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Bend Cable Communications, LLC
c/o David M. Silverman, Esq.
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006

Meredith Corporation
c/o John R. Feore, Jr., Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Gregory C. Lawhon, Esq.
General Counsel
News-Press & Gazette Company
215 West 18th Street #202
Kansas City, Missouri 64108

Re: Application for Assignment of License
KFXO-LP, Bend, Oregon
File No. BALTTA-20060817ABZ
Facility ID No. 35464

Dear Counsel:

This is in regard to the above-referenced application for consent to assign the license of Class A Station KFXO-LP, Bend, Oregon,¹ from Meredith Corporation (“Meredith”), to NPG of Oregon, Inc. (“NPG of Oregon”), a subsidiary of the News-Press & Gazette Company (“NPG”). On September 21, 2006, Bend Cable Communications, LLC (“Bend Cable”), a multichannel video programming provider serving the Bend, Oregon, market, filed a Petition to Deny the assignment application. Meredith and NPG filed separate oppositions on October 25, 2006, and Bend Cable filed a reply on November 27, 2006. Bend Cable argues that, “[w]hile the proposed transaction technically complies with the Commission’s multiple ownership rules, it is likely to have an anticompetitive effect,” on the Bend, Oregon market.² For the reasons set forth below, we deny the Petition to Deny and grant the assignment application.³

¹ On August 31, 2001, the Commission authorized Station KFXO-LP to operate as a Class A station. See BLTTA-20010712AII.

² *Bend Cable Petition to Deny*, at 1.

³ We will exercise our discretion and consider all of the pleadings, and allegations raised therein, that have been filed by the parties. Thus, we need not determine whether Bend Cable has formal standing as a party in interest under section 309(d) of the Telecommunications Act of 1934 (the “Act”).

Background. NPG of Oregon is the current licensee of Station KTVZ(TV), Bend, Oregon, an NBC affiliate, and, according to Bend Cable, the only “operational full power television station in the Bend market broadcasting in both analog and digital.”⁴ Bend Cable acknowledges that common ownership of Station KTVZ(TV) and Station KFXO-LP, a Fox affiliate, would comply with the broadcast multiple ownership rule since there is no limit on the number of low-power or Class A television stations a licensee may own. Bend Cable contends, however, that broader antitrust concerns must be considered in the Commission’s public interest analysis. Bend Cable argues that, when considering broadcast television advertising as the relevant product market and the Bend, Oregon Nielsen Designated Market Area (“DMA”) as the relevant geographic market, the instant transaction would lead to excessive market concentration. Bend Cable cites the Herfindahl-Hirschman Index (“HHI”) and the U.S. Department of Justice (“DOJ”) in maintaining that the proposed merger would pose a threat to competition.

NPG responds that the Commission’s multiple ownership rules have always permitted licensees “to own an unlimited number of TV translators, LPTV stations and Class A TV stations” in any market, and that such a policy is sound since these TV stations “are only ‘secondary services,’ subject to total displacement by full-power TV stations at any time.”⁵ NPG states that, even assuming the Commission were to consider antitrust issues as part of its public interest analysis in this case, Bend Cable has failed “to support its core argument with anything but opinion and unsupported allegations, wholly devoid of probative evidence.”⁶ NPG argues that the Commission has not applied DOJ standards in its review of assignment applications for full-power, much less low-power, television stations. NPG has further submitted a market study concluding that the relevant product market is not broadcast television advertising, as alleged by Bend Cable, but rather “local media advertising,” which includes advertising sold by newspapers, cable systems, radio stations, and television stations. According to NPG, NPG of Oregon “currently has 9.2% of local media advertising revenues and, upon acquiring KFXO-LP, would have approximately 14.2%.”⁷ Thus, according to NPG, the transaction would not lead to excessive market concentration.

Meredith reiterates many of the same arguments made by NPG. Meredith adds that Bend Cable’s estimate of NPG of Oregon’s revenue share is “not attributed to anyone – not an expert economist, a third party data collector, or a person with actual knowledge of the facts,” and that Bend Cable’s “conclusions about unspecified harms befalling consumers and the public interest lack any support other than the generic declaration of Bend Cable’s own CEO.”⁸ Meredith notes that a full-power television station affiliated with NBC and a PBS station currently operate in the Bend DMA and that a full-power ABC affiliate signed on in September 2006. Meredith further states that a CBS affiliate licensed to Portland, Oregon also serves viewers in the Bend, Oregon DMA. In addition to these full-power stations, there are 4 Class A television stations licensed to the Bend, Oregon DMA, including the Fox affiliate Station KFXO-LP, a Univision affiliate, and two independents. Meredith notes that, in addition to these 4 Class A television stations, “43 LPTV stations within 60 miles of the center of Bend currently compete for viewers and revenue.”⁹

⁴ *Bend Cable Petition to Deny*, at 2.

⁵ *NPG Opposition* at 3.

⁶ *Id.* at 4.

⁷ *Id.* at 7.

⁸ *Meredith Opposition* at 5.

⁹ *Id.* at 12.

Discussion. Section 310(d) of the Act provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby.¹⁰ In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act,¹¹ other applicable statutes, and the Commission’s rules.¹² In this case, Bend Cable acknowledges that the transaction does not violate any Commission rule, but instead argues that grant of the application would nevertheless be contrary to the public interest.

The Commission analyzes such allegations according to a two-step process. First, the petition must contain specific allegations of fact sufficient to show that such a grant would be *prima facie* inconsistent with the public interest.¹³ This first step of the public interest analysis “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the affidavit were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established.”¹⁴ If the petition meets the first step, the Commission will designate the application for hearing if the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.¹⁵ In this case, we find that the petition has failed to show that grant of the application would be *prima facie* inconsistent with the public interest.

The Commission’s multiple ownership rules are intended to promote competition, diversity and localism in the mass media, essential goals “in carrying out [the Commission’s] statutory mandate of ensuring that broadcast licensees serve the ‘public interest, convenience, and necessity.’”¹⁶ As recently as the 2002 *Biennial Review Order*, the Commission determined that bright-line rules, as opposed to a case-by-case analysis is the best means of ensuring the goals of competition and diversity are met while at the same time providing certainty to outcomes, conserving resources, reducing administrative delays, lowering transaction costs, increasing transparency of our process, and ensuring consistency in decisions.¹⁷

¹⁰ 47 U.S.C. § 310(d).

¹¹ See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 (2005) (“*SBC-AT&T Order*”); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 (2005) (“*Verizon-MCI Order*”).

¹² See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43.

¹³ 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (“*Astroline*”).

¹⁴ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987). See also *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (affirming two-step public interest analysis).

¹⁵ *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

¹⁶ *In the Matter of Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12907 (1999) (subsequent history omitted) (“*1999 Television Ownership Order*”). See, also, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rule Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620 (2003) (“*2002 Biennial Review Order*”), *aff’d in part and remanded in part, Prometheus Radio Project et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004) (“*Prometheus Remand Order*”), *stay modified on rehearing*, (3d Cir. Sept. 3, 2004) (“*Prometheus Rehearing Order*”).

¹⁷ *2002 Biennial Review Order*, 18 FCC Rcd at 13645.

Under the broadcast multiple ownership rule, a party may own, operate or control two television stations within the same Nielsen Designated Market Area (DMA) if the Grade B contours of the stations do not overlap, or if eight or more independently owned and operating commercial and noncommercial television stations will be licensed to the DMA and at least one of the stations is not ranked within the top four stations in the DMA in terms of audience share.¹⁸ Low power and Class A television stations, however, are not subject to the numerical ownership limits of section 73.3555(b). In the case of Class A television stations, the Commission concluded that Congress in passing the Community Broadcasters Protection Act of 1999¹⁹ intended “that Class A stations be exempt from existing common ownership requirements and that this exemption should apply when a license is subsequently transferred to a buyer with other media interests.”²⁰ The Commission has also stated that there are no ownership limits on low power television stations because such stations have limited coverage areas and operate under restricted power.²¹ Class A stations operate under the same power limitations as low-power television stations.²²

Even were we to apply a case-by-case approach, Bend Cable has failed to proffer sufficient economic data to permit meaningful economic analysis or substantiate its claim of competitive harm. Bend Cable’s statements concerning competition are speculative and unsupported by extrinsic evidence. Also, Bend Cable has provided no data to support its position that the proper product market is broadcast television advertising. Both NPG and Meredith, on the other hand, have provided specific expert testimony as to why the proper product market is the broader “local media advertising.” Thus, we find no reason to depart from our established standards in determining which broadcast services are subject to the numerical ownership limits of the broadcast television multiple ownership rule.

¹⁸ 47 C.F.R. §73.3555(b) (2002).

¹⁹ 47 U.S.C. § 336(f).

²⁰ *In the Matter of Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6392 (2000) (subsequent history omitted).

²¹ *See Report and Order, An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, 51 RR 2d at 516-17 (Low power television stations not subject to ownership rule because these stations "have limited coverage potential, which effectively limits the area from which advertising support may be garnered; their secondary status poses the possibility that they might be required to alter facilities or cease operation at any time; the majority of channel availabilities are in rural areas, where viability generally is less certain than in urbanized areas").

²² *In the Matter of Establishment of a Class A Television Service*, 15 FCC Rcd at 6367-68.

Based on the evidence presented in the record, we find that grant of the above-captioned assignment application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the September 21, 2006, Petition to Deny of Bend Cable Communications, LLC, IS DENIED, and that the application to assign the license of Station KFXO-LP, Bend, Oregon (File No. BALTTL-20060817ABZ) from Meredith Corporation to NPG of Oregon, Inc. IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Robert Lewis Thompson, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Avenue, NW
Suite 301
Washington, D.C. 20016