indeed, NMTV's governing documents reflect a singular goal which all but mimics that of Trinity. Crouch's claim that he intended to create a company which would be owned and controlled by minorities is belied by the fact that the company's governing documents make absolutely no reference to forming a company that would be owned, controlled, or operated by minorities. Further, although Crouch claims to have intended for NMTV to some day become independent of Trinity, the record makes clear that NMTV was conceived as and remains a subsidiary of Trinity, totally dependent on Trinity for money, supervision, and overall direction. In fact, to this very day, NMTV has never developed, much less implemented, any plan to "break away" from its parent company, Trinity. ID Conclusions at ¶306.

58. The corporate composition of NMTV provides, perhaps, the best evidence of Crouch's and Trinity's intent in creating NMTV. At its inception and through the hearing Crouch served as president and one of the three directors of NMTV. Crouch installed Jane Duff, who is Black and a director of Trinity as director and vice president of NMTV. Duff has served in those capacities throughout the history of NMTV. Duff has also served as "Assistant to the President" of Trinity, (Crouch), since 1981, the second highest management position in Trinity's hierarchy. Among her many responsibilities, she is responsible for Trinity's translator and LPTV applications. Also, when NMTV secured full power TV stations, she was put in charge of those operations.

Duff's prominent position in Trinity's operations and her many varied and important responsibilities with Trinity was not disclosed in the LPTV and TV applications filed by NMTV and was first revealed involuntarily in 1991. Duff has received no remuneration from NMTV; her income comes solely from her services for Trinity. ID Conclusions at ¶307.

59. With respect to the other members of NMTV's board of directors, the record reflects that their selections by Crouch were based on two criteria: (a) minority status and (b) demonstrated past loyalty to Trinity. Further, each of the four "outside" directors evidenced a woeful lack of involvement in and knowledge of the affairs of NMTV. Thus, they failed to qualify as "owners" in any meaningful sense. Even if they had opted to be more active participants, the governance of NMTV would not have changed. In initially naming himself and fellow Trinity director Duff to NMTV's board and in limiting the number of directors who actually served,[7] Crouch ensured that he would retain iron clad control over the affairs of NMTV. Hence, it was unnecessary for NMTV's governing documents to contain the same "protections" against Crouch's removal as did Trinity's bylaws. ID Conclusions at ¶308.

60. Crouch and Trinity's complete domination of NMTV permeates every facet of NMTV's affairs. From NMTV's inception,

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[7] It is noteworthy that NMTV's bylaws always permitted up to ten directors to serve on its governing board. Notwithstanding, the number never exceeded four and during most of NMTV's existence, did not go beyond three.

Trinity has controlled that company's finances in all material respects. After NMTV was formed, Trinity's paid employees, consultants and lawyers prepared the company's LPTV applications. NMTV was never billed for any services connected with those applications. During the initial years of its existence, NMTV did not maintain a bank account at any financial institution. Rather, the company's finances were maintained by Trinity personnel in a Trinity account. The financial condition of NMTV was reflected each year in a Trinity financial report which was prepared by accounting firms retained and paid by Trinity. NMTV was never billed for any of these services. ID Conclusions at ¶309.

61. During the initial years of NMTV's existence, Trinity conducted telethons during which contributions were solicited from viewers for NMTV and its projects. Trinity employees processed the money and pledges that were received as a result of the telethons, and Trinity's accounting personnel determined whether and to what extent NMTV's account should be credited with any of the money received. ID at ¶310.

62. For a number of years, Trinity accounting personnel debited NMTV's account for expenses incurred by Trinity in connection with Trinity's efforts to obtain translator and LPTV stations. Since NMTV was created for the purpose of obtaining such facilities, the inference that must be drawn is that Trinity charged its translator/LPTV-related expenses to the NMTV account because Trinity considered NMTV to be a mere subordinate vehicle

for carrying out Trinity's translator/LPTV activities. This practice caused NMTV's account to reflect an ever increasing negative fund balance which, by 1987, ballooned to more than $480,000. No one - not Crouch, Duff, or the company's CFO, Espinoza - ever questioned the Trinity practice of attributing its translator/LPTV debts to NMTV despite the fact that during much of that time NMTV was virtually inactive. ID Conclusions at ¶311.

63. When NMTV acquired its first full power television station in Odessa, Texas in 1987, it did so with money from Trinity. As it had done with its other owned and operated companies, Trinity provided the money to NMTV without any security, repayment terms, interest, or promissory note. This was consistent with Trinity's modus operandi for companies whose governing boards - and finances - are controlled by Crouch and other Trinity personnel. By contrast, companies with autonomous governing boards, whose stations are Trinity program affiliates in the traditional sense, have received loans from Trinity that are evidenced by formal written notes which contain all pertinent terms and conditions. ID Conclusions at ¶312.

64. Trinity's informal method of dispensing money for NMTV projects continued unabated through 1992. Thus, without any evidence of notes, security, terms, or interest rates, Trinity funded the entire construction of NMTV's Odessa full power television station, the purchase and complete construction of NMTV's Portland full power television station, and the filing of

numerous LPTV construction permit applications. Furthermore, Trinity agreed to fund in the same informal manner NMTV's proposals to purchase additional full power commercial television stations in Wilmington, Delaware ($3.6 million); Concord, California ($5.4 million); and Hammond, Indiana ($9 million). ID Conclusions at ¶313.

65. The financial control that Trinity exercised over NMTV is best illustrated by the events transpiring after the Odessa station was sold to Prime Time, a religious entity which promised to continue airing Trinity programming. In fact, neither Crouch, Duff, nor Espinoza, the "outside" director, considered selling the station to anyone who would not continue to operate it as a Trinity affiliate. Clearly, the continuation of Trinity programming - not return on investment - was the main concern in finding a suitable buyer. No one associated with NMTV made any effort to determine the fair market value of the Odessa station before it was sold. In fact, although NMTV was heavily in debt, it agreed to sell the Odessa station to Prime Time for more than $100,000 below what it cost to construct the facility. ID Conclusions at ¶314.

66. The sale of the Odessa station to Prime Time was not a cash deal. Rather, NMTV took back a note for the entire $650,000 sales price. When Prime Time subsequently expressed concern that it might go bankrupt if it was not relieved of its debt, NMTV simply wrote off the entire obligation. There was little, if any, consideration given to modifying the terms of the note in

order to make it easier for Prime Time to continue making payments. Of course, the real motivation for cancelling Prime Time's debt was the concern that if Prime Time went bankrupt, Trinity might lose an affiliate station in Odessa as well as other Trinity affiliate stations that Prime Time owned. ID Conclusions at ¶315.

67. Clearly money was not a concern for NMTV because it had from Trinity what in essence was a bottomless reserve of available funds for projects that furthered Trinity's goals. Every existing full power television station that NMTV acquired or considered acquiring, and every application for a construction permit for a new LPTV or translator station that NMTV filed with the Commission was in a market that did not yet enjoy over-the-air reception of Trinity programming. When it was not in Trinity's interest to construct a studio in Odessa capable of originating local programming, the studio was not built. By contrast, when it benefitted Trinity to have such a studio at NMTV's Portland, Oregon, station, or to commence construction of a new NMTV LPTV or translator station, the money and personnel that were needed became immediately available. ID Conclusions at ¶316.

68. The evidence also reveals that throughout NMTV's existence, Trinity personnel have performed work at all levels for NMTV without compensation and, in numerous instances, as part of their Trinity duties. Crouch receives a salary from Trinity and has always served simultaneously as an officer and director

of both Trinity and NMTV. Similarly, Duff has always been a salaried employee of Trinity and for a number of years was also an officer and director of Trinity while serving as an officer and director of NMTV. The address for NMTV's main offices has always been the same as the address of Trinity's headquarters. However, NMTV has never occupied its own offices within the Trinity complex. For example, Duff's office at Trinity has always served as her office for NMTV. Duff routinely performed numerous tasks on behalf of NMTV during her Trinity work day, and her salary at Trinity was never affected in any way. The work that Duff performed on behalf of NMTV was, in practicality, simply a part of her routine Trinity duties. Duff often drafted correspondence relating exclusively to NMTV matters using Trinity stationery and identifying herself in her capacity as Crouch's assistant at Trinity. On numerous occasions, she directed to NMTV employees in Odessa and Portland the same Trinity interoffice memoranda that she directed to Trinity's owned and operated stations. ID Conclusions at ¶317.

69. According to Trinity, the ultimate question in resolving whether Crouch and/or Trinity exercised de facto control over NMTV is whether Duff acted independently of Crouch or as his agent when she performed her role as a director of NMTV. The Presiding Judge does not agree with Trinity's proposition. Further, Trinity has failed to show Duff was independent. To support the conclusion that Duff was independent, Trinity cites those rare instances where Duff did

not agree with Crouch with respect to a matter concerning NMTV's affairs. However, given Duff's continued role at Trinity, it is virtually impossible to conclude that Duff's activities on behalf of NMTV, including the few times Duff opposed Crouch's desires, were not the result of her assessment of what would be in the best interests of Trinity. Thus, Duff's purported independence as an NMTV board member does little to support a conclusion that Crouch and/or Trinity did not exercise de facto control over NMTV since Duff, during the entirety of her tenure as NMTV board member, also had fiduciary responsibility to Trinity. ID Conclusions at n. 41.

70. Trinity personnel, consultants and lawyers were routinely utilized, often without cost to NMTV, to prepare, file, and prosecute NMTV's LPTV and translator applications before the Commission. Trinity personnel performed all accounting activities for NMTV. Trinity personnel performed all payroll activities for NMTV. When NMTV contemplated purchasing a full-power television station in Wilmington, Delaware, Crouch dispatched one of Trinity's station managers to inspect the facility. Upon his return, the station manager reported his findings to Trinity's Chief Engineer, Ben Miller, and to Duff. NMTV did not compensate Trinity for the station manager's activities. ID Conclusions at ¶318.

71. Miller supervised the overall construction of NMTV's full-power television stations in Odessa and Portland. Miller independently authorized numerous purchase orders for equipment

and supplies for the Odessa and Portland facilities. He arranged in one instance without charge for the transfer of equipment from a Trinity station to an NMTV station. Miller provided continuing oversight of the operation of the Odessa and Portland stations after they commenced broadcasting. He supervised the engineers at NMTV's Portland and Odessa stations, communicated with them directly, and in one case recommended a bonus for the work that an NMTV engineer had performed. Miller provided all of his services to NMTV without charge. He did not have to bill NMTV. Miller is a salaried Trinity employee who performed many of his NMTV tasks during his Trinity working day. Miller's Trinity salary remained unaffected by the work he performed for NMTV. The work that Ben Miller did for NMTV was simply part of his Trinity job. Crouch's and Duff's claims that Miller was merely a "consultant" to NMTV simply cannot be credited. Miller used a number of different titles depending upon the particular Trinity-related company for which he was working at the moment. Miller's use of those titles, however, constituted nothing more than a contrivance. Miller and a host of other Trinity employees performed work for NMTV as part of their jobs at Trinity because NMTV was considered part of Trinity. ID Conclusions at ¶319.

72. NMTV's purpose at its inception was to acquire translator stations and LPTV stations that would serve as additional outlets for Trinity programming. The evidence reveals that every one of NMTV's LPTV and translator stations have always broadcast Trinity programming. During the relatively brief time

that NMTV held the license for the Odessa station, nothing but Trinity programming was broadcast. The record evidence further demonstrates that, with the exception of some locally originated programming, the Portland station has also broadcast only Trinity programming. Indeed, it was understood by everyone associated with NMTV that when NMTV applied to the Commission for a construction permit or to acquire an existing station Trinity would be the source of all network programming. No one even considered broadcasting programs provided by any other religious network. NMTV was created by Crouch who founded Trinity. He controlled NMTV's affairs just as much as he controlled those of Trinity. Under the circumstances, it would have been virtually impossible for an NMTV station to broadcast anything other than Trinity programming. NMTV was, in every material respect, a Trinity owned and operated company. ID Conclusions at ¶320.

73. It is also significant that Trinity held out to the public that NMTV was nothing more than an operating division of Trinity. Thus, in numerous "Praise the Lord" newsletters, Trinity's monthly publication, it was represented in no uncertain terms that Espinoza, then host of the Trinity program, "Felicidad," and a director of NMTV, was "a board member of our Satellite Division." The significance of this representation cannot be understated. Trinity did not have a "Satellite Division" as such, and the only entity of which Espinoza was a board member was NMTV. In stating that Espinoza was a member of Trinity's Satellite Division, Trinity was referring to NMTV,

which Crouch had created for the purpose of acquiring translator stations and rebroadcasting satellite-delivered Trinity programming. NMTV may have been recognized under state law to be a sovereign corporate entity because it had its own articles of incorporation and bylaws, but Crouch plainly regarded NMTV as an operating branch of Trinity. That was Crouch's frame of mind; that is how Trinity characterized NMTV to the public in its newsletters; and that is how, in practice, Crouch and others at Trinity treated NMTV. ID Conclusions at ¶321.

74. Trinity's communications counsel also treated NMTV as a Trinity subsidiary rather than an independent corporate entity. This is most evident in the manner in which the law firm billed for its services. During the early years of NMTV's existence, when the law firm performed work on behalf of the company, the law firm did not bill NMTV at all for its services. Commencing with NMTV's acquisition of the Odessa station, the law firm included a line item reference for services rendered to NMTV in Trinity's bills. The practice of sending one consolidated invoice to Trinity for services rendered to NMTV, Trinity and other Trinity-named companies continued unabated for some five years. Clearly, the law firm's billing practice is a reflection of how the law firm viewed NMTV's relationship to Trinity. The firm billed and expected payment from only Trinity. It is yet another indication of the extent to which the two companies were in fact treated as inextricable. ID Conclusions at ¶322.

75. In sum, the only conclusion that can logically be drawn

is that from its inception and throughout its history Trinity and Crouch, aided and abetted by Duff, has exercised de facto control over all facets of NMTV's business. In fact, it is difficult, if not impossible, to distinguish one company from the other. Crouch's invention of NMTV in 1980 provided the vehicle for Trinity's abuse of the Commission's processes. ID Conclusions at ¶323.

V.
With such a record, it is not material whether the minority preference is viewed as simply "more than 50% ownership" or it is viewed under the "de facto control" laws

76. The de facto control laws apply to this minority preference regulation. The first exception to those laws in 60 years was not established by the Commission sub silentio in its choice of language in the promulgation of this regulation when all precedent before and afterwards demonstrates an unbroken line of application of the de facto control laws. As is crystal clear from the foregoing passages, Trinity's overwhelming control of all phases of the affairs of NMTV has earned the ultimate condemnation of denial of license renewal.

77. But even if the de facto control laws were to be set aside for purposes of discussion, and the issue were to be treated as one of "more than 50% ownership," Trinity still has earned the ultimate condemnation of denial of license renewal. If "more than 50% ownership" of a licensee has any meaning, that must be true, beneficial, legitimate ownership. That means true, beneficial, legitimate entreprenurial stock ownership in the case

of a stock corporation. That means true, beneficial, legitimate governance board positions in the case of a non-stock corporation.

78. Counsel for Trinity-NMTV was obliged to acknowledge this, testifying:

> Q: Now, did the directors have to be active directors?
>
> A: They had to be directors, real directors.
>
> Q. What do you mean by a real director?
>
> A. The had to be a director who was involved in attending meetings, voting at meetings, participating in the discussions that occurred at meetings and, in that process, generally directing the affairs and policies of the company.

[emphasis supplied] Tr. 3277. Also:

> Q. And, now, I asked you a moment ago about what you meant by real director, and you meant they had to participate in the activities of the corporation?
>
> A. They had to go to meetings. They had to participate in discussions at the meetings, vote at the meetings. And in that process, they're adopting the policies and decisions that the company is going to use to do business. And as long as they're participating at that level, they're directors, and the -- then I understand that they were qualified for purposes of being able to certify a minority preference in these applications.
>
> Q. Did they have to control the corporation?
>
> A. The directors do control the corporation. So, as long as the directors are going and voting, they are controlling the corporation.

[emphasis supplied] Tr. 3278.

79. With regard to stock corporations, naked legal title to more than 50% of the stock held for the benefit of another party, such as stock held by a "strawman" or in a "street name," does not satisfy the "more than 50% ownership" requirement in any

conceivable sense of the words as used in the minority preference regulation in question. Otherwise, the regulation could be circumvented with impunity and would have no meaning in its purpose of advancing minority ownership in broadcast media.

80. So, too, with regard to ownership of a non-stock corporation, represented by positions on the board of directors. Naked board membership by two of the three members of a board that is so dominated by the third board member (by whom they are employed and to whom they are totally beholden through his personal stature and the funds, programming and mission of another entity that he controls) that they have no independent governance stature in their own right, does not satisfy the "more than 50% ownership" requirement in any conceivable sense of the words as used in the minority preference regulation in question. Otherwise, the regulation could be circumvented with impunity and would have no meaning in its purpose of advancing minority ownership in broadcast media.

81. As it was here. The pervasive and unprecedented dominance of NMTV by board member Crouch and Trinity, adjudicated and determined by Judge Chachkin as reflected in the foregoing passages, is no less devastating to the true, beneficial, legitmate "ownership" consisting of "more than 50%" of the positions on the board, than it is devastating to NMTV under the de facto control laws. The same incriminating factual mosaic is there, contaminating the achievement of "minority ownership" the same as it contaminated the achievement of "minority control."

That incriminating factual mosaic and its terminal consequences to Trinity/NMTV cannot be explained away no matter how many cumulative briefs are filed and no matter how many fine law firms are hired to write them.

82. Consider this example of that dominance. The sole source of funds of NMTV is Trinity which is also dominated and controlled by Mr. Crouch. All affairs of NMTV that are touched by financial considerations are totally controlled by Trinity and Mr. Crouch. Few affairs of any entity including NMTV are not touched by financial considerations. Even if Mr. Crouch, on a given item, elects to accede to the wishes of the other two board members, he has the power to withhold such accession whenever he chooses. In any corporate matter that involves money, the other board members do not have the independent power base to outvote Mr. Crouch and effectuate a corporate decision unless he lets them. The other board members, employed by or otherwise beholden to Trinity, are at his indulgence and sufferance. If Mr. Crouch wants his way in matters of finance, he can get it. So, too, in matters of programming where the raison d'etre of NMTV is to provide more programming outlets for the national and international Trinity monolith. Or in matters of construction. Or in matters of engineering. Or in matters of attorneys. Or in matters of filing and prosecuting FCC applications. Or in purchasing paper clips. As President Lincoln said to his cabinet which had opposed something he wanted, there are 12 "nayes" and one "aye" and the "ayes" have it.

VI.
The arguments and citations in the comments do not and cannot wish away Trinity-NMTV's record of misconduct and deception

A.
Precedent upholding reliance on advice of counsel do not apply
(comments at 2-3)

83. Based on the evidence of record, Judge Chachkin made the following determinations relative to the advice of counsel in this matter: Crouch seeks to mitigate his abuse of the Commission's processes by contending he relied on his communications counsel, Colby May, who advised that NMTV qualified as a minority controlled entity. The findings demonstrate, however, that the blame for the creation of the "sham" corporation, NMTV, and its subsequent use as a vehicle to abuse the Commission's processes rests squarely with Crouch. Initially, the findings establish that NMTV was the brainchild of Crouch to take advantage of the minority preference. Significantly, the issue of minority control was not discussed with FCC counsel at the time of its creation. With respect to the improper claim of the low power preferences, it is clear that Crouch always intended to claim such preferences, well prior to advice from Colby May. Further, Crouch's alleged reliance on his counsel is belied by the fact that Crouch admitted that he understood NMTV's entitlement to the minority exception to the 12 station ownership limit was uncertain (see ID 65). Crouch's testimony also establishes that he knew how to resolve such uncertainty -- by putting all of the facts before the Commission

and obtaining a ruling. Given this knowledge, no legitimate claim can be made that Crouch merely relied on counsel. Of course, what Crouch knew should have been done was not in fact done. The applications filed by NMTV are on their face models of nondisclosure. The only conclusions that can be drawn is that Crouch voluntarily chose to hide behind an opinion of counsel[8] that allowed him to do what he intended to do, notwithstanding his knowledge that the proper course was to disclose all the facts to the Commission and await its rulings.[9] In this connection, Crouch is an experienced broadcaster and sophisticated in the business and management aspects of his ministry. An experienced broadcaster with significant business experience has a lesser basis for claiming reliance on counsel. See RKO General, Inc. (KFRC), 5 FCC Rcd 3222, 3224 (1990); Algreg Engineering, 9 FCC Rcd 5098, 5142 (Rev. Bd. 1994). Especially in light of Crouch's recognition of the need to make full disclosure to the Commission as the only means of ensuring compliance with the Commission's Rules, there is no basis for excusing Crouch's repeated and willful misconduct based on a plea that Crouch

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[8] Crouch's claimed reliance on his counsel is also dubious considering the fact that May's advice was provided orally and contained no analysis of the pertinent rule history. ID Conclusions at ¶332.

[9] As discussed in finding 65, Crouch sought to backtrack from his testimony after he became aware through further questioning of the adverse inferences that would arise. Crouch's attempt to revise his testimony has been found not to be credible. ID Conclusions at ¶332.

blindly relied upon advice of counsel.[10] ID Conclusions at ¶332.

84. The findings of Judge Chachkin at ¶65 of the Initial Decision, to which reference is made, are these: Crouch initially testified that he told May to disclose in the Odessa application everything regarding the relationship of NMTV and Trinity. Tr. 2674. In this regard, Crouch testified:

> "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 NMTV and Trinity 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."

Notwithstanding Crouch's testimony, none of NMTV's applications seeking a minority exemption including the Odessa assignment application signed by Crouch disclosed to the Commission information about Duff's relationship with Trinity or NMTV's relationship with Trinity. Crouch was given a number of opportunities to explain the discrepancy but was unable to offer a credible explanation. Tr. 2707-2712, 2752-2757. In the end, when confronted with the Portland application which, like the Odessa application, failed to disclose Duff's role with Trinity, Crouch sought to retract his earlier damaging testimony and place the onus on May for any failure to inform the Commission. In

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[10] In International Panorama TV, Inc. (KBTN-TV), released January 25, 1983), Crouch was found to have abdicated responsibility to assure himself that all representations in a renewal application were true and correct. However, as reflected in this record, his previous misconduct has had no deterrent effect on Crouch and Trinity. ID Conclusions at ¶332.