

Federal Communications Commission
Washington, D.C. 20554

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DA 07-4472

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Esteem Broadcasting of North Carolina LLC
c/o Elizabeth Hammond, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005

Re: *Application for Assignment of Licenses*
WFXI(TV), Morehead City, North Carolina
WYDO(TV), Greenville, North Carolina
File No. BALCT-20070326AGP
Facility ID Nos. 37982; 35582

Request for Continuing Satellite Authorization
WYDO(TV), Greenville, North Carolina

Dear Counsel:

This is in reference to the above-captioned application for assignment of licenses from Piedmont Television of Eastern Carolina License LLC to Esteem Broadcasting of North Carolina LLC ("Esteem"). As part of this transaction, Esteem requests continuing satellite authority for WYDO(TV), Greenville, North Carolina, which operates as a satellite of WFXI(TV), Morehead City, North Carolina, pursuant to the satellite exemption to the duopoly rule.¹ The stations have Grade B overlap and are located within the Greenville-New Bern-Washington, North Carolina DMA ("Greenville DMA").

In *Television Satellite Stations*,² the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.³ If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.⁴

¹ See 47 C.F.R. § 73.3555, Note 5.

² *Television Satellite Stations Review of Policy and Rules*, MM Docket No. 87-8, Report and Order, FCC Rcd 4212, 4215 (1991) ("Television Satellite Stations") (subsequent history omitted).

³ *Id.* at 4213-14.

⁴ *Id.* at 4212.

As to the first criterion, Esteem has submitted a report from BIA Financial Network (“BIA”), which demonstrates that there is no City Grade contour overlap between WYDO(TV) and WFXI(TV). Thus, the proposed satellite operation meets the first component of the presumption. With respect to the second criterion, an area is deemed underserved if, under the “transmission test,” there are two or fewer television stations already licensed to the proposed satellite station’s community of license; or if, under the “reception test,” 25 percent or more of the area within the proposed satellite’s Grade B contour, but outside the parent’s Grade B contour, receives four or fewer services. Esteem states that the proposed satellite operation cannot qualify for this second presumptive criterion.

Regarding the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.⁵ Initially, we note that Esteem does not base its satisfaction of the third criteria on efforts to sell station WYDO(TV). In support of the continuing waiver request, Esteem submits a report from Mark R. Fratrick, Ph.D., Vice President with BIA. According to Fratrick, potential lenders would be very hesitant in providing the necessary funds to convert WYDO(TV) to a full-service station because it reaches a very limited population base and would have to enter the market as an independent station. In Fratrick’s opinion, “there appears to be no chance that any purchaser of the satellite station would be willing to convert it to a full-service station.”

While the instant request does not satisfy the Commission’s presumptive satellite standard, Esteem notes that the Commission granted satellite authority to WYDO-TV in 1997⁶ and 1999⁷ based on an *ad hoc* analysis. Moreover, Esteem maintains that many of the factors relevant to the Commission’s original grant of a satellite waiver for WYDO(TV) remain applicable today. In this regard, Esteem contends that continued satellite operation is necessary to allow WYDO(TV) to compete effectively with other licensees in the market. The Greenville DMA is ranked as the 107th largest television market in size and presently comprises five full-service television stations and two satellite stations. According to Esteem, all of the major English-language television networks already have affiliates in the market. Thus, WYDO(TV) would have to be either an affiliate of an Hispanic network or operate as an independent station if it were to be converted to a full-service station. However, WYDO(TV) would reach only 47.6% of the local television market, while the reach of the other full-service stations would be much greater. Due to its limited Grade B coverage and lack of established programming service, states Esteem, WYDO(TV) would face greater difficulty in obtaining market-wide carriage on cable television systems, which lessens the likelihood of its viability as a full-service station.

Moreover, Esteem argues that WYDO(TV)’s potential viability as a full-service station is further reduced due to its very limited revenue possibilities. The Greenville DMA is ranked 113th in revenues. Esteem asserts that in recent years, the local market revenues have not kept up with the average growth across all television markets, and in fact have shown a decrease in market revenues. According to BIA’s estimates, between the years 2000 and 2005, Greenville’s market revenues had a -2.8% compounded annual growth rate, as compared to -0.9% for the average television market. Esteem contends that while market revenue growth is expected to increase from 2005-2010, that growth will not be substantial enough

⁵ *Id.* at 4215.

⁶ *KS Family Television, Inc.*, DA 97-1630, Memorandum Opinion and Order, 12 FCC Rcd 11562 (MMB, rel. Aug. 4, 1997).

⁷ *Gocom Communications, LLC*, DA 99-2384, Memorandum Opinion and Order, 14 FCC Rcd 18568 (MMB, rel. Nov. 1, 1999).

to support an additional full-service station. Moreover, Esteem asserts that WYDO(TV) will have additional capital costs in the next few years to convert to digital transmission on its permanent DTV channel, because the station elected to flash-cut to digital operations right before the February 2009 deadline. WYDO(TV) anticipates spending approximately \$100,000 to acquire the necessary equipment and new tower to flash-cut to digital operations. Esteem avers that these digital conversion costs are in addition to the added capital costs that the station would incur to convert to full-service operations. The BIA report estimates that the typical conversion costs for a satellite to become a full-service station to be over \$1.3 million. Given the limited advertising revenue possibilities and the considerable capital expenditures involved, states Esteem, any new owner of the station attempting to convert the satellite to a full-service station would have extreme difficulty securing investment capital.

Based on our review of the materials submitted, we find that Esteem has set forth information sufficient to warrant continued satellite operation for WYDO(TV) under our *ad hoc* analysis. WYDO(TV) has been a satellite of station WFXI(TV) for many years, and the Commission approved its continued operation as a satellite in 1997 and in 1999. In making these determinations, the Commission relied, in part, on expert opinions demonstrating that it would not be feasible to find a purchaser willing to operate the station on a stand alone basis due to the satellite's small viewer and advertising base. Esteem has submitted further evidence demonstrating the unfeasibility of finding a purchaser willing to operate the station on a stand alone basis. We, therefore, find that the continued operation of WYDO(TV) as a satellite of WFXI(TV) would be in the public interest. In view of the foregoing, and having determined that Esteem is qualified in all respects, we find that a grant of the above-referenced application would serve the public interest, convenience and necessity.

ACCORDINGLY, the request of Esteem Broadcasting of North Carolina LLC for the continued operation of WYDO(TV), Greenville, North Carolina, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, **IS GRANTED**. **FURTHERMORE**, the above-referenced application for consent to assign the licenses for WYDO(TV), Greenville, North Carolina and WFXI(TV), Morehead City, North Carolina (File No. BALCT-20070326AGP) **IS GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Joe Di Scipio, Esq.