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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)))	MM Docket No. 94-150
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)))	MM Docket No. 92-51
Reexamination of the Commission's Cross-Interest Policy	))	MM Docket No. 87-154
Review of the Commission's Regulations Governing Television Broadcasting	))	MM Docket No. 91-221
Television Satellite Stations Review of Policy and Rules	))	MM Docket No. 87-8

To : The Commission

REPLY COMMENTS
OF
RETLAW ENTERPRISES, INC.

Retlaw Enterprises, Inc. ("Retlaw") hereby submits the following reply comments in the above-captioned proceedings. Retlaw is the licensee of nine television stations located in California and the upper Northwest states of Washington, Oregon and Idaho.[1]

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[1] Reitaw's Television Stations are: KJEO, Fresno, California; KVAL, Eugene, Oregon; KCBY, Coos Bay, Oregon; KPIC, Roseburg, Oregon; KIMA-TV, Yakima, Washington; KEPR, Pasco, Washington; KLEW, Lewiston, Idaho; KBCI-TV, Boise, Idaho; and KIDK-TV, Idaho Falls, Idaho.

I.
Introduction

The issues posed by the Commission in these interrelated proceedings strike at the very heart of the American broadcasting system. Although many facets of broadcast ownership and attribution are being explored, the overriding policy question is how best to preserve and foster "localism". Even as the sources of video information proliferate, reaching all the way into cyberspace, a remarkable irony persists. The American public still, perhaps increasingly, relies on local TV stations as their primary source of news, sports and other information. In a sense, therefore, the need for strong local stations owned and operated by separate and diverse interests remains as strong as ever. As stressed in the opening comments of the Network Affiliated Stations Alliance ("NASA"), "[l]ocalism is one of the Commission's most important policy goals because it is the policy that supports broadcasters' decisions to tailor their programming to the specific needs of their communities." NASA Comments, p.4.

Accordingly, the observations and suggestions that follow relate principally to the local TV ownership rules. Retlaw, like certain other broadcasters, is especially concerned that the current trend toward consolidation of broadcast television interests could, if not properly assessed and guided by this agency, ultimately endanger the strong system of locally-based broadcasting that has served the American people so well for so long. See, e.g., Comments of Post-Newsweek Stations, Inc., p.2; Press Broadcasting Co., Inc., p.2. While Retlaw generally supports broadcast industry deregulation, any further steps in this direction must be premised on enhancing overall service to the public and not driven solely by the self-interested views of those who want the rules changed merely to facilitate their own business agendas. In sum, Retlaw strongly supports the Commission's

effort to re-assess its television and ownership attribution rules, but suggests that any modifications made to those rules be judiciously tailored so as not to undermine or overturn any of the current strengths of broadcast television.

Finally, Retlaw submits that large scale or precipitous relaxation of the local TV ownership standards would appear especially premature at this particular moment in time, given the substantial changes that may be introduced into the marketplace in the immediate months and years ahead as a result of the advent of digital television ("DTV"). For example, not only does DTV hold out the promise of sub-channels being deployed by existing analog licensees, but DTV also seems likely to substantially alter some of the existing differences between UHF and VHF propagation that have in the past largely shaped certain TV ownership policies.

II.

Retlaw Supports The Commission's Proposed Modest Reform of the TV Duopoly Rule Which Would Replace The Grade B Overlap Standard With A New Grade A Overlap Standard, As Long As the Stations Involved Serve Separate DMAs

Viewed fairly, the comments to date reflect little uniformity among commenters on most of the Commission's specific TV ownership proposals. It is perhaps not surprising that viewpoints are so divided on some of the major proposals – with many positions being shaped by the business strategies of the commenting parties. Equally important, however, is the fact that these are difficult and sensitive issues not easily resolved with a broad brush.

Most observers, inside or outside the television industry, would concede that program and viewpoint diversity is a good (if not essential) thing in an open society and that multiple rather than singular ownership is a better way of ensuring such diversity. Because the Commission's dual objectives of promoting program and viewpoint diversity and fostering a competitive broadcast environment depend upon certain real-world factors, a periodic assessment of prevailing

marketplace conditions is undoubtedly necessary and appropriate for reaffirming or re-shaping basic policy premises.

We, applaud, therefore, the Commission's ongoing efforts in this regard. Retlaw also acknowledges what virtually every commenter has stressed – i.e., that the TV marketplace has undergone enormous changes within the past decade and stands on the verge of even greater change as we head into the 21st century. These underlying changes may suggest some adjustment in the Commission's standards but, at the same time, they may likewise suggest a certain degree of caution.

In Retlaw's view, competition will not be hindered and the rules would better reflect real-world marketplace conditions if the TV duopoly rule were relaxed to permit common ownership in adjacent markets where the stations are licensed to separate DMAs and there is no Grade A overlap. First, the Grade B standard is overbroad and impedes potential ownership efficiencies without benefiting the public. Second, stations licensed to communities located in separate DMAs obviously serve distinct local markets.

With respect to other permissible local ownership standards, Retlaw agrees with those parties (see, e.g., Comments of Post-Newsweek Stations and Kentuckiana Broadcasting, Inc.) who have urged the Commission not to establish any blanket exceptions to the TV duopoly rule for UHF stations. As stated in the opening comments of Post-Newsweek Stations (at page 4):

> "Relaxing the duopoly rule to permit joint ownership of UHF/UHF or UHF/VHF combinations would place more channels in fewer hands, endangering the Commission's long-standing goals of diversity, competition and service to local communities. There is no legitimate reason to discount UHF station ownership . . . Numerous UHF stations have acquired major network affiliation and they, along with others, have garned significant viewership share in their markets. Also, in today's world where the vast majority of the country is cable-covered there is no real justification for the UHF-VHF distinction."

In short, there simply is no legitimate public interest rationale for creating a universal, across-the-board exception for any two stations to combine in a given local market simply because one happens to operate on a UHF frequency. Such an exception would not only swallow the rule but ensure a more rapid decrease in the number of independent voices serving individual markets.

On the other hand, Retlaw recognizes the possibility that, in certain limited situations, some narrowly crafted exceptions may be appropriate. But the exceptions must be just that – discrete, extraordinary situations premised on ad hoc determinations based upon compelling factual showings applied on a market-by-market basis, not huge, pre-determined gaps in the basic rule.

For example, Retlaw could endorse a Commission ad hoc approach that permitted some waivers of the rule where a station had demonstrably "failed" - - documented either by a formal bankruptcy filing, financial distress short of bankruptcy that is nevertheless based on a showing of long-term financial losses, or a station's being off the air for a proscribed period of time. Moreover, in order to ensure that this exception is not subject to abuse, the Commission should require a waiver applicant to show that no alternative entities are willing to purchase the failed station. See Comments of Kentuckiana Broadcasting, Inc., pp. 3-4.

Finally, Retlaw concurs with the vast majority of commenting parties who have urged the Commission to retain its current policy exempting satellite stations from the TV duopoly rule. Elimination of the satellite station exemption could only result in curtailing vital service to already underserved communities. In our view, television satellite operations, specifically authorized under discrete Commission policy for more than three decades, bear no resemblance to what is now labeled "duopolies" or "LMAs".

III.

Television LMAs Should Be Attributable Under The Multiple Ownership Rules And Thus, In The Future, Permissible Only If The TV Duopoly Rule Is Not Violated

There can be little question that LMAs and similar agreements that entail operational control over the programming, advertising and day-to-day management of a "brokered" station constitute a form of influence that minimizes not enhances diversity. While certain business efficiencies ultimately can be achieved by such combinations, that should not be the test. LMAs perpetuate control without legal ownership. And, as such, they remove an independent voice from the marketplace.

Again, this is plainly not a subject for blanket exceptions. Indeed, carving out an LMA exception from the duopoly rule would fly in the face of reality and run directly counter to long-standing principles upon which the Commission's diversity policies have been established.

LMAs should, therefore, be recognized for what they are – a degree of control and influence that warrants ownership attribution. To do otherwise would be completely and inexplicably inconsistent with the Commission's earlier finding with regard to radio. A party that controls and operates more than 15% of the program time on a particular TV station should be regarded as owning that station. It should be permissible – as long as that form of ownership is permissible under the applicable TV duopoly rule.

Retlaw recognizes, and the comments surely reflect, the fact that a substantial number of TV LMAs are already in existence. While such agreements were entered into with knowledge that the Commission had not yet set any defined standards for such arrangements, the issue of "grandfathering" naturally arises. In Retlaw's view, perpetual grandfathering or grandfathering to the end of existing terms (without regard to length) would be inconsistent with the goal of creating a level playing field in local TV ownership.

For this reason, Retlaw believes that common control arrangements such as TV LMAs, time brokerage agreements, etc. that are currently in place should be required to come into compliance with new attribution standards after the shorter of one year from the date of a final order in these proceedings or the termination date of the current LMA term.

While there may be some circumstances where existing LMAs should be treated more leniently, any special grandfathering should only be allowed following a case-by-case showing that the LMA uniquely serves the public interest and does not adversely impact competition in its particular local market.

IV.

Conclusion

Diversity of programming and informational choices is a linchpin of our broadcast system that fits squarely with our system of government. Retlaw urges the Commission to revise and update its TV ownership standards in a way that maximizes these long-held principles.

Respectfully submitted,

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