

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

In Re Application of	)	
	)	
THE UNIVERSITY OF NOTRE DAME DU	)	
LAC	)	File No. BTCCT-20051202AAC
(Transferor)	)	Facility ID No. 41674
and	)	
	)	
GRAY TELEVISION GROUP, INC.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Michiana Telecasting Corp., Licensee of	)	
WNDU-TV, South Bend, IN	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 23, 2006**

**Released: February 24, 2006**

By the Chief, Media Bureau:

1. The Chief, Media Bureau, acting pursuant to delegated authority, herein considers the above-captioned application to transfer control of Michiana Telecasting Corp., licensee of WNDU-TV, Notre Dame, Indiana, from The University of Notre Dame Du Lac to Gray Television Group, Inc. (GTG). The application is unopposed.<sup>1</sup>

2. The transferee is a wholly owned subsidiary of Gray Television, Inc. (Gray), a publicly traded company. Through another subsidiary, Gray owns and publishes a daily newspaper, *The Goshen News*, in Goshen, Indiana, which is located in the South Bend-Elkhart DMA and within WNDU-TV's Grade A signal contour. As such, the common ownership of both WNDU-TV and *The Goshen News* is prohibited by Section 73.3555(d)(3) of the Commission's Rules,<sup>2</sup> which provides, in pertinent part, that "no license for [a] . . . TV broadcast station shall be granted to any party . . . if such party directly or indirectly owns, operates, or controls a daily newspaper and the grant of such license will result in" the Grade A signal contour of that television station encompassing the entire community in which such newspaper is published. Gray therefore requests a six-month waiver of that rule following the consummation of its proposed acquisition of WNDU-TV to achieve compliance with Section 73.3555(d)(3) of the Rules.

<sup>1</sup> On August 5, 2005, the Commission received a letter from Patricia A. Scott of South Bend, Indiana, requesting that the Commission "carefully screen" any new licensee of WNDU-TV to assure that the local television market remain competitive. This letter was received prior to the filing of the instant application, and is not directed to the proposed transaction contemplated therein. Thus, we conclude that the generalized concerns raised in the Scott letter do not raise any substantial or material question with respect to this transaction and the parties thereto.

<sup>2</sup> 47 C.F.R. Section 73.3555(d)(3).

3. In support of this request, Gray states that it is currently in the process of a corporate reorganization which, among other things, will result in a spin-off of the company's daily newspaper business to an unrelated third party, a publicly traded corporation named Triple Crown Media (Triple Crown).<sup>3</sup> Gray asserts that both it and Triple Crown are committed to the prompt divestiture of *The Goshen News* in order to achieve compliance with the Commission's newspaper-television cross-ownership rule. It claims that the requested six-month temporary waiver period will facilitate the orderly and ultimate divestiture of *The Goshen News*. During the six-month waiver period, Gary states that the two companies will have "largely separate ownership and management."<sup>4</sup> Gray also states that it and Triple Crown will operate the newspaper and the television station separately and will maintain strict separation between the two entities.

4. Gray maintains that a temporary waiver of the rules as requested will not have any appreciable negative impact on competition or diversity. It states that Goshen is located about 25 miles east of South Bend, and that the city of Elkhart, located between them, separates the two. It also asserts that Goshen (2004 population of 30,555) is a significantly smaller community than South Bend (105,494 population) and that the two are also located in different counties. Gray states that the two communities have distinct municipal and county governments and are in different United States Congressional Districts.

5. Gray states that *The Goshen News* is a small daily newspaper with a weekly circulation of 16,094, which is less than 5 percent of the total homes in the South Bend-Elkhart DMA served by WNDU-TV, and registers virtually no circulation in South Bend itself. It maintains that *The Goshen News* reports news events primarily of interest to the residents of Goshen and Elkhart County, and not to residents of South Bend, and that its advertisers are almost exclusively from Goshen. Thus, it argues that neither residents nor advertisers consider *The Goshen News* a substantial media voice of South Bend, and that the newspaper is not a significant competitor of WNDU-TV or the other television stations in the South Bend-Elkhart DMA.

6. In addition to *The Goshen News*, Gray notes that two other newspapers have significant circulation in Goshen (*The South Bend Tribune* published in South Bend and part of a grandfathered AM/FM/TV/daily newspaper combination, and *The Truth* published in Elkhart). Goshen also receives the television service primarily from the one noncommercial educational and three commercial stations licensed to South Bend (including WNDU-TV) and one commercial station licensed to Elkhart. Gray also notes that 23 commercial radio stations and Goshen College's radio service are available in Goshen, and that residents also have a choice of satellite television and radio services. Gray asserts that these broadcast and nonbroadcast services

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<sup>3</sup> Extensive information concerning the proposed spin-off transactions was submitted to the Securities and Exchange Commission for review. Gray reports that the SEC's review process was recently completed, and that shareholder notifications and approvals to effectuate the spin-off are underway.

<sup>4</sup> Gray states that only one existing cognizable shareholder, three of nine current directors and two current officers (neither serving as president) will have positions in both companies. Gray further explains that other than general corporate matters, these principals will have no day-to-day role in the operation of the station and the newspaper during the six-month waiver period. In this regard, Gray reports that these individuals have agreed to execute written recusal commitments to ensure that they are not involved in the management of both local outlets during the waiver period.

provide a multitude of viewing and listening options that assure that Goshen residents will be adequately served during the limited waiver period.<sup>5</sup>

7. **Discussion.** Based on the information before us, we believe that granting Gray a six-month period to come into compliance with the television/newspaper cross-ownership rule is appropriate. *See, e.g., Combined Communications Corporation of Oklahoma, Inc.*, 12 FCC Rcd 1287 (MMB, 1997). The process by which Gray will divest its interest in *The Goshen News* is well underway. The period of corporate common ownership of WNDU-TV and *The Goshen News* is relatively short, and the communities of South Bend and Goshen are sufficiently distinct, such that approval of this transaction is unlikely to have an appreciable negative impact on competition or diversity in the market. Gray's concrete steps to divest its interest in *The Goshen News*, including its representations to the SEC, combined with the recusal commitments of affected Gray/GTG/Triple Crown principals, make us confident that Gray will comply with the divestiture deadline as represented.

8. We have reviewed the transfer of control application, and find that the applicants are fully qualified, and that the grant of that application, as described herein, will serve the public interest, convenience and necessity.

9. Accordingly, IT IS ORDERED, That the application (BTCCT-20051202AAC) for consent to the transfer of control of Michiana Telecasting Corp., licensee of WNDU-TV, Notre Dame, IN, from The University of Notre Dame Du Lac to Gray Television Group, Inc., IS GRANTED.

10. IT IS FURTHER ORDERED, That, from the date this transaction is consummated, Gray IS GRANTED a temporary six-month waiver of Section 73.3555(d)(3) of the Commission's Rules to permit Gray Television Group, Inc. to retain common ownership of WNDU-TV and *The Goshen News* pending the completion of the divestiture of *The Goshen News*.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg  
Chief, Media Bureau

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<sup>5</sup> Citing, *UTV of San Francisco*, 16 FCC Rcd 14975 (2001); *Chancellor Media/Shamrock Radio Licenses, L.L.C.*, 15 FCC Rcd 17053 (2000); and *Multimedia Inc.*, 11 FCC Rcd 4883 (1995), Gray asserts that the instant transaction is similar to transactions involving restructuring of large publicly traded companies with multiple media interests that the Commission has found to serve the public interest. We find the cited transactions, however, to be inapposite and not controlling here.