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

In the Matter of

Policy Regarding Character Qualifications in Broadcast Licensing

Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees and Licensees, and the Reporting of Information Regarding Character Qualifications

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 1992; Released: October 9, 1992

By the Commission:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order,* we modify our requirements regarding the reporting of non-FCC misconduct which may have a bearing on the character 1 qualifications of broadcast licensees, permittees and applicants.[1] Specifically, in light of the substantial evidence presented by petitioners regarding the burdens associated with our litigation reporting requirements for broadcasters, and in order to minimize these burdens, we: (a) modify our rules to require broadcasters to report relevant non-FCC adjudications on an annual basis rather than within 90 days of becoming knowledgeable of such adjudications; (b) eliminate the requirement that broadcast applicants report pending litigation; (c) modify the litigation reporting requirements as they apply to licensee principals who have attributable interests in other entities; and (d) modify the litigation reporting requirements regarding parent corporations and related subsidiaries. We are not in any way modifying our substantive character policies.

II. BACKGROUND

2. In 1986, the Commission identified the range of non-FCC misconduct that it considered relevant in judging the character qualifications of broadcast applicants, licensees and permittees.[2] In order to apply these character policies to individual cases, our application forms have required all applicants for new stations, license renewals, and assignments or transfers to disclose any "adverse finding" or "adverse final action" taken by any court or administrative body involving the specified categories of relevant non-FCC misconduct.[3] The forms have also required new applicants, assignees and transferees to report pending litigation involving relevant non-FCC misconduct.

3. In the *1990 Policy Statement,* we broadened the range of relevant non-FCC misconduct,[4] and amended our rules to require broadcast licensees to report, within 30 days of issuance, any adverse finding or adverse final action involving non-FCC misconduct bearing on a licensee's character qualifications.[5] We required further that renewal applicants, as well as assignors and transferors, provide information regarding pending litigation involving relevant non-FCC misconduct.[6] In the *1991 Reconsideration Order,* we rejected requests to broaden or narrow the range of relevant and reportable non-FCC misconduct. However, we recognized the potential burden the 30-day reporting period could impose on some licensees and extended the reporting period to 90 days from the date that a licensee becomes knowledgeable of any such reportable adverse finding or adverse final action.[7] In response to the *1991 Reconsideration Order,* three petitions for stay and eight petitions for reconsideration were filed. On July 31, 1991, the Commission partially suspended the new reporting requirements imposed by the *1990 Policy Statement* and the *1991 Reconsideration Order,* pending action on the petitions for further reconsideration.[8]

III. DISCUSSION

4. The petitions now before us, filed on behalf of 22 broadcast licensees, and the supportive comments of other broadcasters request that we further reduce the burden of our broadcast character reporting requirements in a number of respects. Petitioners' proposals are aimed at reducing the scope of reportable non-FCC misconduct and proceedings while, at the same time, assuring that the Commission will have before it timely information on relevant misconduct. The only non-broadcaster participants, MAP/TRAC, agree that some of the reporting requirements may be somewhat more burdensome than is necessary to achieve the Commission's regulatory objectives.[9]

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[1] We take this action is response to eight petitions for further reconsideration or clarification of our *Policy Statement and Order,* 5 FCC Rcd 3252 (1990) (hereinafter "*1990 Policy Statement*"), *on reconsideration,* 6 FCC Rcd 3448 (1991) (hereinafter "*1991 Reconsideration Order*"). A list of petitioners and other parties (and the abbreviations used for them herein) is set forth in Appendix A.

[2] *See Policy Regarding Character Qualifications in Broadcast Licensing,* 102 FCC 2d 1179, 1195-97, 1200-03 ("*1986 Policy Statement* "), *recon. granted in part, denied in part,* 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC,* No. 86-1179 (D.C. Cir. June 11, 1987); *see* note 31, *infra.*

[3] *See, e.g.,* FCC Form 301, Section II, Item 12; FCC Form 303-S, Item 6.

[4] 5 FCC Rcd at 3252.

[5] *Id.* at 3253 and Appendix.

[6] *Id.* at 3253.

[7] *1991 Reconsideration Order,* 6 FCC Rcd at 3449.

[8] *See Order,* 6 FCC Rcd 4787, *as corrected,* 6 FCC Rcd 5017, 56 Fed. Reg. 44,008 (1991).

[9] *See* MAP/TRAC Consolidated Response at 4.

A. Timing of Licensee Reports

5. Petitioners contend that requiring licensees to report adverse adjudications of relevant non-FCC misconduct within 90 days of an adjudication imposes an unreasonable burden on many broadcasters. They argue that licensees need more time to monitor and report their own litigation activities and those of any person or entity holding an attributable interest in the licensee.[10] Several petitioners, for example, are licensees controlled by diverse companies which have a substantial number of principals, many of whom are not officers or employees and may be at distant locations or frequently traveling.[11] They have historically relied on annual surveys in obtaining information from principals in order to complete the Commission's annual Ownership Reports and for Securities and Exchange Commission and other reporting purposes.[12] Thus, some petitioners claim that the distribution, collection and analysis of these surveys can be a major undertaking and that obtaining complete returns within a reasonable time ordinarily requires a substantial amount of follow-up correspondence and telephone calls.[13] To ease the burden of continually monitoring such litigation, most petitioners suggest that the Commission require only annual litigation reports, filed at the same time as the annual Ownership Report.[14] MAP/TRAC agree that annual licensee reporting, in conjunction with renewal application reporting, is sufficient.[15]

6. Having considered petitioners' contentions carefully, we agree that even the 90-day reporting requirement would impose an unnecessary burden on many permittees and licensees without significant public interest benefits. Accordingly, Section 1.65(c) of the Rules will be amended to require broadcast permittees and licensees to report on an annual basis final adverse adjudications of misconduct that would be reportable in an application for renewal.[16] This will still provide the Commission with more prompt reporting by licensees than its historical reliance on renewal applications. It bears repeating, however, that if the Commission learns of a relevant adverse adjudication through other means, *e.g.*, by complaint, we will not necessarily await the filing of the report before taking appropriate action.[17]

7. In the *1991 Reconsideration Order*, we indicated that "permittees and licensees have an obligation to make reasonable, good faith efforts to become informed of reportable adjudications of relevant misconduct."[18] In response to requests that we provide more detail regarding how broadcasters can demonstrate such "due diligence,"[19] we clarify that, at the very least, licensees, permittees and applicants[20] must conduct an annual survey of all persons with attributable interests therein to collect information regarding all reportable adjudications, provided the persons surveyed have been clearly instructed that they must report any new reportable adjudications promptly, and provided any new persons who gain attributable interests between annual surveys are also surveyed at the time they gain their interest.[21]

B. Reporting of Pending Litigation

8. Several petitioners request that we eliminate the requirement that applicants report pending litigation involving non-FCC misconduct.[22] They state that the facts surrounding pending litigation are extremely burdensome to monitor, gather and report. Some petitioners contend that this is especially true in reporting allegations of discrimination.[23] Some petitioners state that discrimination litigation against all businesses, including licensees and their principals, has proliferated because of the availability of a number of alternative forums at the federal, state and local level in which complainants can easily assert claims.[24] The burden of this requirement is compounded by Section 1.65(a) of the Rules, 47 C.F.R. § 1.65(a), which requires parties with pending applications to update their applications. If renewal applicants had to provide information on pending matters, some licensees with multiple stations state that because they have renewal applications pending on almost a continuous basis they would be required to constantly monitor and analyze all pending litigation involving them and their principals.[25] Also, petitioners point out that the Commission determined in both the *1986 Policy Statement* and the *1990 Policy Statement* that information regarding pending matters is presumptively not relevant to an applicant's character qualifications.[26]

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[10] *See, e.g.*, Belo Petition at 16.
[11] *See, e.g.*, Great American Petition at 23.
[12] *See, e.g.* NBC Petition at 13; Great American Petition at 22.
[13] *See, e.g.*, Great American Petition at 22-23.
[14] *See, e.g.*, NBC Petition at 12-13; Great American Petition at 22-23; Paramount Petition at 9-13; Belo Petition at 15.
[15] *See* MAP/TRAC Consolidated Response at 5.
[16] Some petitioners suggest that we modify the annual Ownership Report to add a "litigation question." *See, e.g.*, Chronicle Petition at 8. While we will not amend the annual Ownership Report, we agree that the filing schedules for the two reports should parallel each other. Thus, if circumstances require a licensee to report relevant adjudicated misconduct during its license term, the report should be filed, like Ownership Reports, on the anniversary of the date that its renewal application is required to be filed. This filing date includes noncommercial and other licensees and permittees otherwise exempt from filing annual Ownership Reports. Multiple owners who file combined annual Ownership Reports for all stations on a single date, *see* 47 C.F.R. § 73.3615(a), may use that date for a combined Section 1.65(c) report as well.
[17] *See 1991 Reconsideration Order*, 6 FCC Rcd at 3449-50.
[18] *Id.* at 3449.
[19] *See, e.g.*, Great American Petition at 22-24, Chronicle Petition at 7-8; NAB Reply at 2.
[20] Applicants are still required to update their pending applications by reporting the adjudication of relevant actions within 30 days of their occurrence. *See* 47 C.F.R. § 1.65(a).
[21] We will also apply the same "due diligence" standard in connection with the reporting of denial of federal benefits pursuant to our rules implementing Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. *See Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988*, 6 FCC Rcd 7551 (1991). We note, however, that those rules (codified in Subpart M of Part 1) are not changed by this *Order*.
[22] *See, e.g.*, ABC Petition at 17; NBC Petition at 11-12; CBS Petition at 8-9.
[23] *See* note 31, *infra*.
[24] *See* Paramount Petition at 13-14 n.15.
[25] *See, e.g.*, Great American Petition at 4 and Attachments; ABC Petition at 7 and Exhibit A.
[26] *See 1986 Policy Statement*, 102 FCC 2d at 1204-05; *1990 Policy Statement*, 5 FCC Rcd at 3252-53.

9. We agree with petitioners that applicants should no longer be required to report pending litigation.[27] As noted above, this requirement imposes substantial burdens on many applicants. Also, in light of the fact that pending litigation is presumptively not relevant to a broadcaster's character qualifications, we agree that the public interest is not served by requiring that such matters be routinely reported.[28] We note that if an adjudication of relevant non-FCC misconduct occurs while an application is pending, it must be reported pursuant to Section 1.65(a) of the Rules. In addition, if such adjudication occurs after grant, the licensee must fully disclose the matter to the Commission in its annual report pursuant to Section 1.65(c) of the Rules or in its next application.[29] At that time, the Commission can assess the gravity of the adjudication with the option of instituting revocation proceedings or designating the application for hearing on appropriate issues.[30]

10. Accordingly, with respect to relevant non-FCC misconduct,[31] broadcast applicants will need to report only adverse findings or adverse final actions taken by an ultimate trier of fact. An "ultimate trier of fact" is a court or administrative body whose factual findings are not subject to *de novo* review.[32] Licensees, permittees and applicants shall continue to report adjudications by an ultimate trier of fact during the pendency of any appeal of that decision.[33] Although we are relaxing the regular reporting burden on applicants as it applies to pending matters, we retain the discretion to request such information and take appropriate action on a case-by-case basis.[34]

C. Reporting with Respect to Principals and Other Entities.

11. In the *1991 Reconsideration Order*, we indicated that applicants and licensees should continue to report misconduct "involving any persons holding cognizable interests (as defined in section 73.3555 Note 2) in both the licensee and the non-licensee found to have committed the misconduct."[35] Petitioners believe, however, that the Commission should modify the range of entities subject to our character reporting requirements.[36] They suggest that misconduct involving outside entities in which licensee officers, directors and cognizable shareholders also have an attributable interest should be reportable only if the officer, director or shareholder is a named defendant in the action.[37]

12. Petitioners state that the tasks associated with gathering litigation information from numerous non-licensee entities is unreasonably burdensome. For example, NBC reports that the board members of its parent, General Electric, also hold directorships in more than 35 different major companies.[38] Directors of the Washington Post Company, the parent of Post-Newsweek Stations, Inc., serve on the boards of more than 25 entities, including IBM Corporation, The Coca-Cola Company and others.[39] In addition, a number of licensee principals serve as trustees and board members of various universities, charitable foundations, cultural institutions and philanthropic entities which fall under the reporting requirement.[40] Noncommercial licensees state that they often have governing boards consisting of as many as 40 members representing a broad range of entities.[41] Petitioners believe that many of these other entities will routinely have some litigation that, under current requirements, necessitates reports to the Commission.[42] Petitioners also argue that the misconduct of entities with no direct relationship to the licensee but for the presence of common principals is not relevant to the Commission's character determinations unless those principals were directly involved or implicated in the misconduct.[43]

13. On further reflection, we agree with petitioners that it is not necessary to require the reporting of all non-FCC misconduct of non-licensee entities in which principals of a broadcast licensee, permittee or applicant hold an attributable interest. As petitioners have shown, such reporting is extremely burdensome with minimal countervailing public interest benefits. It is difficult for us to conceive of a situation in which a broadcast entity should be disquali-

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[27] As a separate but related matter, MAP/TRAC request that the Commission consider consent decrees involving relevant non-FCC misconduct as relevant to a broadcaster's character qualifications. MAP/TRAC Consolidated Response at 1-4. We continue to believe that where a consent decree does not include an admission or finding of unlawful misconduct, it is generally not appropriate for us to reach legal conclusions on the basis of stipulated facts contained therein. *1986 Policy Statement*, 102 FCC 2d at 1205 and n.64; *1991 Reconsideration Order*, 6 FCC Rcd at 3448-49. Accordingly, we will not change our policy regarding consent decrees.

[28] We retain the discretion to condition a grant on the outcome of pending litigation or take other action in certain situations, *e.g.*, where an applicant has allegedly engaged in non-FCC misconduct "so egregious to shock the conscience and evoke almost universal disapprobation." *1990 Policy Statement*, 5 FCC Rcd at 3252-53 and n.5; *1986 Policy Statement*, 102 FCC 2d at 1205 n.60, 1206 n.66. We believe that in most such instances the matter will come to our attention even without applicant reporting.

[29] As noted above, an applicant need not do a separate survey of its principals for the filing of each application. *See* paragraph 7, *supra*.

[30] *See* 47 U.S.C. §§ 309(e), 312(a)(2); *1991 Reconsideration Order*, 6 FCC Rcd at 3450; 47 C.F.R. §§ 73.3593, 73.3539(c).

[31] Under our character policy, relevant non-FCC misconduct includes: (a) all felonies; (b) fraudulent representations to governmental units; and (c) mass media related violations of antitrust or other laws dealing with unfair competition. *1986 Policy Statement*, 102 FCC 2d at 1195-97, 1200-03; *1990 Policy Statement*, 5 FCC Rcd at 3252. In addition, as some petitioners point out, although the Commission's application forms require reporting of "discrimination" matters, we have never clearly stated that this type of non-FCC misconduct is relevant in assessing an applicant's character. *See, e.g.*, ABC Petition at 4, 16; Paramount Petition at 6-7. We believe, however, that a pattern of adjudicated non-FCC related employment discrimination is relevant. Accordingly, adjudicated instances of non-FCC employment discrimination must continue to be reported to the same extent as other relevant non-FCC misconduct. Whether a pattern of such reported misconduct will affect a broadcaster's character qualifications will be determined on a case-by-case basis.

[32] *See 1986 Policy Statement*, 102 FCC 2d at 1205 and n.62.

[33] *Id.* at 1205 and n.63.

[34] *See 1990 Policy Statement*, 5 FCC Rcd at 3252-53.

[35] *1991 Reconsideration Order*, 6 FCC Rcd at 3449.

[36] *See, e.g.*, Belo Petition at 11.O

[37] *See, e.g.*, Great American Petition at 18; EBC Petition at 11.

[38] *See* NBC Petition at 6.

[39] *See* Chronicle Petition at 3-4.

[40] *See, e.g.*, Great American Petition at 14; EBC Petition at 8.

[41] *See* EBC Petition at 8-9; Columbia/Wayne State Comments at 3.

[42] *See, e.g.*, Great American Petition at 16.

[43] *See, e.g.*, Chronicle Petition at 5-6 n.9; Paramount Petition at 4-9.

fied because of the non-FCC misconduct of another entity that shares a common principal with the broadcast entity unless, of course, the common principal was personally involved in the wrongdoing.

14. Accordingly, we will require the reporting of non-FCC misconduct involving non-licensee entities that share an officer, director or cognizable shareholder/partner with a broadcast entity in situations where the licensee principal in question was in control of the other entity or was adjudicated to be directly involved in the other entity's misconduct.[44] Whether any such reported misconduct will affect the licensee's character qualifications will continue to be determined on a case-by-case basis, taking into account, *inter alia*, the actual involvement, if any, in the misconduct of the broadcaster's principal and his or her involvement in the activities of the licensee, permittee or applicant.[45]

D. Reporting With Respect to Parent and Subsidiary Corporations

15. Some petitioners also suggest that the reporting of litigation involving a licensee's parent company or a related subsidiary should be relaxed.[46] Petitioners argue that the burden of monitoring and reporting litigation relating to every entity affiliated with diversified corporations is not outweighed by its usefulness to the Commission. For example, Paramount Communications, Inc., has nearly 200 subsidiary corporations and joint ventures.[47] Also, Great American is controlled by American Financial Corporation, which holds beneficial interests in a number of subsidiary companies engaging in a broad spectrum of non-broadcast businesses.[48] Moreover, some petitioners also believe that the current reporting requirements for non-FCC misconduct involving parent and non-broadcast subsidiary corporations are much broader than the type of such misconduct the Commission has deemed relevant.[49]

16. We agree with petitioners that such reporting is overly broad and unnecessarily burdensome. In the *1986 Policy Statement*, the Commission's view was that non-FCC misconduct should not be considered relevant unless there is a sufficient nexus between the broadcast subsidiary and the parent company or related subsidiary.[50] We believe that reporting of non-FCC misconduct by parent or other related corporations (or partnerships) should be based on a similar nexus. Accordingly, non-FCC misconduct of a parent or related subsidiary is reportable if: (a) there is a close ongoing relationship between the parent (or non-broadcast subsidiary) and the broadcast subsidiary; (b) the two have common principals; and (c) the common principals are actively involved in the operations of the broadcast subsidiary.[51] We expect broadcasters to apply this standard in good faith, and we will treat seriously any situations where a licensee, permittee or applicant does not do so.

IV. CONCLUSION

17. Accordingly, IT IS ORDERED That the petitions filed by the parties listed in Appendix A hereto ARE GRANTED to the extent indicated above, and ARE DENIED in all other respects.

18. IT IS FURTHER ORDERED That Section 1.65(c) of the Commission's Rules IS AMENDED as set forth in Appendix B hereto.

19. IT IS FURTHER ORDERED That this *Memorandum Opinion and Order* and the amendments to Section 1.65 ARE EFFECTIVE 90 days after publication in the *Federal Register*.

20. IT IS FURTHER ORDERED That the Managing Director and the Chief, Mass Media Bureau, are delegated authority to amend all applicable FCC forms in accordance with the provisions of this *Memorandum Opinion and Order*.

21. The action herein is taken pursuant to Sections 4(i), 303(r), 308(b), 312, and 319(a) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154(i), 303(r), 308(b), 312, and 319(a). For further information regarding this proceeding, contact Peter Tenhula, Office of General Counsel, Administrative Law Division, (202) 254-6530.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Pleadings

Petitions seeking further reconsideration and/or clarification of the Commission's actions in its *Policy Statement and Order*, 5 FCC Rcd 3252 (1990), *on reconsideration*, 6 FCC Rcd 3448 (1991), were filed by the following:

National Broadcasting Company ("NBC");

Educational Broadcasting Corporation ("EBC");

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[44] This standard should alleviate the need for broadcasters to go beyond their principals to numerous outside entities in seeking reportable information. Should other situations nevertheless be brought to our attention in a specific case, we retain the discretion to consider them, as appropriate.

[45] *See 1986 Policy Statement*, 102 FCC 2d at 1218-19, 1227-29; *1990 Policy Statement*, 5 FCC Rcd at 3252. Belo suggests that misconduct of a licensee principal should not be reportable if the principal is not involved in the day-to-day operation of the licensee's broadcast properties or its interest is held for investment purposes only, and the licensee so certifies. Belo Petition at 4. We believe, however, that the changes made herein set an appropriate balance between collecting relevant information and not imposing unnecessary burdens and thus need not go any further. Of course, as noted above, the extent of the individual's involvement in the operations of the station would be a relevant factor in considering the effect of the misconduct on the licensee's qualifications.

[46] *See, e.g.*, NBC Petition at 9; ABC Petition at 18.

[47] *See* Paramount Petition at 11 and Appendix A.

[48] *See* Great American Petition at 6.

[49] *See, e.g.*, Paramount Petition at 5-6.

[50] *1986 Policy Statement*, 102 FCC 2d 1218-19, *on recon.*, 1 FCC Rcd 421, 423.

[51] Misconduct directly involving common principals will be reportable under the standard set forth in paragraph 14, *supra*.

Great American Television and Radio Company, Inc., McGraw-Hill Broadcasting Company, Inc., The New York Times Company, and Renaissance Communications Corporation (collectively "Great American");

Paramount Communications, Inc. ("Paramount");

Capital Cities/ABC, Inc. and The Times Mirror Company (collectively "ABC");

Chronicle Broadcasting Company, Lin Broadcasting Corporation, Post-Newsweek Stations, Inc., Providence Journal Company, Shenandoah Valley Educational Television Corporation, Spartan Radiocasting Company, and WGBH Educational Foundation (collectively "Chronicle");

A.H. Belo Corporation, Cannel Communications, L.P., Cosmos Broadcasting Corporation, Cox Enterprises, Inc., and Multimedia, Inc. (collectively "Belo"); and

CBS, Inc. ("CBS").

A "Consolidated Response" to these petitions was filed by Media Access Project and Telecommunications Research and Action Center (collectively "MAP/TRAC"). Comments were filed by the Trustees of Columbia University and the Board of Governors of Wayne State University ("Columbia/Wayne State"). Chronicle, ABC, NBC, and the National Association of Broadcasters ("NAB") filed replies to the MAP/TRAC Consolidated Response.

APPENDIX B

Part 1 of Chapter I of Title 47 of the Code of Federal Regulation is amended as follows:

1. The authority citation for Part 1 continues to read: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. § 154, 303; Implement, 5 U.S.C. § 552, unless otherwise noted.

2. Section 1.65 is amended by revising paragraph (c) to read as follows:

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

* * * * *

(c) All broadcast permittees and licensees must report annually to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form. If a report is required by this subsection, it shall be filed on the anniversary of the date that the licensee's renewal application is required to be filed, except that licensees owning multiple stations with different anniversary dates need file only one report per year on the anniversary of their choice, provided that their reports are not more than one year apart. Permittees and licensees bear the obligation to make diligent, good faith efforts to become knowledgeable of any such reportable adjudicated misconduct.

Note: The terms "adverse finding" and "adverse final action" as used in subsection (c) include adjudications made by an ultimate trier of fact, whether a government agency or court, but do not include factual determinations which are subject to review *de novo* unless the time for taking such review has expired under the relevant procedural rules. The pendency of an appeal of an adverse finding or adverse final action does not relieve a permittee or licensee from its obligation to report the finding or action.