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 entity [2] 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.

ing of additional authorizations while we conduct an investigation of the use to which the stations have been put. They expect that this will lead the Commission to agree that these stations have failed in their obligation to provide the educational service which was intended and hence persuade us that these entities be required to dispose of their interests in these stations. Petitioners have not set forth the mechanics of how this divestiture process would work.

7. Much of the petition consists of personal expressions of the petitioners on their goals for educational broadcasting, but they do provide an explanation of their reasons for supporting a particular form of educational broadcasting and in their opposing the placing of strictures on the program service based on either a narrowness of outlook or a faintness of heart. It is their point that individuals and groups sharing these views with them should not have to follow the route of filing of petitions to deny against stations thought to be falling short of their obligations in order to obtain rectification of this situation. Rule making in this regard is seen as preferable to *ad hoc* adjudications, but it is not clear whether they urge this for the particular practical advantages they see in it (perhaps, e.g., ease of burden on the Commission or the absence of a need for a local group to file to obtain action) or are more concerned with standard-setting from a policy point of view.

8. As mentioned earlier, there has been a vast outpouring of informal opposition, albeit directed to relief not sought by the petitioner. In addition to these informal responses, there were formal filings from a number of parties. For the most part, these too were in opposition, even if less vigorously expressed. However, several parties did file in support for some aspects of the petition. In addition, petitioners themselves filed responsive material which went beyond the expression of goals and concerns which had been the central focus of the original petition. For the first time they provide a filing which at length cited particular cases embodying legal concepts they considered applicable. Another part of petitioners' supporting material was abstracted from the requirements of the Office of Education of the Department of Health, Education, and Welfare. Both HEW and the Corporation for Public Broadcasting exclude religious groups from the grants of funds these organizations make available for the construction or operation of educational stations.

9. Although there were a number of opposing parties, they overlapped one another a great deal in the arguments they made and the policy approaches they urged. For this reason, it would serve no purpose to discuss each of the formal filings, individually, or of those in support, as the same holds true for these pleadings as well. In addition, we shall not discuss matters on which it would be inappropriate for the Commission to rely, such as the quality or type of music chosen for broadcast. Finally, some of the points made are by their nature not appropriate for resolution within a rule making context but, rather, should be raised in connection with specific case adjudications. This in part was true in the filings of the Pittsburgh Chapter of the NAACP, the Alabama Media Project and the National Citizens Committee for Broadcasting, where in addition to the concern expressed about the absence of multiple ownership rules which would apply to

educational stations there are comments which deal with the alleged consequences of "duopoly" situations (as in Pittsburgh). We also shall avoid discussion of individual cases so the focus can remain on the question before us, that is the need for overall standards. This in no way is intended to foreclose consideration of the questions raised regarding the performance of an individual station, but these should not be raised in a petition for rule making.

10. Turning to the specific points at issue, what becomes clear is that proponents think there is a basis for a two-fold concern about the impact of "duopoly". Philosophically, we are told that less diversity and variety are available when a single party holds two licenses and in practical terms we are told that when a licensee has two stations one of them can become a little-used step-child, offering far less service (in amount as well as quality) than would be the case if separately held by a party whose only station it was. Aside from these more generally expressed concerns about the consequences of "duopoly," there is also the belief that this can work to the detriment of a minority community, as there often is said to be no available channel for application in the event that the second channel does not address their needs in a meaningful fashion. The point is that these parties believe that with "duopoly" there is a structure which leads to a continuing failure to derive the maximum benefit obtainable.

11. On the other hand, the Corporation for Public Broadcasting, while supporting the principles underlying the multiple ownership rules, nevertheless argues that a single licensee with two stations can often be in a position to provide more effective service than two separate licenses. Essentially, the point here is expressed in terms of economies of scale. This is a point stressed in times when financing is seen as a serious problem. Dual licensing, we are told, can lead to more varied service to the community, with one station offering a range of public broadcasting programs of general interest, while the other can specialize. The same, it believes, would not hold true if a second licensee were involved which would then become involved in some duplication of effort. CPB finds significant diversity in the programs now being offered by various FM or television combinations and hence it sees no basis for action. On the question of licensing stations obtaining local or state governmental financial support, CPB argues that it has been such support that has brought much of value to the audience, particularly in the work of state-wide networks which have been able to bring programming within the reach of rural audiences. Overall, CPB is not concerned because it does not see any monopolization of frequencies, but to the extent an individual situation is thought to present a problem, it urges the filing of a competing application as the appropriate remedy. The Public Broadcasting Service and the National Association of Educational Broadcasters also filed, and they too opposed the petition in this regard. Both argue that the allegations are not supported by the requisite factual showings and argue that such support cannot be found.

12. The University of Missouri and Metropolitan Pittsburgh Public Broadcasting, Inc., are entities which could be affected by an application to educational stations of the multiple ownership rule against

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"duopoly". Both oppose that aspect of the petition, arguing that in the case of the University related stations, two separate entities hold the licenses and that various other competing stations are present as well. In the Pittsburgh case, we are told the proposed rule could operate to limit the range of public service provided. In addition, we are told that the two articulated underpinnings of the multiple ownership rules—fostering economic competition and promoting diversity—are not readily the issue here. The first is said to be irrelevant and the second to have limited relevance in view of the prohibition on editorializing by educational stations.[6] Finally, in this group, the Association of Public Radio Stations opposed those portions of the petition which dealt with multiple ownership and with the licensing of stations to governmentally related entities. Nonetheless, it did support the portion of the petition that called for a freeze on the grant of authorizations to religiously affiliated entities until an investigation can be held into whether their service is so limited as to make it inappropriate to use scarce spectrum space in the educational portion of the band to accommodate them.

13. The filings by religious groups varied greatly in length and tone, but most concentrated generally on providing a defense of religious broadcasting and of the religious broadcaster and more specifically on their operation on a reserved FM or television channel. Several parties mentioned their own efforts to serve the public interest in a sense not bound by just sectarian offerings and assert that they do offer varied programming responsive to the needs of their community. More specifically, National Religious Broadcasters, charges that petitioners have failed to meet their burden under Section 1.401(c) of the rules to provide the necessary supportive materials. Instead, they insist that the petition contains nothing more than Milam and Lansman's personal opinions. They also see in the proposal an attempt to bring about action which they assert would run afoul of Commission and court cases which indicate that discrimination based on religious affiliation is improper. In fact, it is their view that the religious affiliation of a licensee should be irrelevant in terms of Commission licensing action and that such an attempt to link it to the licensing process would be improper. Censorship, too, is seen in the proposal, as they believe the Commission would become involved in a process which would judge the religious programs being offered. All this we are asked to reject and instead to rely on our present rules and criteria which are said to be satisfactory for the task. Others echo many of these views or express others of like effect.

14. The Office of Communication of the United Church of Christ opposes much of the petition and takes issue with what it sees as a blanket condemnation of non-commercial educational stations. In its view, general rejection of this whole class is a totally inappropriate remedy for the alleged derelictions of the few. Action, we are told should be based on the service rendered, not the beliefs the licensee may hold. On the specifics of the proposal, while they would not follow the petitioners urgings regarding "duopoly," they would be

[6] Other opponents, it may be noted, have taken a different tack and have argued that diversity may well be a relevant aspect to consider, but they assert that these stations in fact do offer diversity as matters now stand.

concerned if a second channel were put to only limited use. Their remedy would be to foster share-time arrangements and to encourage using an SCA instead of a main channel for in-school service. On the religious aspect they offered much historical information regarding the efforts of those seeking a middle course in connection with this Commission's actions so that an unconstitutional aid of religion and an equally unconstitutional restriction on its free exercise can both be avoided. Based on their reading of the situation we are asked not to change the rules or policies but simply to apply them where necessary. If a licensee falls short under the 1960 Programming Statement or Fairness Doctrine we are urged to act. Thus, no problem is seen with procedures designed to effectuate these existing requirements, but this in their view would suffice.

15. Having discussed the record before us, it now is necessary to resolve the basic question of whether a sufficient basis has been shown to warrant initiation of a rule making proceeding. For the reasons discussed more fully below, we think the answer must be no. Since there are in effect three separate (even if related) aspects to the petition, we shall follow these in explaining our reasons for not issuing a Notice of Proposed Rule Making.

16. The first and most easily disposed of point is that related to long-term funding as a means to avoid what the petitioners see as the process which has led to an intimidating of the licensee so that its efforts are more geared to avoiding antagonizing the governmental money giver than in rendering an active, engaged, public service. Even if we agreed that such has been the result, the course of action urged on us as a remedy is of doubtful legality. Establishing a requirement of such funding not only poses problems in terms of improper intervention into state and local affairs, it is notably impractical. Perhaps even more to the point, the need for it has not been established. To the extent a case may be made out, the Commission is not powerless to deal with stations failing in the discharge of their responsibilities. The Commission does not need, nor does the public require, Commission intervention in the local or state governmental process to force these entities to provide 20 years financing. While petitioners may liken the proposal to the tenure provided to the judiciary, the two are not comparable. We will not oppose any effort by governmental authorities to provide for long-term funding nor will we act to require it. Their responsibility is the financial one. Our responsibility by way of licensing, is to assure that service in the public interest is provided by these licensees. These are disparate functions and responsibilities.

17. On the multiple ownership questions, too, we cannot agree that rule making action now is warranted. This should not be taken as indicating that in our view the current ownership pattern represents the ideal or that certain policies underlying the multiple ownership rules may not on occasion need to be applied to the licensing of educational stations. Nonetheless, occasional invocations of a policy does not establish the need for a rule. Although we are not persuaded to follow the present urgings, it is appropriate that we make some observations on the points of concern to the Commission. None represents a new departure, but for the most part each has been referred to on

a separate basis in cases over the years and not in a single place where one could refer for guidance. Hopefully the brief discussion in the present document will help to clarify matters and to avoid the necessity to proceed to adopt more formalized rules.

18. One of the points made by proponents is that there never has been an articulated rationale for not having multiple ownership rules which applied to educational stations. It is as if all along the rules had been needed but somehow the Commission had never actually implemented them. This view is incorrect, as there were and are reasons why the multiple ownership rules have not been applied to educational stations.[7] The situation can be understood easily by use of a single example, that of a state-wide network. The Commission has encouraged such networks and recognized the value they can have in addressing many matters of statewide importance. The public interest values inherent in such networks have been discussed amply elsewhere and no repetition here is required. So, having encouraged formation of these networks, what if the multiple ownership rules applied? First of all, having so many closely clustered stations in a single state could raise a regional concentration of control question. In fact, if more than seven stations are involved, by definition there would be a prohibited concentration.[8] Finally, in establishing these networks, it is virtually impossible to avoid overlap of pertinent contours as they are denominated in the multiple ownership rules. Thus tallied, it is clear that this makes three strikes against the network. How would this or the other consequences the proposed rules would have, serve the public interest? We do not believe it would. Nonetheless, there can be a different problem when a single entity is licensee of the two stations in a locality. In FM there still, ordinarily, would be competition from other local or at least nearby educational stations or the chance to establish them. In television such is not usually the case. It may well be that no competing educational FM or TV stations may be present or possible to establish. That the above situation may require consideration in a given instance does not indicate that a rule is required. Nor would a rule seem the appropriate remedy to deal with the case where a single licensee puts the second station to very limited use or just employs it to duplicate the other station. This is a matter for *ad hoc* examination where appropriate. So it is with the question of using the channel for in-school instructional purposes only when other means may well be available to do this without using a TV or FM broadcast channel.

19. Simply put, we would be concerned if a station were used to simply mirror another station in a community (even if these same programs were being presented at different hours) if the effect were to foreclose other more extensive use of the channel. While even such limited service may provide some benefit, more is expected in terms of service to the public. The question really turns on the interest in and the availability of another channel should another educational

[7] Although it is couched in terms applicable to all educational FM stations, Section 73.561 of the Commission's Rules indicates that the extent to which the channel is put to use can be relevant to grant of the station's license renewal.

[8] Aside from anything else, in practical terms this means it would be acceptable for a single licensee to have the stations necessary to cover all of Delaware or Rhode Island (since it could be done with 7 stations or less) but not Alaska or California or Montana which might need more. Such an outcome would be unreasonable.

entity wish to enter the picture. In such cases, consideration would have to be given to the nature of the service rendered. Similarly, when a second station is used primarily for in-school service, a problem could arise, but in both cases there may well be a middle ground: time sharing. If many hours, (e.g., those after school, on weekends, during the summer, etc.) are not used or only as a re-run service, permitting a shared use of the frequency could be the answer to a proper balancing of the equities. Some such arrangements already exist, and under them a scarce resource can be shared. Often, too, there are cost savings through a sharing of the costs of expensive equipment. Since no specific proposal along this line is before us, we simply observe that it is our expectation that the parties involved in such cases would act cooperatively and responsibly. Thus we hope to avoid the need for the Commission to have to deal with the extreme choices offered in a license renewal challenge. Moreover, the contest itself would use funds better employed on behalf of the educational service itself.

20. We also must reject their argument that action is required because the programming offered by governmentally supported or religiously affiliated stations is stultifying and/or timid. This assertion, even if relevant and appropriate for us to consider, must be labelled "unproved". As to governmentally supported stations, we are offered nothing more than the fears of the petitioners. Nor would it be enough if mere examples were offered. Rather, it would be necessary to show that a pattern exists before it could be said that we need to consider if remedial action were required. If they or others are of an opinion that a particular station has avoided matters of community need, has avoided discussion of important issues, they are free to offer their information and arguments in connection with the application for renewal by that particular station. This is a far better approach for us to follow because it limits our involvement to cases where there is a *prima facie* showing that the licensee has not fulfilled its obligation.

21. The part of this proceeding which has evoked the greatest public response is that which is concerned with the eligibility of religious organizations for channels which are reserved for noncommercial educational use. Petitioners would have us disqualify all religiously-affiliated organizations and institutions from eligibility to operate on reserved channels. In effect, they would have us practice discrimination against a school or university simply by virtue of the fact that it is owned and operated by a sectarian organization. As a government agency, the Commission is enjoined by the First Amendment to observe a stance of neutrality toward religion, acting neither to promote nor inhibit religion. *King's Garden, Inc. v. Federal Communications Commission*, —— U.S. App. D.C. ——, 498 F. 2d 51 (1974). Under principles of neutrality, a religious group, like any other, may become a broadcast licensee, and, like any other licensee, a religious group is subject to "enforceable public obligations." *King's Garden, supra.*

22. The FM and TV channels which have been reserved for noncommercial educational use have been made available only to educational institutions and organizations. Under existing Commission policies, a religious organization which qualifies as educational because it oper-

ates a school or university is eligible to operate a broadcast station on a channel reserved for noncommercial educational use in the community where it operates the school. *Keswick Foundation, Inc.*, 26 F.C.C. 2d 1025 (1970); *Pensacola Christian School, Inc.*, 41 F.C.C. 2d 74 (1973); see also *Christ Church Foundation*, FCC 68–732 (1968). In observing the principles of neutrality, we treat religious organizations and secular organizations alike in determining eligibility for operation on a reserved channel. Specifically, where an organization's central and primary purpose is religious it is held to be ineligible for a reserved channel, except as noted above, although its eligibility to operate on an unreserved channel is not proscribed. *Bible Moravian Church, Inc.*, 28 F.C.C. 2d 1 (1971).

23. Taken in this context, we view Petitioners' proposals on religious applicants for reserved FM and TV channels as an impermissible proposition, which would violate our neutrality just as much as if we were to favor religious applicants over secular ones. The pleadings indicate Petitioners' personal distaste for most religious programming and espouse their own views for improving such programming. The Commission, even if it were disposed to, cannot cater to personal views. Nor is it empowered to enforce or enhance private rights. See *REA Express, Inc.* v. *CAB*, —— U.S. App. D.C. ——, 507 F. 2d 42, 46 (1974). In its role of determining the public interest in licensing matters, the Commission has broad discretion to create and enforce channel allocations policy and rules.[9] *Coastal Bend Television Co. v. FCC*, 98 U.S. App. D.C. 251, 234 F. 2d 686, 690 (1956). In addressing a matter of our discretion, Petitioners have not made the specific and concrete supportive showing which are called for to void established rules and policy and initiate Commission rulemaking proceedings. They have not given us specific instances of abuse of the rules, or of cognizable violations by incumbent licensees. *TV Channel Assignment of Newark, New Jersey*, 29 RR 2d 1473 (1974). Their general allegations, statements of preferences and general treaties on constitutional law are not legally sufficient to persuade us to undertake discretionary action to change the rules or to engage in rule making. Moreover, the law surrounding administrative rule making does not comprehend any rights in private parties to compel an agency to institute such proceedings or to promulgate rules. *Rhode Island Television Corp. v. FCC*, 116 U.S. App. D.C. 40, 42, 320 F. 2d 762, 764 (1963).

24. Petitioners have suggested that the Commission undertake an inquiry into the programming practices of stations operated on reserved channels by "sectarian institutions" or all government supported institutions. We are not persuaded that new policies or new investigations are necessary in this area. The *ad hoc* enforcement of existing Commission policies appears to be the preferable course of action. The broadcasters referred to by Petitioners are subject, just as all other broadcasters are, to the Fairness Doctrine and the principle that a broadcast station may not be used solely to promote the personal or partisan objectives of the broadcaster. The Commission will continue to take appropriate action in specific cases where a

[9] Congress has given the Commission considerable leeway, recognized by the Courts, to ". . . workout the difficult First Amendment problems endemic to a system of licensed communications. . . ." *King's Garden, supra*, at 61.

prima facie showing can be made that a broadcast station has violated these principles.

25. Accordingly, IT IS ORDERED, That the subject petition for rule making IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

SEPARATE STATEMENT OF COMMISSIONER GLEN O. ROBINSON WITH WHICH COMMISSIONER BENJAMIN HOOKS JOINS

I concur with the Commission's dismissal of the Milam-Lansman petition insofar as it seeks the imposition of a freeze of further authorizations for educational stations or for religiously affiliated stations. I will only add that, if the Milam-Lansman petition is premised on our investigating the programming of stations with religious affiliations to determine whether their operations are truly in the public interest, I might have disposed of this issue much more summarily than the Commission has by a simple reference to the First Amendment and to Section 326 of the Communications Act.

There is, however, another problem that is raised by the Milam-Lansman petition that cannot be so swiftly dismissed, and which I think the Commission does not adequately address. This is the matter of multiple ownership and concentration of control. At this point I am not prepared to say to what extent we should extend our multiple ownership, or concentration of control, rules to noncommercial licensees. However, the problem of concentration of control in noncommercial, "public" stations is a matter which I think is overdue for evaluation by the Commission. I am fully aware that in the past the Commission has paid no attention to such matters. In part this is because the Commission has historically paid little attention to educational ("public") broadcasting. As we have recently indicated in a number of decisions and in policy statements (the most recent of which is our noncommercial ascertainment proceeding of this week), we now recognize that the time has come to take a second look at public broadcasting. I do not suggest that public broadcasting should be subjected to precisely the same kind of multiple ownership restrictions and concentration of control rules that we impose on commercial broadcasters. For one thing, the Commission itself has affirmatively encouraged much of the concentration—particularly the creation of state-wide educational networks—as a means of promoting educational broadcasting. I do not think that we should abruptly change from a promotional policy to a restrictive policy. Certainly we should not do so without a very long and careful look at the whole problem. However, I think it is time to acknowledge that this may very well be a problem. While it may yet be somewhat premature to speculate about the possibility of competing public broadcast stations in a single community, I do not think we ought to overlook the possibility that this might come to pass.

Quite apart from the matter of competition, I think we must be concerned about the efficient use of the spectrum. The majority opinion suggests that multiple ownership of educational stations does not

really waste spectrum because where two facilities are owned by the same institution they are used for different purposes. If this submission is true, I have not seen the evidence for it in this docket, and my own experience is that there is a very great amount of duplication. What this suggests is that, at the very least, we ought to take a closer look than we have done in the past and that we should undertake a further investigation of this entire matter in the very near future.