

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-75

In re Applications of

TRINITY BROADCASTING File No. BRCT-911001LY
OF FLORIDA, INC.

For Renewal of License of
Station WHFT(TV), Miami, Florida

and

GLENDALE File No. BPCT-911227KE
BROADCASTING
COMPANY

For Construction Permit
Miami, Florida

HEARING DESIGNATION ORDER

Adopted: March 16, 1993; Released: April 7, 1993

By the Commission: Commissioner Marshall not participating.

1. The Commission has before it the above-captioned application for the renewal of license of station WHFT(TV), Channel 45, Miami, Florida, filed by Trinity Broadcasting of Florida, Inc. ("TBF"), and the mutually exclusive application of Glendale Broadcasting Company ("Glendale") for a new commercial television station to operate on Channel 45, Miami, Florida.

2. Also before the Commission are the following pleadings: (a) Petition to Deny TBF's renewal application filed by Glendale; (b) Petition to Deny TBF's renewal application filed by Spanish American League Against Discrimina-

tion ("SALAD"); (c) Opposition to Petitions to Deny filed by TBF; (d) Reply to Consolidated Opposition to Petitions to Deny filed by Glendale; (e) Request for Declaratory Ruling of National Minority TV, Inc. ("NMTV"); (f) Opposition to Request for Declaratory Ruling filed by Glendale; (g) Response to the Commission's Letter of Inquiry filed by NMTV; and (h) Comments on NMTV's Response to the Commission's Letter of Inquiry filed by Glendale.

I. BACKGROUND

3. On December 27, 1991, Glendale filed a Petition to Deny the license renewal application of TBF. While Glendale's pleading is styled as a "Petition to Deny" it actually seeks the specification of numerous issues against TBF. The thrust of Glendale's Petition is that Paul F. Crouch and/or Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("TBN") have used NMTV as a front to evade the Commission's multiple ownership rules.

4. TBN is a non-stock corporation. Paul F. Crouch, his wife, Janice Crouch, and Norman G. Juggert are TBN's directors.¹ These three are also the directors of other TBN affiliates² which, with TBN, are the licensees of 11 full-power commercial television stations.³ Paul Crouch, P. Jane Duff, Phillip Aguilar and E.V. Hill⁴ are the directors of NMTV, the licensee of KNMT-TV, Portland, Oregon. At one time, TBN and its affiliates were the licensees of 12 commercial television stations, and NMTV was the licensee of two commercial television stations.⁵ Paul Crouch, a non-minority, is the president of TBN and its affiliates as well as president of NMTV. Duff, a minority, is assistant to the president of TBN and secretary/treasurer of NMTV (she was formerly vice president of NMTV).⁶ Paul Crouch and Jane Duff are salaried employees of TBN. Aguilar, a minority, is the vice president of NMTV and the founder and pastor of Set Free Christian Fellowship, a church in Anaheim, California. Hill, a minority, is the pastor of the Ebenezer Baptist Church in Watts, California.

5. On March 29, 1991, NMTV filed an application to acquire the license of WTGI(TV), Wilmington, Delaware. A petition to deny the assignment application was filed, which alleged that NMTV was a front for TBN. After NMTV filed its Opposition, the Chief of the Mass Media Bureau's Video Services Division requested additional information from NMTV. After NMTV responded, but before the Commission could act on the assignment application, it was withdrawn by NMTV. Glendale seeks to raise the same

¹ In a non-stock corporation the Commission normally looks to directors in evaluating ownership and control. *Roanoke Christian Broadcasting, Inc.*, 52 RR 2d 1725 (Rev. Bd. 1983).

² The term "TBN affiliates" is used herein to refer to the broadcast licensees that have the same directors, Paul F. Crouch, Janice Crouch, and Norman G. Juggert, as TBN. Although they are set up as separate legal entities, they are all controlled by the same individuals.

³ TBN: KTBN-TV, Santa Ana, California; WDLI(TV), Canton, Ohio; and WHSG(TV), Monroe, Georgia. Trinity Broadcasting of Arizona, Inc., KPAZ-TV, Phoenix, Arizona. Trinity Broadcasting of Oklahoma City, Inc., KTBO-TV, Oklahoma City, Oklahoma. Trinity Broadcasting of Washington, Inc., KTBW-TV, Tacoma, Washington. Trinity Broadcasting of Florida, Inc., WHFT(TV), Miami, Florida. Trinity Broadcasting of Indiana, Inc., WKOI(TV), Richmond, Indiana; and WCLJ(TV), Bloomington, Indiana. Trinity Broadcasting of New York, Inc., WTBV-TV, Poughkeepsie, New York. Trinity Broadcasting of Texas, Inc., KDTX-TV, Dallas, Texas.

⁴ From September 1980 until August 1990, Phillip David Espinoza, a minority, was a director of NMTV along with Crouch and Duff. Aguilar replaced Espinoza as a director in August 1990. Hill became the fourth director in October 1991.

⁵ TBN and its affiliates reached the 12 television station limit in 1986 with the purchase of WCLJ(TV), Bloomington, Indiana. NMTV acquired its first commercial television station, KMLM-TV, in June 1987, allegedly putting TBN over the multiple ownership limit with 13 television stations. In December 1988, NMTV acquired KNMT-TV raising TBN's alleged interests to 14 television stations. In December 1989, KNAT-TV, Albuquerque, New Mexico, was sold and WHSG(TV), Monroe, Georgia, was acquired, thus keeping TBN's alleged interests at 14 television stations. In April 1991, KMLM-TV was sold by NMTV and in December 1991, WLXI(TV) was sold by TBN. Thus, TBN was allegedly in violation of the Commission's multiple ownership rules from June 1987 until December 1991.

⁶ Prior to becoming a director of NMTV in 1980, Duff was vice president and a director of TBN.

matters that were alleged in connection with the WTGI(TV) assignment application. Indeed, Glendale resubmits many of the pleadings and attachments previously filed in connection with the proposed sale of WTGI(TV). NMTV has also filed a Request for Declaratory Ruling concerning its relationship to TBN. Consequently, the staff sought additional information from NMTV through a Letter of Inquiry. All of the responsive information and pleadings are being considered herein because they all relate to the issue of who controls NMTV.

II. NMTV'S REQUEST FOR DECLARATORY RULING

A. Proposal

6. NMTV's Request for Declaratory Ruling, filed November 18, 1991, seeks a declaration from the Commission that "the 'minority-owned' standard set forth in rule 73.3555[e]⁷ is met by a nonprofit organization when a controlling number of its voting board members are individuals from recognized minority groups, and when the nonprofit organization is in compliance with state law regarding its chartering and operations, without resorting to consideration of other factors such as whether the minority directors are involved in day-to-day station operation." NMTV also seeks a declaration whether a minority-controlled corporation is prohibited from receiving assistance from or associating with a nonminority-controlled corporation in various enumerated ways.⁸ Because the issues raised in NMTV's Request for Declaratory Ruling are so closely related to the issues raised in the Petitions to Deny the renewal application of TBF, they will be addressed herein.

7. NMTV states that it is a California Nonprofit Corporation organized on September 16, 1980, and authorized to do business in Texas, Oregon and Delaware. It is recognized as a tax-exempt 501(c)(3) organization by the IRS, and is tax-exempt in California, Texas and Oregon. NMTV states that all of its assets are irrevocably dedicated for charitable purposes.

8. NMTV further states that its organizational documents provide that the corporation's directors are its members, are self-perpetuating, and that each has one vote. From its inception until October 1991, two of NMTV's three directors have been minorities. In October 1991, a third minority director (Hill) was added to bring the current number of NMTV directors to four.

9. NMTV notes that the Commission has twice approved its acquisition of television stations pursuant to the provisions of Section 73.3555(e) of the Commission's Rules. NMTV contends that the Commission reviewed its legal qualifications, organization, purpose, and association with TBN in both cases. Moreover, NMTV has provided additional information on several occasions when requested by the Commission's staff. NMTV claims that the staff's appar-

ent unwillingness to grant the application to acquire WTGI(TV), Wilmington, Delaware, has created uncertainty as to whether the Commission's application of the provisions of Section 73.3555(e) has changed.

10. NMTV contends that it is minority-owned because a majority of its directors are members of minority groups. Moreover, it asserts that it is minority-controlled for purposes of Section 73.3555(e) because it meets that rule's definition of minority-controlled by being more than 50 percent owned by one or more members of a minority group. NMTV further contends that the Commission's multiple ownership rules relating to minority ownership do not require integration of ownership into management and do not mention minority programming.

11. NMTV claims that minority ownership, under the Commission's multiple ownership rules, is an end in itself. According to NMTV, the Commission established a different standard for determining minority-control under the multiple ownership rules than it established for use in connection with the integration criteria of the standard comparative issue, and for tax certificate and distress sale policies. NMTV concedes that, in connection with the standard comparative issue, minority ownership is significant only when it is combined with integration of the minority owner into the management of the broadcast station. NMTV also concedes that in adopting the minority distress sale and tax certificate policies the Commission was striving to increase minority ownership and operation of stations. These policies, NMTV notes, were designed to increase minority management, minority programming and diversity of broadcast voices. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978). However, NMTV argues that when the Commission adopted the minority ownership provisions of the multiple ownership rules, no reference was made to management involvement by minorities or to minority programming. Accordingly, NMTV concludes that the Commission should not look beyond mere legal ownership of a licensee in order to determine where control lies.

12. NMTV acknowledges the longstanding and extensive ties with TBN which are discussed herein in connection with the Petitions to Deny. Nevertheless, NMTV contends that, because it maintains a separate corporate and legal existence from TBN, complies with federal and state laws, and functions as a separate corporation, it satisfies the Commission's multiple ownership requirements. NMTV also argues that its history of constructing and operating television stations indicates that its continued operation is in the public interest.

⁷ The Commission recently amended Section 73.3555 of its Rules which caused a renumbering of the subsections. *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387 (1992). Thus, former Section 73.3555(d) has now become Section 73.3555(e). References herein will be to the new subsection numbers.

⁸ NMTV queries whether the following activities are prohibited between a minority-controlled corporation and a nonminority-controlled corporation pursuant to Section 73.3555(e) of the Commission's Rules:

(a) entering into a program affiliation agreement;

(b) loaning funds at favorable rates;

(c) sharing common officers;

(d) using common employees;

(e) having salaried employees of the nonminority-controlled corporation as principals of its minority-owned corporation; and,

(f) having substantially similar or even identical benefit plans, personnel practices and other operational similarities.

B. Discussion

13. As discussed *infra*, we will specify a *de facto* control issue in this proceeding. We reject the contention that the minority-control portion of our multiple ownership rules precludes us from looking beyond mere legal ownership of a licensee. See *Arnold L. Chase*, 5 FCC Rcd 1642 (1990). See also, *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981); *The Trustees of the University of Pennsylvania Radio Station WXPN(FM)*, 69 FCC 2d 1394 (1978). Cf. *Pan Pacific Television, Inc.*, 3 FCC Rcd 6629, 6636 (1988) (Commission looks beyond legal ownership in determining compliance with alien ownership restrictions). As was the case in our review of the first two acquisitions of television stations by NMTV, normally we will seek to determine whether a proposed minority-controlled licensee is in fact a separate legally qualified minority entity. Typically, this review would not entail an inquiry into areas such as involvement in management by minority owners or the broadcast of any particular type of programming. Moreover, when the Commission approved earlier acquisitions of television stations by NMTV, we did not have before us detailed allegations of fact which would indicate that TBN might have *de facto* control of NMTV. However, when a substantial and material question of fact is appropriately raised concerning the *de facto* control of the licensee by another entity, we are not precluded from examining this issue using our established indicia of control. See, e.g., *Stereo Broadcasters, Inc.*, 55 FCC 2d 819 (1985); *George E. Cameron Jr. Communications*, 91 FCC 2d 870 (Rev. Bd. 1983); *Blue Ribbon Broadcasting, Inc.*, 90 FCC 2d 1023 (Rev. Bd. 1982). Indeed, for us to refuse to determine where actual control of NMTV lies would be inconsistent with the mandate of Section 310(d) of the Communications Act of 1934, as amended. *Astroline Com. Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). The types of activities listed in footnote 8, upon which NMTV seeks a declaratory ruling, have been found to be individually acceptable to the Commission in the context of specific factual situations. However, the facts that are before us compel us to consider the whole situation, including the types of activities referenced in footnote 8, in order to determine whether the relationship between TBN and NMTV constitutes *de facto* control.

14. One other matter which we wish to address is NMTV's assertion that under the minority-control provision of our multiple ownership rules, minority ownership is seen as an end in itself. We reject this assertion. Such race based differentiation in the ownership of broadcast stations would not be acceptable if it were not designed to promote goals relating to diversity of programming which we have previously enumerated. See *Metro Broadcasting, Inc. v. FCC*, 110 S. Ct. 2997 (1990). "Congress and the Commission have adopted a policy of minority ownership not as an end in itself, but rather as a means of achieving greater programming diversity." *Id.* at 3025.

III. GLENDALE'S PETITION TO DENY

A. Issues Requested

15. Glendale requests that the following issues be specified:

1. To determine whether Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (TBN) and/or Paul F. Crouch exercises *de facto* control over National Minority TV, Inc.

2. To determine whether TBN and/or Paul F. Crouch abused the Commission's processes by using National Minority TV, Inc., as a subterfuge to evade Section 73.3555[e] of the Commission's Rules.

3. To determine whether a grant of the WHFT renewal application would be consistent with Section 73.3555[e] of the Commission's Rules.

4. To determine whether National Minority TV, Inc., falsely claimed minority preferences in LPTV applications filed in its name and whether such false certifications were an abuse of the Commission's processes.

5. To determine whether National Minority TV, Inc., Paul F. Crouch, and/or TBN lacked candor and/or misrepresented facts in an "Opposition to Petition to Deny" filed in the name of National Minority TV, Inc., on May 23, 1991, and/or its September 24, 1991, response to a Commission inquiry.

6. To determine whether National Minority TV, Inc., violated Sections 73.3514 and 1.65 of the Commission's Rules by failing to report the conviction of its director, Phillip R. Aguilar, of felony assault.

7. To determine whether National Minority TV, Inc., and/or Paul F. Crouch misrepresented facts and/or lacked candor concerning Crouch's knowledge of Phillip R. Aguilar's felony conviction.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether TBF, TBN or NMTV is qualified to remain a Commission licensee.

B. The De Facto Control and Multiple Ownership Issues

16. Section 73.3555(e)(1) of the Commission's Rules states that:

No license for a commercial AM, FM or TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners, members, officers, or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in:

...

(ii) More than 14 television stations, or

(iii) More than 12 television stations which are not minority-controlled.

Furthermore, Section 73.3555(e)(3)(iii) of the Commission's Rules states that for purposes of this rule, "minority-controlled" means more than 50 percent owned by one or more members of a minority group. As the Commission stated when it adopted its multiple ownership rules, it "permit[s] group owners of television and radio stations to utilize a maximum numerical cap of 14 stations provided that at least two of the stations in which they hold cognizable interests are minority controlled." *Reconsideration of Multiple Ownership Rules*, 100 FCC 2d 74, 94 (1985).

17. Commission precedent establishes that questions as to possible *de facto* control must be decided on a case-by-case basis. See, e.g., *Turner Broadcasting System, Inc.*, 101 FCC 2d 843, 848 (1985). A wide variety of factors may be relevant in reaching a determination. See generally, *William S. Paley*, 1 FCC Rcd 1025 (1986), *recon. denied*, 2 FCC Rcd

2274 (1987), *aff'd sub nom. Fairness In Media v. FCC*, 851 F.2d 1500 (D.C. Cir. 1988)(*mem.*); and *News International, PLC*, 97 FCC 2d 349 (1984). These decisions tend to focus on the ability to control finances, personnel and programming. *News International, PLC*, 97 FCC 2d at 357-8, and, where appropriate, the ability or inability to dominate the company's board of directors. *William S. Paley*, 1 FCC Rcd at 1026. In determining whether a person or entity possesses *de facto* control, "we are governed chiefly by the demonstration of ... power to dominate the management of corporate affairs." *Benjamin L. Dubb*, 16 FCC 274, 289 (1951).

C. Alleged Control Over Board of Directors

18. Glendale contends that NMTV's directors are all closely associated with, and heavily dependent upon TBN. Both Crouch and Duff are employees of TBN. Aguilar's ministry, Set Free, receives from TBN \$5,000 per month and the free use of houses and properties in California, Texas and Illinois. Set Free provides services to TBN which include "Prayer Partners," who talk to callers and help in distributing goods donated by TBN viewers. Since its inception in 1980, the other officers of NMTV have been employees of TBN. Currently, employees of TBN, Terrence Hickey and Allan Brown, are assistant secretaries of NMTV. Over the years other officers of NMTV who were also employees of TBN have included: Matthew Crouch, Paul Crouch's son, assistant secretary; Phillip Crouch, Paul Crouch's son, assistant secretary; and Charlene Williams, assistant secretary. Glendale contends that NMTV's dependence on TBN gives TBN the power to control NMTV's minority directors. NMTV's own Response indicates that NMTV's board of directors did not have independent annual meetings from 1981 through 1987, but instead participated in annual meetings of the combined boards of directors of TBN and "affiliated corporations."

19. TBF contends that there are two significant factors that should be kept in mind when analyzing the *de facto* control issue. First, TBF states that both TBN and NMTV are nonmembership, nonprofit corporations in which no individual has an equity or other pecuniary interest. TBF contends that with religious charitable organizations there is often a sharing of volunteers, office space, and financial support. TBF argues that the traditional *de facto* control analysis cannot be blindly applied to entities such as TBN, NMTV and TBF. Second, TBF claims that TBN and NMTV are bound together by their common evangelical mission. TBF states that TBN, NMTV and TBF were all created by:

their principals because of shared, strongly held common religious beliefs, because of a common commitment to evangelism, and because of a common conviction that their message can best be spread through the use of a television ministry. Actions which might, in a for-profit corporation be indicative of 'control,' are in the culture of religious ministries simply evidence of a shared religious fervor.

TBF also echoes the argument made by NMTV in its Request for Declaratory Ruling, that the minority ownership exception to the Commission's multiple ownership rules should be limited to "ownership" and not take into consideration "control." According to TBF, because the majority of the directors of NMTV have always been minorities, there is no need to determine where control lies.

D. Alleged Control Over Programming

20. Glendale contends that TBN provides NMTV with virtually all of its programming. The programming is provided pursuant to a standard Affiliation Agreement between TBN and NMTV. Glendale contends that the provision of programming by TBN removes the programming from the control of NMTV's minority directors and places it under the control of TBN.

21. In the Response of NMTV to the Commission's Letter of Inquiry ("NMTV Response"), NMTV stated that it produced three programs during 1991. This programming involved crusades or revivals, one of which was put on by TBN. NMTV also claims to produce a weekly show, Joy in the Morning. However, the show is broadcast from TBN's studios on TBN's station KTBN-TV, Santa Ana, California. Moreover, TBN retains significant control over the production and rights to this show. For instance, TBN determines the time and schedule of broadcasts and retains all right, title and interest in all programs.

E. Alleged Control of Finances

22. Glendale asserts that evidence of the control which TBN exercises over NMTV's finances can be found in the loan agreement between TBN and NMTV which was to be used to acquire WTGI(TV), Wilmington, Delaware. Glendale speculates that the terms of the loan were arranged so as to give TBN control over NMTV. Moreover, Glendale claims it is unusual to have a provision in the loan which calls for repayments to be made using 30 percent of the contributions made to TBN from people having zip codes within the WTGI(TV) broadcast area. Glendale also states that in connection with the proposed WTGI(TV) acquisition, Allan Brown, who was not an officer or director of NMTV, but was an officer of TBN, signed checks on behalf of NMTV.

23. The NMTV Response reveals that since at least January 26, 1987, TBN has been authorized and empowered to act as the accounting agent for NMTV. Moreover, TBN currently provides bookkeeping and accounting services to NMTV which include the preparation of NMTV's payroll, financial statements, federal and state income tax returns and reports, purchasing requirements, data processing, and the servicing of NMTV's accounts payable. From 1981 through 1987 NMTV and TBN prepared combined balance sheets and other financial documents. While TBN has advanced or loaned NMTV more than \$4 million, no formal notes have ever been executed reflecting the advances/loans. There is also no formal policy for the payback by NMTV of these advances/loans from TBN.

24. TBF claims that NMTV controls its own finances because NMTV generates its own revenue, solicits for its own contributions, files its own tax returns and manages its own bank accounts. TBF also argues that the loan agreement which was proposed to be used with the acquisition of WTGI(TV) is unexceptional and has been used by TBN before.

F. Alleged Control Over Personnel

25. Glendale contends that NMTV has not shown that its minority directors are responsible for making personnel policy decisions at NMTV. Glendale speculates that TBN may have an influence on NMTV's personnel policies because of the sharing of officers and directors.

26. TBF asserts that Duff sets NMTV's personnel policy, and ensures implementation of NMTV's EEO program. Additionally, it claims that Duff prepares and reviews NMTV's filings with the Commission, reviews regular check logs, and approves purchase order expenditures. However, NMTV's Response reveals that NMTV's employee handbook is virtually identical to TBN's employee handbook. Moreover, it appears that some personnel policies were adopted at joint board of directors meetings which involved TBN and all of its affiliates including NMTV.

G. Alleged Lack of Candor/Misrepresentation Issue

27. Glendale challenges NMTV's candor by referencing statements made by NMTV in its opposition to the petition to deny filed in connection with the proposed acquisition of WTGI(TV). Specifically, Glendale alleges that NMTV's statement that it was relying on a loan commitment from the Bank of California to acquire the Wilmington station, was deceptive because NMTV eventually used funds borrowed from TBN to make the escrow payment. Glendale also claims that NMTV was misleading when it stated that it "has its own bank accounts from which it pays its own employees and other creditors, and has its own revenues, from the sale of broadcast time and spots. NMTV receives its own contributions as a recognized 501(c)(3) organization." Glendale further claims that NMTV was not forthright about the role of its minority directors in the management and operation of NMTV.

28. In reply, TBF argues that NMTV's statement, that funds were available from the Bank of California, was not made untrue merely because NMTV eventually chose to obtain funds from another source. Moreover, TBF states that NMTV does have its own bank accounts and employees. Finally, NMTV states that it did not misrepresent Duff's role in the management and operation of NMTV.

29. In its comments on NMTV's Response, Glendale cites additional statements by NMTV which it believes are false or misleading. Glendale claims that Statements made by NMTV in LPTV applications filed in 1980 do not accurately reflect the relationship between NMTV and TBN. Furthermore, Glendale claims that NMTV's assertions that it controls its own finances are false and its claim that it produced local programming each week is false.

H. Allegations Concerning the Reporting of the Felony Conviction of Aguilar

30. Glendale states, and TBF concedes, that Aguilar was convicted of a felony in 1976. NMTV failed to report Aguilar's felony conviction in a timely manner after he became a member of NMTV's board of directors. Glendale contends that a reporting issue is warranted. In addition, Glendale contends that NMTV was untruthful when it stated in opposition to the petition to deny the Wilmington assignment application that it had just learned about Aguilar's 1976 conviction. Since Aguilar's conversion from a "drug addict, biker, and ex-convict" is an integral part of his ministry, Glendale contends that NMTV must have been aware of his felony conviction.

31. NMTV states that when it said that it had just learned of Aguilar's felony conviction, it was referring to communications counsel who had just learned of the conviction, not NMTV. NMTV's directors were aware of Aguilar's felony conviction long before he became a director but did

not focus on the need to report it. Moreover, TBF asserts that Aguilar's conduct as a minister over the past ten years indicates that he has been rehabilitated.

IV. DISCUSSION

32. After consideration of the factual allegations contained in the pleadings before the Commission, we believe that a *prima facie* case has been made with regard to the alleged exercise of control over NMTV by TBN. Moreover, based on the information we have before us, a substantial and material question of fact is presented. In reaching this conclusion we are cognizant of the fact that both NMTV and TBN are nonstock, charitable corporations and have different characteristics than most profit oriented broadcast licensees. However, these characteristics do not persuade us that NMTV and TBN should be treated differently than for-profit licensees. The factors which we have traditionally considered when questions of *de facto* control are raised are equally applicable here. See *Southwest Texas Public Broadcasting Council, supra*; *The Trustees of the University of Pennsylvania Radio Station WXPN(FM), supra*.

33. There is evidence that TBN has asserted control over NMTV's board of directors in various ways. Specifically, since the creation of NMTV by TBN in September 1980, until October 1991, two of NMTV's three directors were high-ranking TBN employees. This provided TBN with a majority on NMTV's board of directors. Even since the addition of a fourth NMTV board member, TBN retains negative control of NMTV's board by virtue of the conduct of the two TBN employees. One of these directors, Duff, was an officer and director of TBN before being appointed to the NMTV board of directors. Moreover, she has continued in a high administrative position at TBN. Her position and conduct on the NMTV board of directors is integrally related to her role at TBN. In addition, Crouch is the president of both TBN and NMTV. As president of NMTV, Crouch has the authority under NMTV's bylaws to "supervise, direct and control the business and the officers of [NMTV]." Finally, for many years TBN and NMTV held joint boards of directors meetings along with other TBN affiliates.

34. There is also evidence that TBN controls NMTV's programming. Virtually all of NMTV's programming comes from TBN. NMTV could identify only two programs that it had produced in the past year without the assistance of TBN. Another weekly show that NMTV claims to produce is actually recorded in TBN's studios in Taustin, California, and broadcast on TBN's station KTBN-TV. Thus, it appears that NMTV produces little or no programming independent from TBN.

35. Furthermore, it appears that TBN provides accounting and bookkeeping services to NMTV including the preparation of NMTV's payroll, financial statements, federal and state income tax returns and reports, purchasing requirements, data processing, and servicing of NMTV's accounts payable. TBN has also "advanced/loaned" NMTV \$4 million with no formal notes or repayment schedules. The "advances/loans" are repaid from unrestricted donations to TBN by people with zip codes within the NMTV stations' service contours. Moreover, while NMTV has its own bank accounts, the people authorized to sign on the accounts are generally TBN employees.

36. It also appears that TBN controls NMTV's personnel policies. Some of NMTV's personnel policies were adopted at joint boards of directors meetings with TBN and its

26. TBF asserts that Duff sets NMTV's personnel policy, and ensures implementation of NMTV's EEO program. Additionally, it claims that Duff prepares and reviews NMTV's filings with the Commission, reviews regular check logs, and approves purchase order expenditures. However, NMTV's Response reveals that NMTV's employee handbook is virtually identical to TBN's employee handbook. Moreover, it appears that some personnel policies were adopted at joint board of directors meetings which involved TBN and all of its affiliates including NMTV.

G. Alleged Lack of Candor/Misrepresentation Issue

27. Glendale challenges NMTV's candor by referencing statements made by NMTV in its opposition to the petition to deny filed in connection with the proposed acquisition of WTGI(TV). Specifically, Glendale alleges that NMTV's statement that it was relying on a loan commitment from the Bank of California to acquire the Wilmington station, was deceptive because NMTV eventually used funds borrowed from TBN to make the escrow payment. Glendale also claims that NMTV was misleading when it stated that it "has its own bank accounts from which it pays its own employees and other creditors, and has its own revenues, from the sale of broadcast time and spots. NMTV receives its own contributions as a recognized 501(c)(3) organization." Glendale further claims that NMTV was not forthright about the role of its minority directors in the management and operation of NMTV.

28. In reply, TBF argues that NMTV's statement, that funds were available from the Bank of California, was not made untrue merely because NMTV eventually chose to obtain funds from another source. Moreover, TBF states that NMTV does have its own bank accounts and employees. Finally, NMTV states that it did not misrepresent Duff's role in the management and operation of NMTV.

29. In its comments on NMTV's Response, Glendale cites additional statements by NMTV which it believes are false or misleading. Glendale claims that Statements made by NMTV in LPTV applications filed in 1980 do not accurately reflect the relationship between NMTV and TBN. Furthermore, Glendale claims that NMTV's assertions that it controls its own finances are false and its claim that it produced local programming each week is false.

H. Allegations Concerning the Reporting of the Felony Conviction of Aguilar

30. Glendale states, and TBF concedes, that Aguilar was convicted of a felony in 1976. NMTV failed to report Aguilar's felony conviction in a timely manner after he became a member of NMTV's board of directors. Glendale contends that a reporting issue is warranted. In addition, Glendale contends that NMTV was untruthful when it stated in opposition to the petition to deny the Wilmington assignment application that it had just learned about Aguilar's 1976 conviction. Since Aguilar's conversion from a "drug addict, biker, and ex-convict" is an integral part of his ministry, Glendale contends that NMTV must have been aware of his felony conviction.

31. NMTV states that when it said that it had just learned of Aguilar's felony conviction, it was referring to communications counsel who had just learned of the conviction, not NMTV. NMTV's directors were aware of Aguilar's felony conviction long before he became a director but did

not focus on the need to report it. Moreover, TBF asserts that Aguilar's conduct as a minister over the past ten years indicates that he has been rehabilitated.

IV. DISCUSSION

32. After consideration of the factual allegations contained in the pleadings before the Commission, we believe that a *prima facie* case has been made with regard to the alleged exercise of control over NMTV by TBN. Moreover, based on the information we have before us, a substantial and material question of fact is presented. In reaching this conclusion we are cognizant of the fact that both NMTV and TBN are nonstock, charitable corporations and have different characteristics than most profit oriented broadcast licensees. However, these characteristics do not persuade us that NMTV and TBN should be treated differently than for-profit licensees. The factors which we have traditionally considered when questions of *de facto* control are raised are equally applicable here. See *Southwest Texas Public Broadcasting Council, supra; The Trustees of the University of Pennsylvania Radio Station WXPNI(FM), supra*.

33. There is evidence that TBN has asserted control over NMTV's board of directors in various ways. Specifically, since the creation of NMTV by TBN in September 1980, until October 1991, two of NMTV's three directors were high-ranking TBN employees. This provided TBN with a majority on NMTV's board of directors. Even since the addition of a fourth NMTV board member, TBN retains negative control of NMTV's board by virtue of the conduct of the two TBN employees. One of these directors, Duff, was an officer and director of TBN before being appointed to the NMTV board of directors. Moreover, she has continued in a high administrative position at TBN. Her position and conduct on the NMTV board of directors is integrally related to her role at TBN. In addition, Crouch is the president of both TBN and NMTV. As president of NMTV, Crouch has the authority under NMTV's bylaws to "supervise, direct and control the business and the officers of [NMTV]." Finally, for many years TBN and NMTV held joint boards of directors meetings along with other TBN affiliates.

34. There is also evidence that TBN controls NMTV's programming. Virtually all of NMTV's programming comes from TBN. NMTV could identify only two programs that it had produced in the past year without the assistance of TBN. Another weekly show that NMTV claims to produce is actually recorded in TBN's studios in Taustin, California, and broadcast on TBN's station KTBN-TV. Thus, it appears that NMTV produces little or no programming independent from TBN.

35. Furthermore, it appears that TBN provides accounting and bookkeeping services to NMTV including the preparation of NMTV's payroll, financial statements, federal and state income tax returns and reports, purchasing requirements, data processing, and servicing of NMTV's accounts payable. TBN has also "advanced/loaned" NMTV \$4 million with no formal notes or repayment schedules. The "advances/loans" are repaid from unrestricted donations to TBN by people with zip codes within the NMTV stations' service contours. Moreover, while NMTV has its own bank accounts, the people authorized to sign on the accounts are generally TBN employees.

36. It also appears that TBN controls NMTV's personnel policies. Some of NMTV's personnel policies were adopted at joint boards of directors meetings with TBN and its

VI. PROCEDURAL MATTERS

44. TBF, the licensee of WHFT-TV, is legally a separate entity from TBN. TBN is a programming supplier to TBF and also a Commission licensee of several television stations. While TBF is not a subsidiary of TBN, they share the same officers, directors, and operating policies. Because of this shared identity of interest and because the allegations herein relate to TBN, it will be made a party to this proceeding so that TBN's position may be fully advocated. Cf. *Shawn Phalen*, 7 FCC Rcd 7638, 7639 (1992) (collateral estoppel is problematic unless entity is made a party to the proceeding); *RKO General, Inc. (WAXY-FM)*, 5 FCC Rcd 642, 646 n.11 (1990). In addition, because the allegations relate to the *de facto* control of NMTV by TBN and/or Paul Crouch, we will make NMTV a party so that its position may be fully advocated. Finally, the petitioner, SALAD, will be made a party to this proceeding.

45. While TBN and NMTV are being made parties to this proceeding, we are not now going to call for early renewals or institute revocation proceedings against all NMTV, TBN or affiliate licenses. While the outcome of this proceeding could have implications for all stations licensed to NMTV, TBN and its affiliates, we believe that there is no need to designate those licenses for hearing at this time. Although the issues being specified in this case are not limited to the operation of WHFT(TV), we are not prepared, at this time, to conclude that they are so fundamental that they would affect the qualifications of NMTV, TBN or its affiliates to hold any station license. See *1986 Character Policy Statement*, 102 FCC 2d at 1223. If issues (a) and (b), set forth below, are resolved against NMTV, TBN or its affiliates, the Commission will determine what actions are appropriate in connection with the stations licensed to these entities. In addition, NMTV, TBN and its affiliates are free to dispose of licenses during the pendency of this proceeding. NMTV, TBN and its affiliates may also acquire licenses during the pendency of this proceeding, subject to compliance with relevant Commission rules and policies, and provided that no more than a total of 12 commercial television stations shall be licensed to NMTV, TBN and its affiliates at any point in time.

VII. CONCLUSION

46. We have carefully reviewed the pleadings and related material before us, and, for the reasons indicated above, we believe that issues have been raised which must be explored in a hearing.

47. Except as indicated by the issues specified below, the applicants are qualified. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

48. Accordingly, IT IS ORDERED. That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications ARE DESIGNATED FOR HEARING IN A COMPARATIVE PROCEEDING to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether Paul F. Crouch, Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network (TBN) or its affiliates exercised *de facto* control over National Minority TV, Inc. (NMTV).

(b) To determine whether NMTV, Paul F. Crouch, TBN or its affiliates or principals abused the Commission's processes by using NMTV to evade the provisions of Section 73.3555(e) of the Commission's Rules and/or by using NMTV to improperly claim minority preferences in LPTV applications.

(c) To determine, in light of the evidence adduced pursuant to issues (a) and (b), whether Trinity Broadcasting of Florida, Inc., is qualified to remain a Commission licensee.

(d) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(e) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

49. IT IS FURTHER ORDERED. That the Petitions to Deny filed by Glendale Broadcasting Company and the Spanish American League Against Discrimination ARE GRANTED to the extent indicated above, and ARE DENIED in all other respects.

50. IT IS FURTHER ORDERED. That the Request for Declaratory Ruling filed by National Minority TV, Inc., IS GRANTED to the extent indicated above, and IS DENIED in all other respects.

51. IT IS FURTHER ORDERED. That the Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network, National Minority TV, Inc., and Spanish American League Against Discrimination ARE MADE PARTIES to this proceeding.

52. IT IS FURTHER ORDERED. That irrespective of whether the hearing record warrants an Order denying the renewal application for Station WHFT(TV), it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER FOR FORFEITURE in an amount not to exceed \$250,000, shall be issued against TBF, TBN and/or NMTV for willful and/or repeated violations of Section 310(d) of the Communications Act of 1934, as amended, and/or Section 73.3555(e) of the Commission's Rules, which occurred or continued within the applicable statute of limitations.

53. IT IS FURTHER ORDERED. That in connection with the possible forfeiture liability noted above, this document constitutes a notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended.

54. IT IS FURTHER ORDERED. That Glendale and SALAD shall have the burden of proceeding with the introduction of evidence as to issues (a) through (c), and that TBF, TBN and NMTV shall have the burden of proof as to issues (a) through (c).

55. IT IS FURTHER ORDERED. That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service SHALL BE ADDRESSED to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Fed-

eral Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order also SHALL BE SERVED on the Chief, Data Management Staff, Mass Media Bureau, Federal Communications Commission, 1919 M Street, N.W., Room 350, Washington, D.C. 20554.

56. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, TBF, Glendale, TBN, NMTV and SALAD, pursuant to Section 1.221(c) of the Commission's Rules, in person or by their respective attorneys, within 20 days of the mailing of this Order, SHALL FILE in triplicate, A WRITTEN APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

57. IT IS FURTHER ORDERED, That the applicants herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed, and SHALL ADVISE the Commission of the publication of such notice, as required by Section 73.3549(g) of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary