

Policy Statement
Programming
Time Brokerage

Commission issues Policy Statement encouraging time brokerage arrangements by broadcast licensees. Such arrangements have the potential to foster healthy program competition and enhance diversity of programming by encouraging independently produced programming. BC 78-355

FCC 80-621

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Petition for Issuance of Policy Statement or
Notice of Inquiry on Part-Time Programming

BC Docket No.
78-355
RM-3055

POLICY STATEMENT

(Adopted: October 21, 1980; Released: November 13, 1980)

BY THE COMMISSION: COMMISSIONER LEE NOT PARTICIPATING;
COMMISSIONERS QUELLO AND FOGARTY CONCURRING IN THE
RESULT.

1. By *Notice of Inquiry on Part-Time Programming*, 43 Fed. Reg. 55804, the Commission solicited comment on incentives to foster time brokerage arrangements and thereby further encourage minority group involvement in broadcasting.¹ The *Notice* suggested that brokerage holds out the prospect of “diversified programming, improved minority employment opportunities, and the acquisition of operational experience by minority entrepreneurs.”² It also suggested that because such contractual arrangements for programming require

¹ Exploration of the time-brokerage mechanism had been suggested in a broad petition for rule making to encourage minority involvement in broadcasting, submitted by the Office of Telecommunications Policy (later reorganized as the National Telecommunications and Information Administration (“NTIA”) within the Department of Commerce). Other portions of that petition were answered in a separate *Memorandum Opinion and Order*, 69 F.C.C. 2d 1591 (1978). The parties filing comments and replies are listed in an appendix.

² Generally, time brokerage refers to the practice of licensee sale of discrete blocks of time to a “broker” who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Both radio and television stations have engaged in the practice which has traditionally been used to provide specialized programming, including foreign language programming. See also, footnote 4, *infra*.

neither advance Commission approval nor a sizable capital commitment by the independent producers, such programming might be more flexibly initiated and terminated than a conventional full-time radio format. On the other hand, the Commission in 1972, had expressed concern that extensive time brokering might constitute an improper delegation of program control by the licensee to the broker(s), and hence conflict with the public interest.³ Based on its own experience and after reviewing the record in this proceeding, the Commission believes that time brokerage has the potential to notably increase available program alternatives.⁴ Accordingly, we have decided to encourage time brokerage. It is our hope that this will act as a competitive mechanism enabling the market to respond to audience segments which would otherwise be denied their preferred program alternatives. Our reasons for reaching this conclusion are described below.

2. Our re-examination of time brokerage is premised on the view that it could foster healthy program competition and enhance diversity of programming by encouraging independently produced programming. Encouragement of such diverse programming comports fully with the Commission's interest in moving from regulatory to competitive incentives if possible, as evidenced by our recent *Notice of Inquiry and Proposed Rule Making* on radio deregulation (44 Fed. Reg. 57636 (1979)). In addition, it could be expected to broaden employment opportunities and entrepreneurial experience for minority groups. Some background discussion is necessary to explain our decision to depart somewhat from past Commission practice in the area of time brokerage.

3. Radio programming has long been marked by the sale of discrete blocks of time to brokers who provide both programming and the commercial messages which support it,⁵ and by Commission concern with such practices.⁶ In fact, brokered foreign language programs were common in large markets even before passage of the 1934 Communications Act. Since its establishment, the Commission has been concerned that time brokerage could interfere with the licensee's exercise of its ultimate responsibility for the station's programming. Nevertheless, some time brokerage has been permitted, and the Commission has recognized that some "block" programming has

³ *Order Concerning the Filing of Agreements Involving the Sale of Broadcast Time for Resale*, 33 F.C.C. 2d 654 (1972).

⁴ Indeed, as one commenting party notes, commercial television network presently operate under a variant of time brokerage: the local affiliate sells time to the network in exchange for desirable programming, station compensation, and the opportunity to place its local commercials within popular national programs.

⁵ The limited record in this proceeding discloses only one example of a radio licensee operating what amounts to two formats so that it could serve a second, different audience segment in the late evening and early morning hours.

⁶ See, for example, *Metropolitan Broadcasting Corporation et al* 8 F.C.C. 557 (1941).

contributed variety and imagination to broadcasting. Many radio licensees in larger markets provide a few hours of specialized programming weekly via brokerage, or even devote the dominant portion of their broadcast schedule to a potpourri of such programming. In fact, in the largest markets there are established brokerage programs on television stations as well. One Chicago television station provides almost a third of its programming through arrangements with independent local producers.

4. Radio stations devote time to brokerage operations in substantial part because the low cost of such programming is attractive. In many cases, the time broker indirectly subsidizes the specialized programming by accepting economic compensation below that usually necessary to produce a comparable commercial program. The uncompensated difference derives from the broker's "sweat equity." He donates his time and effort, whether from dedication to the specialized audience or for other, personal reasons, but generally relies on other sources of income for the greatest part of his livelihood. In most cases, neither he nor the station realizes a substantial profit from such operations. Indeed, with the increased availability of prepackaged program formats, several stations with a history of commitment to brokered programs have shifted away from independent producers.

5. Although the Commission abstains from routine administrative review of time brokerage operations, this does not diminish the licensee's ultimate responsibility for programming broadcast over his facility. This is a point discussed in *Cosmopolitan Broadcasting Corporation*, 59 F.C.C. 2d 558 (1976), *recon. den.*, 61 F.C.C. 2d 257 (1976), a case in which a station lost its license because of an abdication of its responsibility to maintain control over the station's programming. Several parties see the Commission's decision in this case as deterring others from engaging in extensive time brokerage activities. Even so, it appears that time brokerage has continued at substantial levels despite the Commission's 1973 cautionary language,⁷ and its decision in *Cosmopolitan* refusing to renew the applicant's license.⁸

Discussion

6. *Present Program Practices and Contractual Arrangements* - Without systematic reporting of program information by licensees, the extent and nature of contemporary time brokerage practices are difficult to determine accurately, and the record reflects this. Because

⁷ *Policy Statement on Foreign Language Broadcast*, 39 F.C.C. 2d 1037 (1973).

⁸ The Court of Appeals remanded the *Cosmopolitan* case to the Commission for further consideration, and a supplemental decision has been adopted by the Commission. 581 F. 2d 917 (D.C. Cir. 1978). However, neither decision suggests that time brokerage relieves a licensee of its responsibility for programs thereby presented.

the Commission only requires licensees to keep brokerage contracts locally available for public inspection,⁹ rather than routinely send them to Washington, we have no organized data on the present extent of program brokering, including that which is directed to minority groups. Nor did any comments address this specific question. However, a broad field sampling of ethnic radio (other than Black or Hispanic) was recently conducted for the American Folklife Center at the Library of Congress.

7. The Folklife Center's survey covered metropolitan areas in sixteen states, and documented ethnic radio operations serving some 54 population groups, speaking some 43 languages. The field researcher, Dr. Theodore Grame, found considerable variations between markets. There were 20 hour-long ethnic programs in Pittsburgh; several German and Greek programs in Tampa Bay; a low-budget Portuguese television program in Modesto; radio broadcasts in 18 languages in San Francisco (including Aramaic, Estonian, and Tagalog); Oriental-language television in Los Angeles; French-language radio in sixteen Louisiana cities; and in six New England states, 162 weekly programs serving 19 distinct groups in 73 cities.

8. Dr. Grame estimates there are some 2,000 weekly broadcasts of ethnic material, totalling some 2,000 hours of programming for special interest audiences. Grame also asserts that industry publications fail to report as much as 50 percent of this ethnic programming. While the extent to which brokerage presently provides Black or Hispanic-oriented programs is not directly revealed by the record,¹⁰ other groups clearly have found the mechanism a useful one. The typical ethnic format involves an hour-long Sunday afternoon program produced by a "one-man-band" who acts as announcer, producer and commercial salesman. Only rarely does broadcasting provide this person's primary income. The typical licensee using brokered programming has arrangements with several independent producers, so this pattern can involve substantial segments of the program schedule. On the other hand, the economic and managerial advantages to the licensee may be greater if the licensee is able to contract with one independent producer for larger segments of time appealing to a single, larger segment of the audience—such as Blacks or Hispanics.

9. Some commentators are actively engaged in specialized part-time operations. Community Service Broadcasting, licensee of WDZI in Jackson, Tennessee, has split its schedule into two formats: country music from 5 a.m. to 10 p.m. and rhythm and blues from 10 p.m. to 2 a.m., the latter format directed primarily to the surrounding county's

⁹ 47 C.F.R. 613(d).

¹⁰ As noted in paragraph 12, there are many more stations offering some Black-oriented programming than are owned by Blacks or whose programming is generally directed to a Black audience, but we simply do not know whether brokerage plays a substantial role in explaining the difference.

38 percent Black population. The station states, however, that it has had difficulty succeeding with this bifurcated approach, and hopes to contract with a broker for supervision of the minority-oriented segment of its schedule. Group owner Harte-Hanks contends that the division of a single station's format into two or more time blocks to facilitate part-time minority operation is not economically feasible because listeners will become confused by the station's shifting identity. It believes that licensees will be reluctant to risk administrative hearings in order to accomplish "on-the-job" familiarization with Commission rules and policies. Harte-Hanks' reservations are not entirely supported by Universal Broadcasting Corporation, although Universal does mention the problems which it says can arise from the activities of an inexperienced broker.

10. Neither Harte-Hanks nor Universal describe any actual experience with specific brokerage operations to support their reservations. In contrast, two television licensees experienced in brokerage operations, assert in comments that the practice can make a substantial and successful contribution to the community of license. WNJU-TV, licensed to Linden-Newark, New Jersey, brokers more than 16 hours weekly. Most of this consists of foreign language programs. WCIU-TV, licensed to Weigel Broadcasting in Chicago, independently contracts for 31-1/2 hours of programming weekly, or almost a third of its schedule. Most of WCIU-TV's brokers are ethnic minorities, providing programming in seven foreign languages. WCIU-TV asserts that even the larger minority groups in the Chicago area cannot support full-time specialized television programming, so that brokers remain the best and possibly the only viable option for developing such a service. Weigel lists other benefits provided by such independently produced programming: it provides a showcase for local talent, a conduit for specialized public service announcements, and informational programming for foreign language groups. WCIU-TV regularly broadcasts news reports in six languages, and has also broadcast fund-raising telethons in foreign languages. One of Weigel's independently contracted programs won a local award for public affairs programming.

11. Contractual arrangements between licensees and brokers usually involve the broker as both program producer and commercial salesman for a time block purchased from the licensee, but there are several variations. Some stations sell air time to independent producers while selling some or all of the commercial time directly, presumably resulting in a lower time rate for the program producer. Others take a percentage of advertising revenues from the broker. In some cases, brokers compensate stations for air time by bartering their personal services in another field, and some independent programs are funded wholly or in part by on-air appeals for contributions. Some independent producers complain about certain station practices which they think take advantage of brokers, such as drastically raising time rates after a brokered program becomes financially viable.

12. As the above discussion indicates, time brokerage is a widespread phenomenon, but it may not have reached its full potential. There is reason to believe that independent producers can provide even more diverse service if positively encouraged, but the record does not permit us to provide a specific estimate on the potential for time brokerage to bring additional service to minorities. The desire for full-time program service or expectations of ownership may have overshadowed the demand for specialized part-time programming. However, we know for instance, that there are only 120 Black-owned stations in the country,¹¹ but there are at least 416 stations offering some Black-oriented programming. The Standard Rate and Data Service (SRDS) lists such specialty programs as reported by licensees in its monthly "Spot Radio Rates and Data" book, but neither this source nor the Broadcasting Yearbook specify whether they are licensee or broker originated. In any event, we hope the actions outlined below will encourage licensees to participate in brokerage arrangements, so that groups presently unable to support a specialized facility will have the opportunity to support responsive brokered programming by independent producers. Although we wish to remove unnecessary roadblocks, the realization of that potential for service to the various groups is best left to the marketplace.

13. *Should there be regulatory review of brokerage?* - As stated in the *Notice of Inquiry*, there are plausible grounds for regulatory review of extensive brokerage arrangements, thereby providing some advance guidance to the licensee. On the other hand, such review could have the effect of stifling brokerage. This at least is the view of a number of the commentators who contend that administrative delays could be fatal to brokerage arrangements. The NTIA, too, opposes any new form of regulatory oversight as "quite possibly counter-productive." The same reservations are set forth in more detail by the National Radio Broadcasters Association (NRBA), which contends that most licensees are unlikely to participate in extensive time brokerage arrangements without an explicit indication that the Commission encourages such agreements. Universal also opposes creation of a new regulatory structure to govern "lessees of licensees," urging instead that the Commission develop an informational program to encourage and inform potential entrepreneurs and increase their experience and administrative responsibility. The Folklife Center urges the Commission to provide simplified materials outlining relevant rules and regulations to brokers. Citizens Communications Center reiterates the licensee's ascertainment obligations, and urges that brokerage should not be used to diminish any ascertainment or EEO responsibility of the

¹¹ Some of these are AM-FM combinations, but the record does not show how many represent two separate voices directed to the Black community. Data from the Commission's Minority Enterprise Division.

licensee. Several commentators point out that under the Commission's recently revised forfeiture authority,¹² forfeiture can be assessed against "any person" violating the Act or the Commission Rules. They read this as permitting the Commission to deal directly with time brokers for rule violations instead of penalizing the licensee for the actions of a broker. This, they believe, should lessen some of the Commission's concern. In reaching our own conclusions, we have considered our experience with the difficulties presented by time brokerage as well as benefits it can provide. Our goal has been to prevent these difficulties without stifling the benefits.

14. No doubt some potential for abuse exists. Even so, we question the need for advance administrative review of time brokerage arrangements. In our view, the public interest would be disserved by imposing such an administrative burden, especially since it could seriously limit the flexibility of the marketplace.¹³ So long as licensees and brokers generally comply with otherwise applicable regulations affecting all stations, we see no need to impose any screening process or to intrude into the negotiation or termination of brokerage arrangements. Independent program production contracts will still be required to be filed locally, and may be requested by the Commission as part of subsequent review. They need not be routinely sent to Washington.

15. *Focus for Commission Enforcement* - While refraining from advance review of brokerage arrangements, the Commission has a statutory responsibility to impartially enforce its own rules and regulations. At present, licensees are held ultimately responsible for the behavior of their independent producers. The experience of established brokerage operators such as WNJU-TV and WCIU-TV has convinced us that discharging this obligation does not impose an onerous burden. From the Commission's standpoint, it is easier to insure compliance if enforcement efforts were focused on the licensee's responsibility. The independent broker may not be concerned with the license renewal processes or with economic sanctions that can be levied against a substantial capital investment. The licensee, however, would be, and this encourages licensees to broker time only to responsible entrepreneurs and to become actively involved in supervision of their activities. We believe that licensees must expect to retain control over, and responsibility for, all programming if they wish to remain public trustees rather than common carriers.

16. In continuing to call for licensee responsibility, we do not

¹² P.L. 95-234, amending §503(b) of the Communications Act became effective March 23, 1978.

¹³ For a fuller discussion of the economics of broadcast competition and the methodological problems it poses for efficient regulation, see generally our recent *Notice of Inquiry and Proposed Rule Making* on Radio Deregulation. It should also be noted that these deregulatory proposals did not distinguish among commercial radio stations based on whether they engaged in time brokerage.

intend to relieve brokers of their responsibility to avoid rule violations. Where appropriate, this avenue of enforcement also can be used. This may be warranted in situations where, notwithstanding licensee vigilance, problems arise. While asking the broker to share the responsibility is appropriate, it is no substitute for licensee vigilance. In addition, shifting the responsibility to the broker would create separate problems, including those arising out of a need to have all such agreements filed with the Commission.

17. Any decision to employ time-brokerage under such circumstances is entirely voluntary and presumably to the licensee's advantage. Where responsible oversight involves some burden, the record does not support the view that it would be an onerous one. While we sincerely hope that expanded time brokerage will further the public interest, we do not intend to transform the radio service into a common carrier, with licensees free to delegate ultimate program responsibility to anyone with the price of an hour of air time. Although we are encouraging the use of time brokerage to increase program diversity, this should not be taken as indicative that the Commission has lessened its concern about abdication of control over station operation as a whole or over station programming in particular. Rather the Commission continues to believe that it must deal with such problems when they occur. *The Cosmopolitan Broadcasting Corporation* case makes it clear that the amount of time brokerage is not really the issue. Instead it is the degree to which the licensee abdicated its responsibilities to the time brokers. As the Commission stated in its original *Cosmopolitan* decision (59 F.C.C. 2d 558 (1976)) and affirmed in reconsideration (61 F.C.C. 2d 257 (1976)), WHBI's renewal was denied because of ". . . the magnitude and frequency of violations demonstrated on this record." Nothing in the Commission's Supplemental Decision (F.C.C. 2d (1980)) adopted following remand of the case by the Court of Appeals (581 F. 2d 917 (D.C. Cir. 1978)) alters this aspect of the case.

18. The suggestion has been made that we adopt a simplified version of the rules for distribution to inexperienced independent producers. However, no existing or potential independent producers have complained of actual difficulty with our present rules. Moreover, we are currently engaged in efforts to clarify our rules and delete needless regulations. Further changes in our rules and policies relating to radio broadcasting may also result from our pending deregulation inquiry. Under these circumstances, a separate clarification for time brokers appears to be unwarranted. In any event, licensees are far better placed to assess a producer's familiarity with Commission policy and identify relevant problem areas. Broadcasters, mindful of their responsibility, thus may provide a better orientation and translation function for their own independent producers than any written Commission materials would furnish.

19. *Independent Incentives to Brokerage* - Apart from our general encouragement of time brokering, the *Notice* and comments consider

the effects of the statutory political advertising requirements (the lowest-unit-charge provisions of 47 U.S.C. §315) to reflect the nature of brokerage operations.¹⁴ We are also asked to consider a time broker's protected group employment in our review of the licensee's employment practices.

20. *Incentives: Minority and Female Employment* - Opportunities for employment of protected group members in broadcasting can be expected to increase as a result of time brokerage programs directed to minority groups. This raises the question of whether we should credit an independent producer's minority or female employee(s) to the licensee's EEO profile in order to provide an additional incentive for affirmative action. It might also operate as an incentive to engage in time brokering and thereby offer more minority-oriented programming. On the other hand, we have to recognize that brokerage operations are not especially profitable. Therefore, imposing reporting requirements could operate as a disincentive. In addition, there is a concern that counting time broker employees could lead to a reduction in the licensee's affirmative action efforts with the stations' primary staff. There are also administrative difficulties, posed by the variability of brokerage arrangements and the differing staff positions which can arise under them.¹⁵

21. First of all, we believe that it would be unwise to impose mandatory reporting requirements. Such requirements would be an unwarranted burden on the licensee, the time broker or both. However, it is conceivable that situations will arise in which it would be reasonable to consider the time broker's employment profile and practices in judging the licensee's affirmative action efforts. For example, a licensee may regularly use the time broker as a recruiting source for potential protected group employees, or it may refer inexperienced job applicants to the time broker for on-the-job training. In either case, the licensee's use of the time broker as part of its equal employment opportunity efforts would be considered by the Commission in assessing the station's adherence to our rules and policies. Where appropriate, the use of the time broker as part of EEO efforts can be reported to us by the licensee. Accordingly, we welcome the submission of supplemental EEO information on a voluntary basis where the licensee considers it necessary to portray fully its affirmative action efforts.

¹⁴ The Office of Minority Business Enterprise suggests that comparative hearing procedures should award merit to licensees submitting time brokerage proposals or reporting existing programs, and is supported in this by Weigel. This possibility will be considered by the staff as part of the development of a revised policy on comparative hearings, but it would be inappropriate to express an opinion on the merits of such an approach here.

¹⁵ For an example of the complex evaluation problems that inadvertent commingling of personnel can generate for EEO enforcement, see *WSM, Inc.*, 66 F.C.C. 2d 994 (1977).

22. *Incentives: Political Advertising* - Universal, the NRBA and NTIA all point out what they see as a difficulty with the Commission's present interpretation of statutory limitations on the cost of political broadcast advertising. Section 315 of the Communications Act requires the licensee to offer advertising time to all candidates at the lowest unit rate at which the same class and quantity of time has been sold.¹⁶ It has been our practice to disregard the rates charged by time brokers to their commercial advertisers in establishing a station's lowest unit charge for political time. In this manner, a time broker can set its commercial rates at a level commensurate with its often smaller specialized audience, without restricting the station's political rate. However, when a time broker sells advertising time to a political candidate, the rate would affect a station's lowest unit charge, and licensees are therefore likely to restrict the rates at which time brokers can sell political time. The result is that candidates for public office tend to shy away from brokered programs where the advertising rate they must pay can be out of line with the often limited audience to which the program is directed. The problem, as pointed out by the commentors, does not involve the rights afforded to political candidates under Section 315; rather it involves the ability of time brokers to attract political advertising to their programs at rates set by the licensee in its more general audience offerings.

23. However, on the basis of the record before us, it appears that our enforcement posture has ignored very real distinctions between a licensee's regular programming and brokered time. It further appears that this failure to recognize the reasonable distinctions between such programming has inadvertently prevented time brokers from getting the benefits of political advertising. Under the terms of Section 315, time brokerage, by its very nature, can be considered a separate "class" subject to different lowest unit charge strictures. This is not to say that all time brokerage programming is a different class from all other brokered time or from a station's regular format. Rather, a licensee must make a reasonable and informed judgment on the basis of the programs themselves; for example, a licensee that carries one general audience format but brokers time for another general format could not establish a different lowest unit charge for each of the two formats. On the other hand, a general format station that brokered time for specialized minority or foreign language programming could show that

¹⁶ On October 18, 1980, the U.S. Court of Appeals for the District of Columbia Circuit filed an Order reversing a Commission decision that a candidate for State Senator was not entitled, under the lowest unit charge provision of Section 315, to run-of-schedule time. The Court, however, held that the candidate "must be afforded run-of-schedule rates." *Hernstadt v. F.C.C.*, No. 80-3228, (D.C. Cir. October 18, 1980). The Court added that the candidate's "spot announcements will be subject to the same vagaries as would those of any commercial advertiser purchasing such service." The Order states that an opinion will issue at a later date explaining the Court's reasoning. At the time the opinion is issued, we will, of course, consider what impact, if any, it has on the approach outlined below.

the audience differences were such that establishment of different lowest unit charges would be reasonable. Similarly, as between brokered programs, significant differences in available audience levels could support a difference in class of advertising under the Act, while substantially similar potential audiences would be subject to the same lowest unit charge.

24. The decision as to which brokered programming would support a different lowest unit charge from the licensee's general programming or from other brokered programming must be left to the good faith discretion of the licensee. Of course, the exercise of that discretion is subject to review by the Commission in considering complaints brought under Section 315. However, it appears that this approach will generally lower the cost of political advertising on brokered programming. Thus, it will benefit: the broker, who will be able to sell the advertisement; the candidate, who will get reasonably priced access to particular audience segments; and the public, through support of diversified programming and the widest possible dissemination of political opinions. As with present brokerage practice, the licensee remains ultimately responsible for the broker's advertising practices. Thus, the licensee electing to establish different rate cards must take reasonable steps to assure that all brokers adhere to those rates, and otherwise comply with statutory and Commission-imposed requirements affecting political advertising.¹⁷

Other Matters

25. *Shared-Time Operations*¹⁸ - The NTIA petition which precipitated this inquiry noted that share-time licensing is already provided for in the Commission's Rules, 47 C.F.R. 73.1715 and 47 C.R.R. 73.561, but is infrequently utilized because of the difficulties which arise in the actual licensing of two operators to the same frequency. The *Notice* thus emphasized time brokerage as a more flexible and less capital-intensive mechanism for encouraging minority involvement. There were no comments from present share-time operators, or parties seeking to initiate such operations. However, NTIA states in reply comments that it had sought an expanded role for operations which

¹⁷ The Commission staff has received inquiries from political candidates who contend they should be allowed to purchase political time on a foreign-language program without being required to deliver their message in that language. The Communications Act, 47 U.S.C. 315(a), specifically prohibits licensees from exercising any censorship over political broadcasts. A linguistic restriction is an improper restriction on the full and free political discourse which the Section seeks to encourage. While the Act does not address brokers directly, it would turn the statute upside down to permit them to restrict political dialogue in ways forbidden to licensees. Licensees should remember their ultimate responsibility for station operation and assure that brokers understand the limitations on their authority in the political advertising field.

¹⁸ Shared-time operations are characterized by dual licensees who have agreed to share portions of the broadcast day on the same or similar technical facilities.

would "in practical effect" constitute share-time operations because the broker would share responsibility for rule violations and his EEO contributions would be credited to the licensee. Comments by Citizens Communications Center urge the Commission to create a set of guidelines for share-time license agreements and review them to "insure that each licensee is allocated sufficient hours of operation." Both NTIA and Citizens express the hope that such operations will establish a natural progression from time brokerage to outright minority ownership.

26. We consider, as with time brokerage, that the Commission's role in increasing share-time operations is best restricted to one of encouragement rather than specific prescription. Existing licensees are free to explore such possibilities in the competitive marketplace, as noted by NTIA, and Commission review of such arrangements to determine "sufficient hours of operation" would more likely restrict than liberate the forces of entrepreneurship. The initiation of share-time operations is in the licensee's discretion. Share-time operators, as licensees, are of course required by our rules to file their own 395 reports and affirmative action programs.

27. Thus, while we hope that time brokerage arrangements will develop into expanded diversity of ownership, we do not wish to impose a governmental description of "natural progression" on such arrangements. The share-time alternative remains available, and we encourage interested parties to explore its applicability to particular situations, but because both licensees are directly responsible to the Commission in such an arrangement, there is even less reason to routinely interfere with the negotiation of such arrangements than where time brokers are involved as independent program producers.

28. *Noncommercial brokerage* - Potential brokerage practices in the noncommercial radio service are described in reply comments from the Radio Foundation, Inc. The Foundation proposes to lease radio time on commercial or noncommercial stations and disseminate specialty programs via the NPR satellite distribution network. The Foundation intends to finance its program production with grants and nonbroadcast solicitations, as well as on-air fund raising. It asserts that noncommercial brokerage has both attractions and drawbacks: because the Commission allows a noncommercial licensee to recover only actual operating costs when selling air time, time is cheaper; yet because the time broker is in direct competition with the station's own fund-raising efforts, the station is frequently resistant to the idea of brokering time.¹⁹ The Foundation further suggests that having the licensee held responsible for brokered programming inhibits brokerage experiments,

¹⁹ The Foundation complains that the Commission's original decision in *Cosmopolitan* deprived it of its most likely brokerage partner, and contends the expressed rationale of that decision is disbelieved by many persons in the broadcast industry, who consider that the sanction originally imposed was substantially motivated by Commission dislike of brokerage practices. Clearly this is not the case, and the

and it urges that the statutory prohibition against censorship (47 U.S.C. §326) should be extended to licensees so that independent producers could be held directly responsible for their programming's deficiencies.²⁰

29. As to the licensee-imposed "censorship," we have noted above our determination that the public interest is better served by retention of the licensee's ultimate responsibility for programming broadcast over its facility. The Foundation's proposed approach of enforcing rules against the broker, is simply inadequate. Brokers do not have the same stake in compliance that a licensee does. In the extreme case of offenses which would warrant denial of a station's license, no comparable penalty can be imposed on the broker. In lesser cases where the Commission might impose a short-term renewal or conditions on renewal, the Commission's administrative sanctions against brokers are similarly limited.

30. Nor does independent fund raising pose any fundamentally unique problems. Commercial licensees are sometimes reluctant to yield all their commercial opportunities to a broker, reserving some time for station sales. Non-profit groups, too, can negotiate with noncommercial licensees over this question. If their funding must come from non-broadcast appeals because of the licensee's judgment that fund raising for the primary licensee is more important, we will not interfere with that judgment. The noncommercial service was created to provide a distinct alternative to commercial broadcasting, and its financial structure is not yet so generally healthy as the commercial system. We will not further complicate the economic challenges facing noncommercial licensees by *requiring* them to yield fund raising time to independent producers, any more than we would require commercial licensees to limit their commercial participation in negotiating contracts for brokered programs. Producers sufficiently confident of their ability to raise funds on the air can purchase time from commercial licensees and operate in that manner. Ethnic broadcasters have used this approach for years.²¹

Commission will not alter its enforcement policy or decisional approach because some observers insist on misreading the clearly expressed basis for a decision.

²⁰ The Foundation expressly asks that the Commission not impose eligibility requirements on noncommercial brokers as stringent as those applied to licensees, and asks that any fund raising limitations be restricted to auction broadcasts. With respect to eligibility requirements for noncommercial licensees, we will leave the selection of independent producers to the discretion of the licensee, subject to the final outcome of the pending proceeding on eligibility. (BC Docket No. 78-164). We have not, and will not, review in advance the "eligibility" of brokers, so long as the fundamental noncommercial educational nature of the service is maintained; nor do we expect such licensees will neglect their special status as sources of diverse programming in discharging this aspect of their responsibilities.

²¹ By our unwillingness to interfere with the balance of incentives in the noncommercial realm, we do not mean to discourage voluntary exploration of such arrange-

Conclusion

31. The broadcast industry has changed substantially since the pre-television epoch, when radio was the dominant entertainment medium. Because of the limited number of then existing stations, the Commission specifically encouraged program formats designed to appeal to the broadest audiences, rather than specialized formats that would appeal only to particular segments of the total audience. See, e.g., *Young People's Association for the Propagation of the Gospel*, 6 F.C.C. 178 (1938). That policy was intended to assure that there would not be large segments of the audience whose demands were left unmet. Changed circumstances render that policy obsolete. The growth of television and the increase in the number of radio stations over time has yielded an environment where, for most radio stations, the preferred strategy is to seek specialized audiences rather than mass audiences. There are, nonetheless, some specialized audiences whose tastes continue to go unmet because they are too small to support an entire weekly schedule of such programming. This is frequently the case for foreign language audiences, whose preferred programming is unlikely to attract a sizeable cross-over audience. Greater flexibility in time brokerage and time sharing arrangements could encourage more programming responsive to these specialized audiences.

32. Because of the changes that have occurred in the almost four decades since *Metropolitan*, it is time for the Commission to adopt a new policy. In an industry characterized by numerous specialized competitors and brokers and varied sources of prepackaged programming, brokerage can often represent both a less expensive program source for the individual licensee and an appropriate market response to the audience's fragmentation into preference groups too small to support an entire station. In the largest markets, some television stations also have become a potpourri of brokered "formats." Neither licensees nor minority groups facing difficult economic circumstances should be discouraged from exploring programming alternatives that appear to reflect accurately both consumer wants and competitive incentives. Occasional abuse by an irresponsible licensee or broker does not warrant blanket regulatory discouragement of an entrepreneurial mechanism that is uniquely suited to support specialized services. The Commission can control the occasional abuses, and believes that the potential for improved service far outweighs any potential for harm.

33. **IT IS ORDERED**, That the changes requested in the Commission's policies regarding time brokerage **ARE GRANTED** to the extent indicated and in other respects **ARE DENIED**.

ments. So long as the fundamentally noncommercial nature of the operation is preserved, we encourage licensees to explore innovative brokerage agreements.

34. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.²²

FEDERAL COMMUNICATIONS COMMISSION,

WILLIAM J. TRICARICO, *Secretary*.

Appendix of parties submitting comments may be seen in FCC, Dockets Branch.

²² As indicated in the *Notice*, the remaining matters raised in the petition are to be dealt with elsewhere. Accordingly, this proceeding can be terminated with the adoption of this *Policy Statement*.