Educational Noncommercial FM Station
Educational Noncommercial TV Station
Ownership, Multiple, see also Cross-Ownership or Duopoly

Notice of Proposed Rulemaking to amend the multiple ownership rules to include educational FM and TV stations. Questions to be addressed are how to define common ownership for these stations and how to treat situations arising under such a definition. (BC 78-165)

F.C.C. 78-387

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Amendment of the Commission's Multiple Ownership Rules to Include Educational FM and TV Stations	BC Docket No. 78-165

NOTICE OF PROPOSED RULEMAKING

(Adopted: June 7, 1978; Released: July 14, 1978)

BY THE COMMISSION:

1. The Commission has before it a possible amendment of its multiple ownership rules to include noncommercial educational FM and TV stations. Under the existing rules, there is no fixed limit on the total number of such stations a given educational entity may hold or even the number it might have in one locality. To deal with this situation, we propose amendments which would make the multiple ownership rules applicable, at least in part, to educational FM and TV stations.[1]

2. The Commission's multiple ownership rules, which now apply to commercial AM, FM and TV stations,[2] limit the multiple ownership of broadcast stations as well as the cross-ownership of broadcast stations and daily newspapers or CATV systems. These rules, intended to prevent "duopoly"[3] or undue concentration of control[4] specifically exempt noncommercial educational stations. The concerns which had led to the adoption of rules limiting the multiple ownership of commercial stations had not seemed to apply to the ownership of educational stations. In part, the Commission chose not to apply such rules because it believed that this approach could foster the development of educational

[1] Most noncommercial educational FM stations to which the rules would apply operate in the portion of the FM band set aside for such use, and most of the TV stations in question operate on reserved channels. However, the rules we propose would apply to any educational station whether licensed on a reserved frequency or not.

[2] See Sections 73.35(AM), 73.240(FM), and 73.636(TV) of the Commission's Rules. Also see Section 76.501 regarding Cable/Broadcast Cross Ownership.

[3] "Duopoly" refers to the common ownership, operation or control of two stations in the same broadcast service with overlapping service contours.

[4] Concentration of control has several meanings. The concentration can be geographic, as with concentration in a locality or region. Also it can refer to a pattern of ownership which, because of total numbers alone, becomes concentration.

broadcasting. By virtue of the absence of multiple ownership rules, there is no limit on the number of stations which could be owned by a single entity nor on their location. This is a far cry from the commercial broadcasting situation.

3. The Commission's concern with multiple ownership is a matter of long standing.[5] In 1938, the Commission began its "chain" (that is, network) broadcasting inquiry, to study the implications of network operations. It included network ownership of stations as part of this inquiry. During the same period the Commission also was considering multiple ownership by parties other than networks. Even though the Communications Act contained no specific provisions regarding the number of broadcast stations which a single licensee could hold, an informal "duopoly" policy was gradually adopted by the Commission as an important consideration in the granting of licenses. In effect, this policy was designed to avoid having one entity be the licensee of two AM stations in a particular locality.[6] By 1940, a formal multiple ownership rule for FM broadcasting stations had been adopted (FCC Rule 3.228). The rule contained a local "duopoly" provision and placed a limit of six on the total number of licenses which could be held by a single individual or organization nationwide. Television stations were permitted to convert from experimental to commercial operation in April of 1941, with a limit of three stations nationwide and one station locally. This was later increased in May of 1944, to five television licenses. The Commission's first rule limiting multiple ownership of AM station was finalized in 1943 and included the "duopoly" rule, but no total limit on the number of licenses held nationally. The Commission decided on divestiture of NBC's network "duopoly" and the stations relinquished by NBC became the core of the ABC network. Over the years, the Commission has made various changes in the multiple ownership rules. Now the total number of stations permitted is seven AM, seven FM and seven TV, no more than five of which can be VHF.

4. The multiple ownership rules are designed to promote diversity in programming and to prevent undue concentration of economic power contrary to the public interest. Although the economic concentration concern is not directly applicable, the interest in promoting diversity is pertinent to the educational area as well as the commercial one. Although the Commission has not yet placed any restriction on educational station multiple ownership, we think that the time has come to give active consideration to this subject and possibly to adopt specific rules to govern at least some aspects of educational station multiple ownership.

5. Among other things, the difference in treatment between commercial and educational licensees seemed to rest on the fact that spectrum space for educational stations was not in as great demand as that

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[5] A discussion of the history of multiple ownership regulation in the commercial area and its absence in the educational area is contained in an article by Robert K. Avery entitled *Public Broadcasting and the Duopoly Rule*, 5 Public Telecommunications Review #5, page 29.

[6] Apparently, the Commission did contemplate waivers upon a proper showing, as was made clear in *Genesee Radio Corporation*, 5 F.C.C. 183 (1938). Even though the Commission's decision was to deny the application in question, it did suggest that such an application could be granted if "there is a compelling showing upon the whole case that public convenience, interest or necessity would be served thereby" at 187.

for commercial stations. Usually one or more channels remained vacant, available for use if needed. Indeed, multiple ownership may have allowed for educational broadcasting service that would not otherwise have been provided. Thus, allowing a single educational entity to have multiple holdings exceeding those allowed commercial licensees was not as likely to have reduced diversity. Now, however, frequency space for educational stations is at a premium, and this fact requires us to reevaluate several of our policies. Part of this reevaluation is already underway—see the actions taken in Docket No. 20735, dealing with a range of issues related to FM allocation policies. Beyond this, we believe that multiple ownership of educational FM and TV stations also can have harmful effects.

6. In the commercial broadcasting area it has long been accepted that there should be some limits on the extent and nature of ownership by a single entity.[7] To do otherwise would curtail diversity and, consequently, undermine the public interest. This is a particular concern when one entity has more than one station of a particular type (that is AM, FM or TV), in a given locality or nearby. This has led us to impose a prohibition on such commercial station "duopoly." The rule is expressed in terms of prohibiting overlap of the respective service contours of the FM and TV stations. We believe "duopoly" is one of the key points to consider here as well. To this end we propose to utilize a contour overlap standard in much the same way as it is already used for commercial TV and FM stations. Generally, we propose to follow the rules now in effect for commercial stations which require commercial FM stations to be located so as to avoid 1 mV/m overlap and TV stations to be located so as to avoid Grade B overlap.

7. One area of particular concern involves that of statewide networks. It could be argued that application of the duopoly rule to statewide networks would endanger their existence. The statewide networks are established under state aegis and licensed to a state or one of its instrumentalities such as an educational agency or state university. Their role is to provide an educational service to all residents of a state, see Section 392(c) of the Communications Act. In order to provide coverage to the entire state, these stations have been located in a way that inevitably brings some overlap of service contours. In the past, the Commission has encouraged the development of these state networks. In part, this was designed to foster the earlier establishment of these stations even though they would not be offering much separate programming, at least in the beginning.

8. The justification, however, for continuing to encourage statewide networks—the prospect that much of the public would otherwise be denied educational broadcasting service—is open to serious question.[8] It is also true that continuation of such multiple ownership patterns can have a significant impact on the opportunity for the development

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[7] This has particular importance as for example where minority groups or others that did not acquire stations in earlier times find no frequency space remains available.

[8] As a consequence, if this arrangement is to continue, some alternative approach regarding multiple ownership would be necessary. This could be accomplished with a rule barring overlap of city-grade contours—the level of signal which is required to be provided to the entire city of license. This would prevent undue overlap of common service areas without interfering with a pattern of statewide coverage.

of minority ownership and control in the broadcasting industry and on the participation of minorities in the offering of programming responsive to these local needs. [9] These serious issues deserve careful study and we invite comments specifically addressing this point.

9. We also believe that it is necessary to consider a rule to deal with concentration of control. As has been noted, a rule dealing with concentration of control has more than one aspect. On the one hand, it limits the total number of stations that may be under common control, and on the other it is aimed at an overall pattern of ownership which can give rise to concern. Our principal area of focus here is the number of stations which may be under common control, and we propose to apply the same limits as now govern commercial holdings. The same concerns posed by the proposed "duopoly" rule with respect to statewide networks also apply in the instance of a rule proposing a limit on the number of stations which could be held under common control. Once again we invite comments on the divergent policies which might lead us to impose or not impose such a rule on statewide networks. Thus, we could consider excepting them from application of the rule, leaving them to be governed by the "duopoly" provision designed to apply to them.

10. We contemplate including commercial and noncommercial educational stations in the total which would be allowed. Thus, a single entity could control seven FM stations, for example four educational FM and three commercial FM, or any other combination totalling seven. At present, few educational entities are licensees of commercial stations. Even so, with the possible exception, again, of statewide networks, we do not see public interest reasons for permitting more than 7 FM or 7 TV (no more than 5 to be VHF) to be under common ownership or control.

11. Although we are proposing to apply multiple ownership rules to educational broadcasting, it does not appear necessary to include in this proposal a rule which would restrict common ownership of a radio station and a television station in a particular locality. These stations often can complement each other and work in tandem to provide service to the community. Such a combination does not pose the competitive problem which could arise with a commercial FM and TV combination. Nor do we think it necessary to propose one restricting CATV or newspaper-broadcast common ownership as there does not seem to be any move underway to create such combinations and no significant number of them exist now.

12. The possible adoption of the rules outlined above raises another question: namely, what to do about any existing ownership situations which would not be in conformity with any rules which might be adopted. In reaching a conclusion on how to deal with this issue we need to examine the pattern of existing ownership and the degree to which a conflict with the proposed rule would exist. There are a total of six entities which hold licenses for two educational TV stations

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[9] See *Statement of Policy on Minority Ownership of Broadcasting Facilities*, FCC 78-322 (released May 25, 1978).

licensed to the same community. [10] In each instance, the television combination consists of one VHF station and one UHF station. There have been no additions since 1970, [11] and, indeed, combinations have dropped from the list in recent years in Richmond, Virginia, and Dayton, Ohio, and in Philadelphia, Pennsylvania/Wilmington, Delaware. Also, there is some reason to believe that one or more of the remaining group of six may remove themselves from the list. Two of these TV stations are now silent, and others operate limited hours or duplicate the other station's programming.

13. In the case of FM, at present a total of five entities (four public universities and one public library) hold licenses or permits for two educational FM stations [12] in the same locality. [13] The list of FM stations appears to have grown recently. Even so, from the information now available it does not appear necessary to require divestiture. Only relatively few cities are involved, and it is not clear that this pattern of ownership necessarily precludes otherwise possible service. Nonetheless, in such of these instances where no other channel is available for use in the locality and where a single entity has two stations, we may need to provide for special treatment such as time sharing. Consideration must also be given to whether to indefinitely continue the present pattern of ownership if commonly-owned stations are off the air or are operated only on a duplicated or otherwise limited basis. While time sharing might represent an appropriate solution when the station has a limited operating schedule, some other approach could be required in cases where the station is not operational at all. Suggestions as to how to deal with these situations would be most helpful. We also invite comments on whether these or other such procedures are warranted in the TV "duopoly" cases.

14. The Commission desires comments on the proposal outlined above or on alternatives that might be suggested. In addition, the Commission desires comments on two other points. The first is how to define common ownership for these stations. It may be necessary to

[10] The pattern of television combinations is as follows:

City	Call Letters	Date Permit Granted	Channel
Boston	WGBH	7-15-53	2
"	WGBX	7-15-53	4
Miami	WTHS	11-12-53	2 (shared time)
"	WLRN	9-18-61	17
Milwaukee	WMVS	6-6-56	10
"	WMVT	2-21-62	36
Minneapolis/St. Paul	KTCA	6-20-56	2
" "	KTCI	7-27-64	17
Pittsburgh	WQED	5-15-53	13
"	WQEX	11-12-58	16
San Francisco	KQED	7-22-73	9
"	KQEC	9-9-70	32

[11] However, there is one possible addition to the television list, as an application for a second (UHF) channel has been filed by the licensee of a VHF station in St. Louis.

[12] They are the University of Idaho, Moscow, Idaho—KVOI—10W (student station) and KUID, the University of Massachusetts, Amherst, Massachusetts—WMUA and WFCR, the University of North Carolina, Chapel Hill, North Carolina—WUNC and new 10W station, the University of Kansas, Lawrence, Kansas—KANU and KJHE—10W (also has an AM station) and the Louisville Public Library, Louisville, Kentucky—WFPL and WFPK.

[13] An unknown number of others, not licensed to the same city, might involve overlap of the sort we propose to prohibit.

develop a separate, perhaps even a quite different method from that employed for commercial stations. Suggestions along this line would be helpful. In this regard, recognition needs to be given to the fact that some commercial stations are licensed to the same or related organizations. We need to consider how to treat such situations. We could use the existing standards of common ownership, operation or control, or new approaches could be developed. Suggestions on which course is preferable could prove helpful. Our tentative thinking is that there should be a prohibition on educational/commercial FM or TV duopoly and should count both commercial and educational stations in the number of licenses one entity could hold. All relevant suggestions on these points and any other matters relevant to the present inquiry are welcomed. It is hoped that the comments would be accompanied by sufficient documentation so it would be possible to evaluate the likely impact of the approach suggested, thereby enabling the Commission to better determine the benefits and detriments involved.

15. Authority to institute the subject rulemaking proceeding is found in Sections 4(i), 303(a), (g), (h) and (r) and 307(b) of the Communications Act of 1934, as amended.

16. *Comments and Reply Comments.* Pursuant to applicable procedures set out in Sections 1.4, 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before November 15, 1978, and reply comments on or before December 15, 1978. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. All relevant and timely comments will be considered by the Commission before final action is taken.

17. In accordance with the provisions of Section 1.419 of the Rules, an original and five copies of all comments, replies, pleadings, briefs and other documents shall be furnished the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number, including the entire designation (BC Docket No. 78-165) in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary.*