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Re: Application for Assignment of License of
WYTV(TV), Youngstown, Ohio
File No. BALCT-20070205ACH
Facility ID No. 4639

Dear Counsel:

This is in regard to the above-referenced application to assign the license of WYTV(TV), Youngstown, Ohio, from Chelsey Broadcasting Company of Youngstown, LLC ("*Chelsey*") to Parkin Broadcasting of Youngstown License, LLC ("*Parkin*"). The National Association of Broadcast Employees and Technicians-Communications Workers of America ("*NABET*") filed a petition to deny the application. Chelsey and Parkin filed a joint opposition to the petition (*together the "Applicants*").

In the application, Parkin disclosed that upon acquiring WYTV(TV) it plans to enter into several agreements with NVT Youngstown, LLC, the parent of NVT Youngstown Licensee, LLC (*collectively "New Vision*"), the current licensee of WKBN-TV, Youngstown, Ohio and WYFX-LP, Youngstown, Ohio (*a Class A station*).[1] These agreements include: a *Shared Services Agreement*, pursuant to which New Vision will provide certain station-related services to Parkin; an *Option Agreement* that grants New Vision an option to purchase WYTV(TV); and a *Guarantee*, pursuant to which New Vision has agreed to act as a guarantor of a loan by Parkin's commercial lender(s).

[1] NABET asserts that it represents the employees at WYTV(TV), WKBN-TV, and WYFX-LP, and thus has intimate knowledge of the management and operations of these outlets, as well as staffing.

Petition to Deny. NABET alleges that Parkin is providing New Vision with a shell company to acquire the assets of WYTV(TV) at a time when the Commission's rules prohibit New Vision from acquiring the station.[2] NABET asserts that New Vision is the guarantor of loans made by Parkin's lenders, and that this private financial arrangement was orchestrated by New Vision to prevent any type of bidding war for a license that was not publicly noticed for sale. NABET further argues that the set pricing structure of the option granted to New Vision provides a favorable rate of purchase for WYTV(TV), again without the benefit of publicly auctioning or selling the license at some future date. In short, NABET argues that, "In combination, the loan underwriting by New Vision, coupled with a prospective sales option, and the almost immediate consolidation of all services between the two systems, including news, is simply an end around method to permit New Vision management to operate and profit by three television stations in the same market in violation of the duopoly rule."

NABET further argues that the proposed sale of WYTV(TV) will result in the loss of an independent news voice in Youngstown, contrary to the public interest. NABET notes that the market currently contains four television broadcasting stations, including WKBN-TV, WYFX-LP, WFMJ-TV, and the subject station, WYTV(TV). While WKBN-TV and WYFX-LP are both owned by New Vision, WFMJ-TV is owned by the only daily newspaper in Youngstown. NABET argues that up to this point, WYTV(TV) has provided an independent voice to the television viewing market in Youngstown, not tied to the local newspaper, and not linked to any other broadcast outlet in the market. NABET acknowledges that the proposed transaction limits the volume of program content prepared for WYTV(TV) by New Vision to no more than 15%. However, NABET argues that since locally-produced news represents less than 15% of the daily programming content (most of the daily program content is provided through syndicated program packages and network content), this arrangement does not address the need to continue to obligate WYTV(TV) to meet its public responsibilities to provide local programming.

Furthermore, NABET expresses concern that the proposed transaction will result in the loss of jobs by union employees of WYTV(TV) and WKBN-TV. NABET alleges that the WYTV(TV) SSA essentially covers all station operations; and that if the sale is approved, it expects New Vision to immediately begin performing all of the underlying functions at both stations. NABET notes that all the employees at WKBN-TV were terminated when that station was sold to New Vision in March, 2007. NABET further states that while the employees were offered reemployment by New Vision management, WKBN-TV unilaterally changed significant benefits under New Vision's ownership, leading to a National Labor Relations Board charge. According to NABET, New Vision management unilaterally wiped out union seniority at WKBN-TV, placing all employees on a 90-day probation period. In addition, NABET asserts that WYTV(TV) has refused to provide any information about the status of employees' working conditions due to the impending ownership change, except to say that there will be changes. Given the probationary status of WKBN-TV employees, NABET contends that it is not difficult to infer that New Vision management will "cherry pick" among the two groups of employees, retaining a smaller core group of desired employees, to the detriment of seniority, experience and possibly even union representation.

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[2] WKBN-TV is located in the same Designated Market Area as WYTV(TV), and the Grade B contours of the two stations overlap.

Opposition. In their joint opposition, the applicants argue that the petition is a thinly-disguised attempt to gain leverage in labor negotiations, primarily with respect to WKBN-TV. Moreover, they argue that the petition was not served on the parties to the application and does not meet the requirements of Section 309(d)(1) of the Communications Act of 1934, as amended ("Act") and the implementing Commission rules. Specifically, the applicants note that a petition to deny must be filed not later than 30 days after the Commission issues public notice of the acceptance of an application for filing.[3] However, NABET's petition was filed 67 days after the public notice. Just as importantly, assert the applicants, NABET did not serve its late-filed petition on either party to the WYTV(TV) assignment application. Under Section 1.45 of the Commission's rules, a petitioner must file its petition to deny in accordance with the procedures of Section 1.939. That section requires that a "petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to Section 1.47." Furthermore, the applicants note that the certificate of service appended to the petition does not even purport to provide service on the parties to the application or their respective counsel.

On the merits, the applicants argue that nothing in NABET's petition supports any conclusion that the contemplated arrangements are not in compliance with the Commission's rules and policies. They contend that the terms of the agreements ensure that Parkin, after closing, will retain full control over WYTV(TV)'s core functions, including programming, personnel and finances. In this regard, the applicants assert that the agreement does not trigger attribution under the Commission's rules because New Vision is barred under the SSA from providing more than 15% of the programming of WYTV(TV). Moreover, the applicants contend that, while a joint sales agreement between two same-market television stations would not give rise to attribution, the contemplated arrangements here are more limited in scope and do not encompass such a selling arrangement. The applicants further argue that the petition ignores the myriad of assignment and transfer of control applications where the Commission has approved similar or substantially more extensive arrangements between two same-market stations.

Discussion. In assessing the merits of a petition to deny or informal objection, we follow a two-step analysis. First, we determine whether the petitioner makes specific allegations of fact which, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest.[4] If so, we then proceed to examine and weigh all of the material before us to determine whether there is a substantial and material question of fact requiring resolution in a hearing.[5] If the facts are not disputed, but disposition turns on inferences and legal conclusions to be drawn from facts already known, a hearing is unnecessary.[6]

[3] *See* 47 C.F.R. § 73.3584(a). *See also* 47 C.F.R. § 1.939(a)(2).

[4] *See Astroline Communications Co. Ltd. Partnership v FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

[5] *Id.*

[6] *Stone v. FCC*, 466 F.2d 316, 323 (D.C. Cir. 1972).

NABET's petition was untimely filed and procedurally defective. We will, therefore, treat it as an informal objection pursuant to Section 73.3587 of the Commission's rules. Furthermore, we conclude that NABET has failed to raise a substantial and material question of fact sufficient to show that grant of the subject application would be inconsistent with the public interest. Accordingly, NABET's informal objection will be denied.

When viewed in totality, the agreements between Parkin and New Vision do not give New Vision an attributable interest in WYTV(TV) in violation of our local television ownership rules. Because New Vision is barred from providing more than 15% of the programming of WYTV(TV) under the SSA, the agreement does not trigger attribution under Section 73.3555(b) Note 2.[7] Furthermore, the Commission has ruled that options[8] and guarantees are permissible and do not give rise to attribution where they would not trigger the equity-debt-plus attribution standard.[9] In concluding that loan guarantees are not attributable, and that options are not attributable until exercised, the Commission indicated that such relationships do not provide the interest holder with the incentive and means to exert influence over the core operations of a licensee.[10]

Furthermore, based on our review of the agreements, we find that Parkin will retain full control over WYTV(TV)'s core functions, including programming, personnel and finances. The agreements to be executed by the parties make clear that Parkin has ultimate control over programming. As discussed above, New Vision's time brokerage of WYTV(TV) complies with Commission policies. With respect to personnel, it is clear that Parkin will control its employees. The SSA provides that Parkin shall employ personnel performing the typical functions of a general manager and business manager, and such personnel will report solely to Parkin and have no involvement or responsibility regarding the operation of WKBN(TV). In addition, the SSA

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[7] NABET argues that since locally-produced news represents less than 15% of the daily program content, this arrangement would not address the need to continue to obligate WYTV(TV) to meet its public responsibilities to provide local programming. However, the local program origination requirements were eliminated by the Commission in 1987, and have never dictated the nature of the programming to be originated locally. *See Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 2 FCC Rcd 3215 (1987). Though under no obligation to do so, Parkin states that it hopes that increased efficiencies made available under the SSA will provide enhanced opportunities for local service. Furthermore, Parkin states that it will maintain editorial control to ensure responsive and diverse presentation of news coverage.

[8] We reject NABET's allegation that the exercise price for the option suggests that the transaction is not "arms length." Under the agreement, upon exercise of the option, New Vision could purchase WYTV(TV) after one year for $1,000,000 more than the sales price, or $16,500,000. For years two through five of the option period, the agreement provides for half million dollar increases annually. After the fifth year, the exercise price for the station would be based on the fair market value of the station determined by a mutually acceptable appraiser. NABET's argument that the incremental increases under the option are well below the market average for the value of real property and do not reflect the fair market value of the property is flawed because the very basis for entering into an option is to protect against such market increases.

[9] Parkin reconfirms that neither New Vision nor any affiliate will have any equity or debt interest with respect to Parkin, other than the guaranty of the loan from a commercial lender(s), and that such arrangement will not trigger the equity-debt-plus attribution standard.

[10] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests (Attribution Reconsideration),* 16 FCC Rcd 1097, 1112 (2001).

stipulates that each party shall maintain for its station separate managerial and other personnel to carry out the selection and procurement of programming and sale of advertising for its station.

Regarding finances, Parkin will retain 100% of its advertising revenue, and NABET expressly concedes that the service fee to be paid to New Vision under the SSA is less than the actual operating costs associated with those services. As acknowledged by NABET, this arrangement clearly leaves Parkin with a significant positive cash flow from the sale of broadcast time for operation of the television station. This further supports Parkin's assertion that it maintains control over station finances. Thus, NABET's objection fails to demonstrate that the Parkin/New Vision agreements violate the Commission's rules and policies. The Commission, moreover, has granted similar applications between two same market stations.[11] With respect to NABET's concerns that the SSA may eventually lead to staff reductions at WYTV(TV) and WKBN-TV, these on-going labor negotiations are private disputes, and it is well settled policy that the Commission does not become involved in such private matters.[12]

For the reasons stated above, we conclude that Parkin is fully qualified to be the licensee for WYTV(TV), Youngstown, Ohio. Additionally, we find that grant of the application will further the public interest, convenience and necessity. Accordingly, the petition to deny filed by the National Association of Broadcast Employees and Technicians-Communications Workers of America **IS DENIED** and the application to assign station WYTV(TV), Youngstown, Ohio from Chelsey Broadcasting Company of Youngstown, LLC to Parkin Broadcasting of Youngstown License, LLC (File No. BALCT-20070205ACH) **IS GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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[11] *See, e.g., Malara Broadcast Group*, 19 FCC Rcd 24070 (2004), appl. for rev. pending.

[12] *See, e.g., Listeners Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987)(noting longstanding Commission policy of refusing to become involved in private contract disputes for which a forum exists other than the Commission).