

FCC 75-946

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
 REVISION OF RULES PERMITTING MULTIPLE
 OWNERSHIP OF NON-COMMERCIAL EDUCATIONAL
 RADIO AND TELEVISION STATIONS IN
 SINGLE MARKETS; AND
 REQUEST FOR "FREEZE" ON ALL APPLICATIONS
 BY GOVERNMENT OWNED AND CONTROLLED
 GROUPS FOR RESERVED EDUCATIONAL FM
 AND TV CHANNELS; AND
 REQUEST FOR "FREEZE" ON ALL APPLICATIONS
 BY RELIGIOUS "BIBLE," CHRISTIAN, AND
 OTHER SECTARIAN SCHOOLS, COLLEGES, AND
 INSTITUTES FOR RESERVED EDUCATIONAL FM
 AND TV CHANNELS

} RM-2493

MEMORANDUM OPINION AND ORDER

(Adopted August 1, 1975; Released August 13, 1975)

BY THE COMMISSION: COMMISSIONER ROBINSON ISSUING A SEPARATE STATEMENT IN WHICH COMMISSIONER HOOKS JOINS.

1. The Commission has before it the above-captioned petition filed by Lorenzo Milam and Jeremy Lansman and the filings in response to it. As described below, the petition seeks a series of changes in the rules relating to the standards applicable to the licensing and operation of educational stations on reserved FM or television channels. In particular, petitioners seek the commencement of an inquiry leading toward changes in the rules to place certain limitations on which educational organizations might be considered eligible to hold station authorizations.

2. Although the number of formal filings in response to the petition has been rather small,¹ the filing of the petition has generated a vast amount of letters to the Commission, likely in excess of 700,000. The Commission appreciates the time taken by these individuals to make their feelings known, however, the majority of these letters are not directed to a resolution of the issues raised by the petition, as most are based on an incorrect understanding of the nature of the relief petitioners seek. Many of them are form letters that are premised on

¹ Formal filings were received from the petitioners themselves and from Western Bible Institute, Curators of the University of Missouri, Metropolitan Pittsburgh Public Broadcasting, Inc., John Brown Schools of California, Inc., National Association of Broadcasters, David A. Depew, U.S. Catholic Conference, Inc., Christopher Hall, Grand Rapids Baptist College and Seminary, Rev. Jim Nicholls, Dordt College, Inc., Public Broadcasting Service, Office of Communication of the United Church of Christ, Moody Bible Institute of Chicago, National Religious Broadcasters, Inc., Pillar of Fire, Association of Public Radio Stations, Alabama Media Project and the Civil Liberties Union of Alabama, Pittsburgh Chapter NAACP, Corporation for Public Broadcasting, and National Citizens Committee for Broadcasting.

the mistaken view that the petition was filed by Madalyn Murray O'Hare, when such was not the case. In addition, the vast majority of letters urges us to reject what they understand to be the proposal to ban the broadcast of all religious programs (including church services) from the air. However, no such proposal was advanced by the petitioners, nor was it raised by the Commission. Even with these misunderstandings that have intervened, it is nonetheless clear that those who have written to the Commission on behalf of the need for religious programming could not be expected to support that part of the proposal which was premised on a concern about how religiously affiliated educational organizations operate their stations. One final point requires mention before proceeding to an examination of the petition itself: Although various parties sought and were granted extensions of time to respond to the petition, not all of these parties have filed during the extended period allowed. Nonetheless, the time for commenting has passed, and the matter is ready for decision on whether to proceed with the issuance of a Notice of Proposed Rule Making.

3. Although the religious aspect of the petition has garnered virtually all of the attention of those filing informally, as well as a sizable portion of the formal filings, in fact much of the petition involves separate questions not involving religiously affiliated licensees. One of these requests for changes in our procedures relates to the licensing of governmentally supported stations, and petitioners argue in favor of long-term funding for them to avoid what they see as the pitfalls of governmental review of the stations' operation. It also involves an attempt to apply traditional multiple ownership standards to the licensing of educational stations, regardless of licensee. To date the multiple ownership provisions of Sections 73.35, 73.240 and 73.636 that apply to commercial AM, FM and television stations, respectively, do not have a counterpart in the rules applicable to educational broadcast stations. The FM and TV multiple ownership rules specifically exempt noncommercial educational stations.

4. Petitioners support the multiple ownership rule concept and urge us to apply it to educational stations. The petitioners, who are actively involved in aiding groups to establish community oriented educational stations, point out there is a diminishing number of educational channels available to accommodate educational entities desiring to operate stations. They assert that in certain instances all available space in a given area may have been or may soon be taken by a single entity² and in others that there is a pattern of considerable concentration of ownership which is sufficient to give rise to concern. In their view, the exemption from the multiple ownership rules provided for educational stations now serves no useful purpose, and so far as they know, it never did. In fact, petitioners assert that they have been unable to find any decision or other document where the Commission actually articulated the bases on which the exemption rests. In the view of the petitioners, even if there had been some, none have validity in the current state of considerable channel demand.

² It should be mentioned also that they have objections on other grounds to some of these entities because of what they see as the consequences of their governmental connection; this is discussed later.

5. The multiple ownership rules have two principal aspects: "duopoly" and concentration. In the first, parties are precluded from having two like stations (i.e., two AM or two FM, or two TV) in the same locality or close enough to each other so that certain signal strength contours overlap.³ The portion of the rules precluding concentration of control among other things places an absolute limit of seven stations in a particular service. It also deals generally with regional concentration of control, the subject of a recently begun rule making proceeding which will be considering the adoption of a more specific standard.⁴ On occasion, situations have arisen in which the ownership pattern of educational stations would have violated multiple ownership rules had they been applicable. In some instances, the same entity is actually the licensee of two stations of a particular type in one locality. In other cases, two stations in a locality are licensed to related even if not necessarily commonly controlled educational organizations, perhaps connected with the same university. In still other cases a state-wide network of stations exists, and their contours overlap in such a way as to run afoul of the "duopoly" restriction if these were commercial stations and in some cases the number of stations in the network exceeds the seven-station limit. Finally, because of the proximity of the stations and their cumulative impact, were they commercial stations, it could be argued that a problem of regional concentration of control would be involved as well. Petitioners argue that the same rationale which caused the Commission to see the need for rules to govern commercial stations applies here as well, and they assert that the problem is sufficiently widespread to warrant extending the rules to cover these situations. Such action, they assert, would enhance diversity and variety in programming.

6. Petitioners describe themselves as actively supporting use of the educational channel reservations in such a way as to foster robust, wide-open debate on public issues. They also have sought to promote variety in programming and to foster community involvement in the operation of these stations. Examining the performance of educational stations against these standards, they assert that two categories of station licensees do not share their desire for varied and challenging program fare. Instead they charge that governmentally supported stations show a timidity in the presentation of political issues or a narrowness born of academic aloofness.⁵ Religiously affiliated stations are charged with similar failures, reflected in a one-sidedness of programming designed only to further the particular sectarian interest of the group holding the license. At some length petitioners complain of a narrowness in outlook they see as being reflected in the programming of these religiously affiliated stations as well as an alleged failure to observe Fairness Doctrine obligations. To deal with the deficiencies they see in both groups of stations, petitioners urge us to impose a "freeze" on the grant-

³ This is the oldest portion of the rules, dating to the 1940's in its application to AM stations. In addition to the above, it should be noted that the rules now also bar the formation of radio television combinations on essentially the same basis and subject to the same standards.

⁴ *Notice of Proposed Rule Making* in Docket No. 20520, FCC 75-709, — F.C.C. 2d (1975).

⁵ Either way, to remedy matters, petitioners propose that the Commission take action to insure that these governmental units work toward a separation from this process through twenty-year guaranteed funding. This, petitioners believe would be sufficient to encourage even the most timid to accept the challenge.