



October 27, 2004

**Via Electronic Comment Filing System (ECFS)**

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of Proposed Rulemaking  
MB Docket No. 04-256

Dear Ms. Dortch:

I am General Manager of KRXI-TV, Channel 11, Reno, Nevada.<sup>1</sup> KRXI-TV hereby submits these Comments in response to the Commission's Notice of Proposed Rule Making (the "Notice") in MB Docket No. 04-256. In the *Notice*, the Commission asks whether its reevaluation of grandfathered pre-November 1996 television local marketing agreements ("LMAs") should commence in 2004 or be postponed until the quadrennial ownership review in 2006. KRXI-TV urges the Commission to postpone the reevaluation until 2006 at the earliest due to the unsettled issues involving the Commission's new ownership rules and substantial questions about the economic viability of subject stations as stand-alone operations in smaller markets.

KRXI-TV has a significant interest in the Commission's inquiry regarding grandfathered pre-November 1996 television LMAs. KRXI-TV provides programming to television station KAME-TV, Channel 21, Reno, Nevada, pursuant to a grandfathered pre-November 1996 Time Brokerage Agreement dated as of August 31, 1995 ("KAME-TV LMA") with Broadcast Development Corporation, the licensee of KAME-TV at that time. Both stations are located in the Reno, Nevada Designated Market Area (the "Reno DMA") which is ranked 116th in the country.<sup>2</sup>

KRXI-TV submits that the unresolved issues involving the Commission's new ownership rules should be settled before the Commission reevaluates grandfathered pre-November 1996 television LMAs because of the significant impact the new rules may have on them. Indeed, the new rules may render the Commission's reevaluation of many grandfathered pre-November

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<sup>1</sup> KRXI-TV is owned by KTVU Partnership. KTVU, Inc. is the managing general partner of KTVU Partnership and a subsidiary of Cox Broadcasting, Inc.

<sup>2</sup> See BIA, *Investing in Television 2004*, DMA Rank: 116 (3rd ed. 2004) ("*Investing in TV*").

1996 LMAs moot, given a large number may comply with the Commission's new local television ownership rules. The KAME-TV LMA likely would be one such example. Based on KAME-TV's and KRXI-TV's most recent all-day (9:00 a.m.- midnight) audience share (July 2004) listed in *Investing in TV*, KAME-TV and KRXI-TV are ranked 5th and 4th, respectively, in the Reno DMA. According to *Investing in TV*, the Reno DMA includes nine full-power, commercial and non-commercial television stations. Under the revised local television ownership rules, a single entity may own two television stations in a market of that size, so long as both stations are not among the top four-ranked stations in the DMA. Given that KTVU Partnership holds attributable interests in just two television stations in the DMA, only one of which is among the top-four ranked stations, the KAME-TV LMA would not cause KTVU Partnership to exceed the local ownership limits in the Reno DMA under the revised rules. In a similar manner, the Commission's revised ownership rules could significantly impact many other grandfathered pre-November 1996 television LMAs.

The Commission's broadcast ownership rules are in flux, however, and may remain so for quite some time. As the Commission is aware, in June 2004, the Third Circuit remanded much of the Commission's June 2003 decision back for further consideration, including portions of the revised local television ownership rules.<sup>3</sup> The new rules appear unlikely to take effect anytime soon, as the Third Circuit's stay preventing the Commission from implementing the new rules will remain in force until after either the Supreme Court reverses the Third Circuit's decision or the Commission completes its court-ordered review and the Third Circuit approves the result. Indeed, it appears that the entire process may not be completed before 2006. Accordingly, given the interrelated nature of television LMAs and the Commission's ownership rules, the Commission should postpone its reevaluation of grandfathered pre-November 1996 television LMAs at least until 2006.

In addition, before beginning its reevaluation of grandfathered pre-November 1996 television LMAs, the Commission should be certain that the stations could remain economically viable as stand-alone operations. KRXI-TV submits that there is substantial question whether that would occur in smaller markets. In such markets, the current economic conditions, competition, digital transition, and small advertiser base may make it especially difficult for joint broadcast operations to remain economically viable on their own. For example, how have poor economic conditions affected the status of competition and diversity in smaller markets? Also, has it been relatively more difficult for stations in smaller markets to finance the transition to DTV? Additional data is necessary for those and other questions to be answered. Broadcasters must be afforded sufficient time to gather such data so the Commission has a complete record to determine whether continuation of the LMA is in the public interest. The Commission therefore should not rush to reevaluate grandfathered pre-November 1996 television LMAs. Given the

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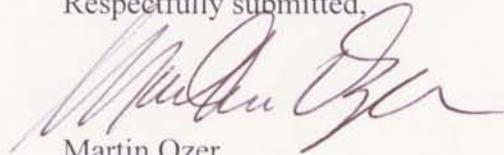
<sup>3</sup> Specifically, the court upheld the "Top Four" restriction of the Commission's revised local television rules but it held the Commission did not properly justify the particular revised numerical limits. Consequently, the court remanded the numerical limits back to the Commission for further review and analysis.

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potentially devastating impact termination of grandfathered pre-November 1996 television LMAs may have on the economic viability of many stations in smaller markets, and, in turn, their service to the public, the public interest demands such a result.

Based on the foregoing, KRXI-TV urges the Commission to postpone its reevaluation of grandfathered pre-November 1996 television LMAs until 2006 at the earliest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin Ozer", written in a cursive style.

Martin Ozer  
General Manager of KRXI-TV