



Federal Communications Commission  
Washington, D.C. 20554

SMH-1800E3

**DA 08-1342**  
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Foxco Acquisition Sub, LLC  
c/o Kevin P. Latek, Esq.  
Dow Lohnes PLLC  
1200 New Hampshire Ave., NW  
Washington, DC 20036

Re: *Applications for Assignment of Licenses*  
KDVR(TV), Denver, CO, Fac. ID No. 126  
KFCT(TV), Fort Collins, CO, Fac. ID No. 125  
WBRC(TV), Birmingham, AL, Fac. ID No. 71221  
WJW(TV), Cleveland, OH, Fac. ID No. 73150  
WGHP(TV), High Point, NC, Fac. ID No. 72106  
WITI(TV), Milwaukee, WI, Fac. ID No. 73107  
KSTU(TV), Salt Lake City, UT, Fac. ID No. 22215  
KTVI(TV), St. Louis, MO, Fac. ID No. 35693  
File Nos. BALCT-20080110ACC, ACD, ACF-ACI, ACS, ACU

*Application for Transfer of Control*  
WDAF License, Inc.  
WDAF-TV, Kansas City, MO, Fac. ID No. 11291  
File No. BTCCT-20080110ACC

*Request for Continuing Satellite Authorization*  
KFCT(TV), Fort Collins, Colorado

Dear Counsel:

This is in reference to the above-captioned applications for the assignment or transfer of nine television licenses from Fox Television Stations, Inc. ("Fox") to Foxco Acquisition Sub, LLC ("Foxco"). As part of this transaction, Foxco requests continuing satellite authority for KFCT(TV), Fort Collins, Colorado, which operates as a satellite of KDVR(TV), Denver, Colorado, pursuant to the satellite exemption to the duopoly rule.<sup>1</sup> The stations have Grade B overlap and are located within the Denver, Colorado, DMA.

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<sup>1</sup> See 47 C.F.R. § 73.3555, Note 5.

In *Television Satellite Stations*,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

As to the first criterion, Foxco has submitted an engineering study, which demonstrates that there is no City Grade contour overlap between KDVR(TV) and KFCT(TV). With respect to the second criterion, Foxco has demonstrated, using our transmission test, that the respective area is underserved. The "transmission" test deems an area underserved if there are two or fewer full-service television stations licensed to a proposed satellite's community of license.<sup>5</sup> Foxco asserts that KFCT(TV) remains the only full-power television station licensed to Fort Collins, Colorado.

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.<sup>6</sup> In support of its continuing waiver request, Foxco submits a letter from Kenneth M. Siskind, Managing Director of Allen & Company, LLC, an investment banking firm specializing in the entertainment and media sectors. Siskind asserts that in June 2007, News Corporation publicly announced its plan to sell nine of its full-service television stations, including KFCT(TV). Siskind explains that his company was retained by News Corporation to advise it in connection with the sale, and in such capacity solicited numerous strategic buyers and private equity firms over several months. In late December 2007, News Corporation reached an agreement with Foxco to purchase eight of these full-service stations. Siskind maintains that throughout this process, it received no expressions of interest in KFCT(TV) as a stand-alone station. Siskind avers that, to his knowledge, all interested parties evaluated KFCT(TV) only as a satellite of KDVR(TV), and his company would not recommend that the satellite be marketed as a stand-alone facility.

Moreover, Foxco submits a letter from Brian E. Cobb, President of CobbCorp, a media brokerage, appraisal and merchant banking firm specializing in television station transactions. Cobb contends that KFCT(TV) would be unable to effectively compete in the Denver, Colorado DMA. In addition, Cobb states that if any attempt were made to operate the satellite as an independent facility there would be virtually no opportunity to garner a network affiliation, since they are all contracted for in the market. Moreover, he asserts that the current Grade B signal of the station does not reach Denver, a necessity to compete in the market. According to Cobb, with eleven full power commercial stations

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<sup>2</sup> *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).

<sup>3</sup> *Id.* at 4213-14.

<sup>4</sup> *Id.* at 4212.

<sup>5</sup> *Id.* at 4215.

<sup>6</sup> *Id.*

competing in Denver, the level of competition is not only intense, but the opportunity to procure programming attractive to viewers and of the quality that it currently airs would be negligible. Finally, Cobb avers that if asked to list KFCT(TV) for sale, his company would have little interest in doing so.

Based on our review of the materials submitted, we find that Foxco has set forth information sufficient to warrant continued satellite operation of KFCT(TV), Fort Collins, Colorado under our *ad hoc* analysis. KFCT(TV) has operated as a satellite of KDVR(TV), Denver, Colorado, since it filed its first license in 1995,<sup>7</sup> and the Commission last consented to KFCT(TV)'s continued operation as a satellite in 2006.<sup>8</sup> Since that time, none of the essential facts underlying the operations of these stations have changed. Furthermore, Foxco 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 KFCT(TV) as a satellite of KDVR(TV) would be in the public interest. In view of the foregoing, and having determined that Foxco is qualified in all respects, we find that a grant of the above-referenced applications would serve the public interest, convenience and necessity.

**ACCORDINGLY**, the request of Foxco Acquisition Sub, LLC for the continued operation of KFCT(TV), Fort Collins, Colorado, 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 applications for consent to assign the licenses for KDVR(TV), Denver, Colorado, KFCT(TV), Fort Collins, Colorado, WBRC(TV), Birmingham, Alabama, WJW(TV), Cleveland, Ohio, WGHP(TV), High Point, North Carolina, WITI(TV), Milwaukee, Wisconsin, KSTU(TV), Salt Lake City, Utah, and KTVI(TV), St. Louis, Missouri (File Nos. BALCT-20080110ACC, ACD, ACF-ACI, ACS, ACU) **ARE GRANTED**.

**FURTHERMORE**, the above-referenced application for consent to transfer control of WDAF License, Inc., licensee of WDAF-TV, Kansas City, Missouri (File No. BTCCT-20080110ACC) **IS GRANTED**.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc: John C. Quale, Esq.

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<sup>7</sup> See FCC File No. BLCT-19950628KF.

<sup>8</sup> See FCC File No. BTCCT-20050819AAF.