

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In Re Application of)	
)	
NBC WVTM License Company)	File No. BALCT-20060410AEK
(Assignor))	
)	Facility ID No. 74173
and)	
)	
Media General Communications, Inc.)	
(Assignee))	
)	
For Consent to the Assignment)	
Of License for WVTM-TV)	
Birmingham, Alabama)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 23, 2006

Released: June 23, 2006

By the Chief, Media Bureau:

1. The Commission, by the Chief, Media Bureau, acting pursuant to delegated authority, has before it for consideration an application to assign the license of WVTM-TV, Channel 13 (NBC), Birmingham, Alabama from NBC WVTM License Company to Media General Communications, Inc. (Media General). Grant of the assignment would create a non-permissible television duopoly in the Birmingham market where Media General already owns WIAT(TV), Channel 42 (CBS). Media General has requested a six-month waiver to come into compliance with the multiple ownership rules in that market. The application is unopposed. For the reasons stated below, we grant the requested waiver and the application.

2. **The Multiple Ownership Waiver.** Under our multiple ownership rules, an entity may own two television stations in the same Designated Market Area (DMA)¹ only if (1) the Grade B contours of the two stations do not overlap or (2) at the time the application is filed, at least one of the stations is not ranked among the top four stations in the DMA and at least eight independently owned and operating, full-power television stations would remain in the DMA post-merger.²

¹ Our rules rely on DMAs, as determined by Nielsen Media Research.

² 47 C.F.R. § 73.3555(b) (2002). In the *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620 (2003), the Commission adopted new rules governing television local multiple ownership limitations. Several aspects of the new rules are currently stayed pursuant to *Prometheus Radio Project v. FCC*, 373 F. 3d 372 (3rd Cir. 2004). Both sets of rules, however, contain the top-four limitation, which was also upheld in *Prometheus Radio*.

Media General has submitted materials showing that more than eight independently owned and operated stations would remain in the Birmingham market post-grant, but that both of the stations that it would own are ranked in the top four.

3. Media argues that a six-month waiver of these rules is warranted in this situation. It argues that the requested waiver is similar to other waivers the Commission has found to be in the public interest in order to facilitate multi-station transactions.³ Furthermore, Media General has offered substantial evidence of its efforts to sell one of the stations.

4. In the application, Media General states that it will seek to promptly divest WIAT(TV) and that it will maintain separate operations of the subject stations during the waiver period. In subsequent amendments to the application, Media General states that it has engaged Stephens, Inc. (Stephens) to assist in the transaction and that Stephens has been actively engaged in seeking a buyer. Media General has committed extensive staff resources and employed outside professionals in performing due diligence for the proposed sale. Media General has entered into Confidentiality Agreements with several potential buyers and expects to receive preliminary bids by May 31, 2006. It expects to file an assignment application for WIAT(TV) shortly after the beginning of the third quarter.

5. In addition to its efforts to market the station, Media General reports that it has entered into a commitment with the Antitrust Division of the Department of Justice (DOJ). Pursuant to that agreement, Media General has committed to operate the two stations as separate entities and maintain competition between them pending divestiture. If Media General has not divested one Birmingham station within six months of closing on the assignment application, it has agreed that DOJ will have the right to file a Consent Decree and Hold Separate Stipulation and Order, which will provide that: (1) upon the filing of the Consent Decree, Media General will have an additional 90 days to complete the divestiture on its own; and (2) if Media General fails to complete the divestitures within 90 days (subject to a 60-day extension at DOJ's discretion), a trustee will be appointed to complete the divestiture, subject to DOJ's approval.⁴

6. On the facts presented here, we believe the requested multiple ownership waiver is warranted. Media General has been aggressive in marketing WIAT(TV). Its concrete steps to sell the station, coupled with its agreement with DOJ, make it probable that Media General will comply with the divestiture deadline. Indeed, we are relying on Media General's continued aggressive marketing of WIAT(TV) and its agreement with DOJ in reaching our decision here.

³ See, e.g., *Telemundo Communications Group, Inc.* 17 FCC Rcd 6958 (2002); *UTV of San Francisco*, 14 FCC Rcd 14975 (2001). This assignment is part of a transaction by which NBC sought to assign WVTM-TV and three other stations to Media General. The three other stations are WJAR(TV), Providence, RI, ID No. 50780, File No. BALCT-20060410ADY; WCMH-TV, Columbus, OH, ID No. 50781, File No. BALCT-20060410AEB; WNCN(TV), Goldsboro, NC, ID No. 50782, File No. BALCT-20060410AEH. The other three applications, which did not require waivers and which were also unopposed, were granted separately.

⁴ A similar agreement was entered into between DOJ and Raycom Media, Inc. in connection with the transfer of control of Liberty Media, Inc. and its licensee subsidiaries to Raycom. *Liberty Corporation*, DA 06-72 (released Jan. 17, 2006). In that case, impermissible duopolies requiring divestiture were created in four markets.

At this time, we do not anticipate that we would have any reason to extend the waiver period beyond the requested six months.

7. Having found the parties fully qualified, we conclude that grant of the subject application would serve the public interest. ACCORDINGLY, IT IS ORDERED THAT, the application for assignment of license of WVTM-TV, Birmingham, Alabama, from NBC WVTM License Company to Media General Communications, Inc. IS GRANTED, subject to the condition that, within six months of the consummation of this transaction, an application is filed with the Commission to dispose of such stations as would be necessary for Media General to come into full compliance with 47 C.F.R, § 73.3555(b) in the Birmingham DMA.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau