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Re: Assignment of License for
KWBA(TV), Sierra Vista, AZ
Facility ID No. 35095
File No. BALCT-20080320AEY

Dear Counsel:

This is in reference to the application for consent to assign the license for KWBA(TV), Channel 58 (CW), Sierra Vista, Arizona, from Tucson Communications, L.L.C. (Tucson) to Journal Broadcast Corporation (Journal). The application is unopposed. The application requests a waiver of Section 73.3555(b)(2) of the Commission's rules, the television duopoly rule, to permit Tucson, licensee of KGUN(TV), Channel 9 (ABC), Tucson, Arizona, to acquire KWBA. Both KGUN and KWBA are in the same Nielsen Designated Market Area (DMA), Tucson (Sierra Vista) and their Grade B contours overlap.

Under Section 73.3555(b)(2) of the Commission's rules currently in effect,[1] two television stations licensed in the same DMA that have Grade B overlap may be commonly owned if: (i) at least one of the stations is not ranked among the top four stations in the DMA; and (ii) at least eight independently owned and operating, full-power commercial and non-commercial educational television stations would remain in the DMA after the merger. The Tucson (Sierra Vista) DMA would not have eight independently owned and operated television stations post-merger. Thus, the proposed common

[1] *2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, Ways to Further Section 257 Mandate and To Build on Earlier Studies; and Public Interest Obligations of TV Broadcast Licensees, Report and Order on Reconsideration,* 23 F.C.C.R. 2010 (2008)("*2007 Ownership Order*").

ownership of KGUN and KWBA would violate Section 73.3555(b)(2). The applicants request a waiver on the basis that KWBA is a "failing station." [2]

Duopoly Waiver Request. The Commission's *Local Ownership Order* established the criteria for a waiver of the television duopoly rule for a "failing station," defined as one which has been struggling for "an extended period of time both in terms of its audience share and financial performance." These criteria are:

(a) One of the merging stations has had a low all-day audience share (*i.e.,* 4 percent or lower);

(b) The financial condition of one of the merging stations is poor. "A waiver is more likely to be granted where one …of the stations has had a negative cash flow for the previous three years;"

(c) The merger will produce public interest benefits. "A waiver will be granted where the applicant demonstrates that the tangible and verifiable public interest benefits of the merger outweigh any harm to competition and diversity;" and

(d) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; selling the station to an out-of-market buyer would result in an artificially depressed price. [3]

If the applicant satisfies each criterion, a waiver of the rule will be presumed to be in the public interest.

As part of its waiver request, the applicants attach a chart showing Nielsen reported audience shares for the all-day share. The chart shows that, over the period between February 2005 and November 2007, KWBA's all-day share averaged 1.9 and was never higher than a 3 share. In 2007, the station experienced a substantial decline in audience due to the expiration of its programming contract with the Arizona Diamondbacks professional baseball team and the movement of that programming to another station in the market.

With respect to KWBA's financial condition, the applicants append financial data intended to show negative cash flow and operating losses for the three years preceding the filing of the instant application.[4] That information indicates that KWBA's financial posture has been worsening during that time, and that the station has been monetizing most of its major available assets, including the station's building and all spare equipment, and deferring payments of various liabilities and obligations to sustain its continued performance. KWBA's worsening financial posture has hampered the ability of the current

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[2] *See* 47 C.F.R. § 73.3555, Note 7. *See also Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12935-40 (1999) (*"Local Ownership Order"*), *recon. granted in part,* 16 FCC Rcd 1067 (2001).

[3] *Local Ownership Order*, 14 FCC Rcd at 12939.

[4] The applicants' requested confidential treatment for this material pursuant to Sections 0.457 and 0.459(a) of the Commission's rules.

licensee to provide more than minimal public interest benefits, and the station has not broadcast any news programming since December 2005, and only minimal amounts of public affairs programming. In addition, in a Declaration, Tom Hettle, Chief Financial Officer of Tucson, asserts that there is no hope of a change in the station's financial posture without the efficiencies of joint operation.

To satisfy the third criterion, the applicants maintain that the proposed assignment of KWBA will produce tangible and verifiable public interest benefits that far outweigh any potential harm to competition and diversity. Although KWBA currently maintains its main studio in Tucson as permitted under the FCC's rules, most of the station's network and other program distribution and production operations are located at an out-of-state hub facility. The applicants state that Journal's proposed ownership of the station will permit it to return KWBA's operations to Tucson, where they will be collocated with the digital high-tech production facilities of KGUN. They further assert that Journal will maintain separate network affiliations for KWBA and KGUN. They pledge that using the established news capabilities of KGUN, Journal will initiate a 30-minute daily (Monday-Friday) newscast on KWBA, which will also have access to its bilingual news staff members, as well as allow the station to provide its viewers with important local alerts regarding traffic, emergency and weather information.

The applicants state that Journal will significantly increase KWBA's community outreach efforts. Journal and KGUN already devote significant staff and other resources to public service events such as holiday food drives and the collection of phone cards for military personnel to call relatives back home, and it will include KWBA in such events. In addition, the applicants assert that KWBA's similar audience demographics makes it a natural partner for Journal's KGMG(FM), which is regularly involved in Tucson community programs, such as an annual holiday party for underprivileged youth and operates a Shoes for School program that recently collected more than 1,000 pairs of shoes for Tucson District school children. Journal also plans to redesign KWBA's online website to increase the station's outreach and enhance its interactive capabilities. Through KWBA's present affiliation with Latino Alternative Television, a bilingual music and entertainment multicast program service, Journal intends to make significant community outreach efforts on the station's multicast channel to provide additional benefits to Tucson's growing Latino audience.

As to the final criterion for the requested waiver, the applicants state that Tucson retained Patrick Communications (Patrick), a leading media brokerage and investment banking firm, to market the sale of KWBA. Larry Patrick, President of Patrick states that the firm made vigorous efforts to solicit offers from out-of-market entities and approached more than 35 prospective buyers, but found no interest in the station. The only offer to purchase KWBA was made by Journal, and Mr. Patrick notes that Tucson will suffer significant losses as a result of the proposed sale.

Discussion. We will grant the parties' request for a waiver of the television duopoly rule, and we will grant the assignment application. On balance, based upon the showings submitted under the waiver criteria established by the Commission in the *Local Ownership Order*, we are persuaded that grant of a waiver is warranted on grounds that KWBA is a "failing station."

Specifically, the parties have demonstrated that KWBA has a sufficiently low audience share for the last three years. Furthermore, the financial documentation submitted by the parties shows that KWBA's financial condition is poor. In reviewing the financial information submitted by the parties, we

are persuaded that KWBA is failing to such an extent that its ability to be a viable voice in the Tucson market is severely hampered, placing it at a competitive disadvantage.

Given these operational circumstances, it is not surprising that little news, public affairs, or other public interest programming is currently being provided by the station.[5] The proposed merger would address these shortcomings, and we find important public interest benefits will accrue from the combined operation of KWBA and KGUN. For example, Journal has pledged to improve KWBA's weather and emergency announcement capabilities, as well as its community outreach capabilities. Finally, the parties have established that Journal is the only reasonably available buyer for station KWBA.

Consistent with the *Local Ownership Order*, we find that the combined operation of KWBA and KGUN will pose minimal harm to our diversity and competition goals because KWBA's financial situation hampers its ability to be a viable voice in its market. Under these circumstances, allowing KWBA to be operated by a stronger station in the market will result in a definite improvement in facilities and programming, an outcome which clearly benefits the public interest.[6]

Having found the applicants fully qualified, we find that grant of the KWBA assignment application would serve the public interest.

Accordingly, IT IS ORDERED, That the request for a "failing station" waiver of the television duopoly rule, Section 73.3555(b)(2), to permit Journal to own and operate both KWBA and KGUN, IS GRANTED.

IT IS FURTHER ORDERED, That the application for assignment of license (File No. BALCT-20080320AEY) of Station KWBA(TV), Sierra Vista, Arizona, IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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[5] As the *Local Ownership Order* indicated, failing stations "rarely have the resources to provide local news programming, and often struggle to provide significant local programming at all." *Local Ownership* Order, 14 FCC Rcd at 12939.

[6] *Local Ownership* Order, 14 FCC Rcd at 12939; s*ee also WCNW LLC*, 21 FCC Rcd 13522 (MB 2006); *KSMO Licensee, Inc.*, 20 FCC Rcd 15254 (MB 2005).