Federal Communications Commission
Washington, D.C. 20554

DA 07-3476
Released: July 30, 2007

Piedmont Television of Springfield License LLC
c/o Joseph Di Scipio, Esq.
Fletcher, Heald & Hildreth
1300 N. 17th St.
11th Floor
Arlington, Virginia 22209

Perkin Media, LLC
c/o Dawn M. Sciarrino, Esq.
Sciarrino and Associates, PLLC
5425 Tree Line Drive
Centerville, Virginia 20120

EBC Harrison, Inc.
c/o Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3120

Koplar Communications International, Inc.
c/o Charles R. Naftalin
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

Re: KSPR(TV), Springfield, Missouri,
Application for Assignment of License, File
No. BALCT-20061005ADY, ID No. 35630

Dear Counsel:

This is regard to the application to assign the license of KSPR(TV), Springfield, Missouri from Piedmont Television of Springfield License LLC to Perkin Media, LLC (Perkin). Petitions to deny the application were filed by EBC Harrison, Inc. (EBC), licensee of KWBM(TV), Harrison, Arkansas, and Koplar Communications International, Inc. (Koplar), licensee of KRBK(TV), Osage Beach, Missouri. Perkin filed an opposition and both petitioners filed replies. For the reasons stated below, we deny the petitions and grant the application.

In connection with its acquisition of KSPR(TV), Perkin has entered into an Asset Purchase Agreement with the current licensee and with KY3 Inc. (KY3), the licensee of KYTV(TV), Springfield, Missouri, which is in the same DMA as KSPR(TV). Under the terms of the asset purchase agreement, KY3 will acquire certain physical assets of the station for $10,629,239.00, while Perkin will acquire the remaining assets, including the FCC licenses for $10,000,000. In addition, Perkin and KY3 have entered a Shared Service Agreement (SSA), Advertising Representation Agreement (ARA), an Option Agreement (Option) and a lease of certain facilities. Schurz Communications, parent of KY3, will act as guarantor of Perkin's financing for the station.

By a letter dated May 22, 2007, we required that the applicants supply additional information regarding the financial arrangements between Perkin and KY3.[1] In response, the applicants amended their application on May 30, 2007, supplying the schedules to the SSA, ARA, and Option that specified the payment terms under those agreements.

In its petition to deny, Koplar argues that Perkin is a "mere straw man" and that the proposed transaction is an attempt to circumvent our multiple ownership rules and give KY3 an impermissible duopoly.[2] Koplar argues that KY3 will control all essential KSPR(TV) personnel[3] and all non-network programming[4] and will dictate the financial operations of the station, thereby acquiring *de facto* control of KSPR(TV).[5] Koplar states that Perkins will employ four full-time employees and that the station's operations[6] are being moved to KY3's facility for KYTV(TV).[7] Koplar also states that under the SSA, KY3 will be responsible for the promotion of KSPR and maintenance of the station's facilities.[8]

---

[1] Letter from Clay C. Pendarvis, Associate Chief, Video Division, Media Bureau, to Joseph Di Scipio, Esq., *et al.*, dated May 22, 2007. Both EBC and Koplar devoted significant portions of their petitions to speculations on what the payment terms might be under the various agreements and the impact of those terms. Although neither party filed anything in response to the amendment, we take this opportunity to remind parties that the payment terms of contracts are a fundamental part of our analysis of a transaction.

[2] Koplar petition to deny (Koplar PTD) at 1 and 4. Under our rules a party may own two television stations in the same DMA, if eight independently owned and operating commercial and noncommercial television stations will remain in the DMA post-merger, and at least one of the stations is not among the top four-ranked stations in the market. 47 C.F.R. 73.3555.

[3] Koplar PTD at 8.

[4] *Id* at 10. Koplar argues that KY3 will program more than 15% of KSPR(TV)'s weekly time because the 15% of programming provided by KY3 under the SSA, when added to the advertising time sold by KY3, will necessarily exceed the 15% weekly cap for avoiding attribution. *See* 47 C.F.R. § 73.3555, Note 2(i). However, we have previously held that such advertising time is not to be counted in computing whether the 15% limit has been reached. *Malara Broadcast Group*, 19 FCC Rcd 24070 (2004), *pet for recon pending* (*Malara*).

[5] *Id* at 12.

[6] *Id* at 8.

[7] *Id*.

[8] *Id* at 9.

In its opposition, Perkin argues that the agreements between it and KY3 are consistent with arrangements that the Media Bureau has previously approved and will not give KY3 *de facto* control of KSPR(TV).[9] Perkins states that its principal, William N. Perkin, an experienced broadcaster, will be the Station Manager and actively supervise the programming and operations of KSPR(TV).[10] Perkin also states that any services provided under the SSA will be "subject at all times to the direction of Perkin and to the applicable licensee's ultimate supervision and control."[11] In the amendment, the SSA states that Perkin will pay KY3 a fee of $8,333.33 per month for specified engineering, maintenance and operational services.[12] Perkin states that the ARA reserves to Perkin the ultimate responsibility for maintaining and operating the station. Under the ARA, the rates charged for advertising "shall be subject to the ultimate control of Perkin."[13] The ARA also provides that Perkin will receive a base payment from KY3, with additional payments when station revenue exceeds certain targets. The ARA requires Perkin employees working at the station to be independent of KY3 and to carry out all duties not specifically assigned to KY3 by the agreements. KY3 employees are required to be under Perkin's direction when working on behalf of KSPR(TV).[14] Perkin argues that the arrangements set out in the various agreements are consistent with our decision in *Malara.*[15] Perkin further argues that any determination regarding whether a licensee has retained *de facto* control of its station must be considered in light of how a station's management actually is working or will work in practice and not on allegations about how things might work if the parties fail to comply with contractual provisions.[16]

In assessing the merits of a petition to deny or an informal objection, we follow a two-step analysis. First, we determine whether the petition makes specific allegations of fact which, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest. If so, we then proceed to examine an weight all of the material before us, including the applicant's submissions, to determine whether there is a substantial and material

---

[9] Perkin Opposition at 9. In addition, Perkin argues that Koplar, as a permittee rather than a licensee, lacks standing to file a petition to deny. The Commission has clearly stated that present permittees, as opposed to applicants for a permit, may be deemed aggrieved competitors and have standing to file a petition to deny an assignment application. *Family Television Corp.*, 59 RR 2d 1344, 1346 (1996).

[10] Perkin Opposition at 12.

[11] *Id* at 3.

[12] SSA § 5(c).

[13] Perkin Opposition at 4.

[14] *Id.*

[15] *Id* at 9-17.

[16] *Id.* at 9. *Citing Shareholders of Hispanic Broadcasting Corp.*, 18 FCC Rcd 18834 (2003); *By Direction Letter Regarding Control of CBS, Inc.*, 2 FCC Rcd 2274 (1987)(lack of "evidence of specific exercise" of unauthorized control cited as basis for denying petition).

question of fact requiring resolution in a hearing.[17] 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.[18]

Neither Koplar nor EBC have raised a substantial and material question of fact which would require resolution in a hearing.[19] If KY3 were found to be in *de facto* control of KSPR(TV), that station would be attributed to it and it would be in violation of our local multiple ownership rules. However, as Perkin argues, the agreements between Perkin and KY3 are in accordance with arrangements we have previously approved, such as those in *Malara*. As in *Malara*, the assignee would maintain programming control by virtue of the 15% limitation on programming by the time broker and the assignee will control its employees operating the station.[20] The SSA is explicit in regard to both the programming limits and employee control. Furthermore, rather than relying on a flat monthly payment from KY3 to Perkin, compensation under the ARA includes additional compensation for Perkin if station revenues exceed target goals. This gives Perkin a vested interest in being active in running the station in order to improve station operations and programming and, thereby, attract more advertisers. In regard to the other agreements, there is nothing in the record to indicate either the loan guaranty or the option agreement gives KY3 an incentive or the ability to exert influence over the core operations of the licensee.[21] Based on the limitations that the various agreements between the parties put on KY3 with respect to the operations of KSPR(TV) and the requirements those agreements impose on Perkin and the incentives they create for his active involvement, we find that the allegations by the petitioners that KY3 will exercise *de facto* control over KSPR(TV) in violation of our multiple ownership rules are unfounded.

We have reviewed the application and related pleadings and find that the applicants are fully qualified and that grant of the assignment applications are in the public interest, convenience and necessity. ACCORDINGLY, IT IS ORDERED THAT, The petitions to deny filed by EBC Harrison, Inc. and Koplar Communications International, Inc., ARE DENIED and the

[17] *See* 47 U.S.C. §§ 309(d)(1) and (2), as explained in *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1998).

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

[19] Koplar and EBC have both argued that the proposed agreements between KY3 and Perkin reduce competition in the market. Their arguments are primarily based on processing guidelines for applications involving radio stations, not television stations. The question of whether or not to apply those guidelines or similar guidelines is one to be resolved in the context of a rulemaking, not in the context of a station assignment.

[20] *See Malara*, 19 FCC Rcd at 24076.

[21] *See Malara*, 19 FCC Rcd at 24076; *US Broadcast Group Licensee*, 13 FCC Rcd 13963 (1998)(approving license transfer involving option and loan guaranty agreements.)

application to assign the license of KSPR(TV), Springfield, Missouri from Piedmont Television of Springfield License LLC to Perkin Media, LLC, File No. BALCT-20061005ADY, IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau