

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
J. Stewart Bryan III and Media General
Communications Holdings, LLC
(Transferor)
Shareholders of New Young Broadcasting
Holding Company, Inc., and Its Subsidiaries
(Transferor)
and
Post-Merger Shareholders of Media General, Inc.
(Transferee)
For Consent to Transfer Control of Licenses

MB Docket No. 13-191
File Nos. BTCCDT-20130703ABQ et al.

MEMORANDUM OPINION AND ORDER

Adopted: November 7, 2013

Released: November 8, 2013

By Chief, Video Division, Media Bureau

I. INTRODUCTION

1. The Federal Communications Commission ("Commission"), by the Chief, Video Division, Media Bureau, pursuant to delegated authority, has before it applications seeking consent to the transfer of control of the broadcast television operations of the licensee subsidiaries of New Young Broadcasting Holding Co., Inc. ("Young") and Media General Communications Holdings, LLC ("Media General")(collectively "the Applicants") to a new post-merger entity, which in the applications has been referred to as Post-Merger Shareholders of Media General, Inc. (hereinafter "Post-Merger Media General").

1 Applications for Consent to Transfer Control of New Young Broadcasting Holding Co., Inc. (Transferor) and Media General Communications Holdings, LLC (Transferor) to Post-Merger Shareholders of Media General, Inc. (Transferee), File Nos. BTCCDT-20130703ABQ et al. (July 5, 2013, as amended) (collectively "Young-Media General Merger Applications").

2 47 C.F.R. §73.3555(b).

3 Id.

## II. BACKGROUND

2. Post-Merger Media General will consist of 32 full-power television stations and 17 low-power television stations,<sup>4</sup> as well as various land mobile and earth station licenses.<sup>5</sup> Pursuant to the merger agreement, the parties will consummate the transaction through a series of mergers, each to be effectuated at a single closing. Newly created subsidiaries of Media General will merge with and into the present Young. As the surviving corporation, Young will then merge into a new limited liability company, Media General Broadcasting, LLC, which will then be the surviving company, of which Post-Merger Media General will be the sole shareholder. The present shareholders of both Media General and Young will surrender their ownership interest in their respective companies in exchange for shares in the Post-Merger Media General. The corporate ownership structure of Young subsidiaries will not be altered by the transaction.<sup>6</sup>

3. Current equity holders of Media General will own approximately 31.7% of Post-Merger Media General. Current equity holders of Young will hold a 68.3% interest in Post-Merger Media General. No single entity or individual will control a majority of the shares or voting rights of Post-Merger Media General, which will remain a publicly traded company.<sup>7</sup> The Post-Merger Media General Board (the "Board") will be comprised of 14 members, including nine current Media General directors and five current Young directors. Through the 2014 annual shareholder's meeting significant corporate action will require 10 Board member votes. At the 2014 annual shareholder's meeting the Board's size will be reduced to 11 members, which will be comprised of five current Media General directors, five Young Directors and one additional nominee.<sup>8</sup>

4. Post-Merger Media General will not hold an interest in any radio station, daily newspaper of general circulation or television broadcast station, with the exception of the interests in current Young and Media General television broadcast stations. On February 4, 2008, as part of the Commission's 2007 *Ownership Order*, the Commission granted permanent newspaper/broadcast cross-ownership ("NBCO") waivers to four Media General stations,<sup>9</sup> three of which Media General still owns and which are included in the instant transaction: WBTW(TV), Florence, South Carolina; WRBL(TV), Columbus Georgia; and WJHL-TV, Johnson City, Tennessee.<sup>10</sup> In 2012, Berkshire Hathaway, Inc. ("*Berkshire Hathaway*") made financial investments in Media General, including the purchase of the Media General newspapers that

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<sup>4</sup> Young currently holds 14 full-power television stations and three low-power television stations. Media General currently holds 18 full-power television stations and 14 low-power television stations. See *infra* Appendix A.

<sup>5</sup> See *Young-Media General Merger Applications*, Comprehensive Exhibit (Attachment 6) at 4-5, fns. 5 and 6. ("*Comprehensive Exhibit*"). These licenses will be acted on separately.

<sup>6</sup> *Comprehensive Exhibit* at 3.

<sup>7</sup> *Comprehensive Exhibit* at 2. Current Young equity holders are comprised of non-attributable shareholders; Standard General Fund, L.P., and Standard General Communications LLC. Both, Standard General Fund, L.P., and Standard General Communications, LLC, are 100% controlled by Mr. Soohyung Kim through various intervening entities. Non-attributable former Young shareholders will have a 38.6% interest in Post-Merger Media General and Soohyung Kim will maintain a 29.7% interest through Standard General Fund, L.P., and Standard General Communications LLC. *Young-Media General Merger Applications*, Revised Chart (Attachment 1).

<sup>8</sup> *Comprehensive Exhibit* at 3-4.

<sup>9</sup> 2006 *Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2055-56, ¶ 77 (2008) ("*2007 Ownership Order*").

<sup>10</sup> Media General no longer owns Station WMBB-TV, Panama City, Florida, which was assigned to Hoak Media of Panama City License, LLC, on June 3, 2008. See *Application for Consent to Assignment*, File No. BALCT-20080327ACW.

were granted permanent NBCO waivers.<sup>11</sup> According to Media General, the NBCO issues remained following the Berkshire Hathaway transaction, although the overlapping interest was “greatly diminished.”<sup>12</sup> As a result of the instant transaction, Applicants state that Berkshire Hathaway will no longer hold an attributable interest in the Post-Merger Media General and the NBCO waivers held by Media General will no longer be required.<sup>13</sup>

5. The Applicants have requested a continuation of two separate “satellite exemptions” under Note 5, Section 73.3555 of the Commission’s local television ownership rules: the first for WCDC-TV, Adams Massachusetts, which is a satellite of WTEN(TV) Albany, New York,<sup>14</sup> and the second for KDLO-TV, Florence, South Dakota and KPLO-TV Reliance South Dakota, both satellites of KELO-TV, Sioux Falls, South Dakota.<sup>15</sup> The applicants have also requested a “failing” station waiver pursuant to Note 7 of Section 73.3555 to permit continued ownership of WYCW(TV), Asheville, North Carolina, which is co-owned with WSPA-TV, Spartanburg, South Carolina.<sup>16</sup>

6. On August 8, 2013, Spartan filed an Informal Objection opposing the application for transfer of control of WLNS-TV, Lansing, Michigan,<sup>17</sup> alleging WLNS-TV (the broker station) and WLAJ(TV), Lansing, Michigan (the brokered station) have violated the Commission’s rules governing shared service agreements (“SSA”) and joint advertising agreements (“JSA”).<sup>18</sup> Spartan filed a supplement to the Informal Objection on August 9, 2013, to include an Affidavit attesting to the facts contained therein.<sup>19</sup> Young filed an Opposition to the Informal Objection on August 19, 2013.<sup>20</sup> Spartan filed a Reply on August 26, 2013.<sup>21</sup>

7. Spartan is the licensee of WHTV(TV), Jackson, Michigan, a MyNetwork affiliate in the Lansing Designated Market Area (“DMA”).<sup>22</sup> Spartan objects to the manner in which the JSA and SSA between WLNS-TV and WLAJ(TV) has been implemented. Spartan alleges that the relationship between WLNS-TV and WLAJ(TV) has amounted to *de facto* control of WLAJ(TV) by Young and violates Commission rules and precedent.<sup>23</sup> Spartan opposes the transfer of control of WLNS-TV from Young to

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<sup>11</sup> See Letter from John Feore, Jr. to Marlene H. Dortch, Secretary, FCC, File No. BRCT-20050401BYS, *et al.* (Sept. 5, 2012) (“*Berkshire Hathaway Letter*”).

<sup>12</sup> *Id.*

<sup>13</sup> *Comprehensive Exhibit* at 15.

<sup>14</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20130703AED and BTCCDT-20130703AEE.

<sup>15</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20130703AES, BTCCDT-20130703AET and BTCCDT-20130703AEU.

<sup>16</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20130703ACF and BTCCDT-20130703ACH.

<sup>17</sup> See *Application for Transfer of Control*, File No. BTCCDT-201320703ADG.

<sup>18</sup> *Informal Objection by Spartan-TV, LLC*, MB Docket No. 13-191 (filed Aug. 8, 2013) (“*Spartan Objection*”).

<sup>19</sup> *Supplement to the Informal Objection of Spartan, LLC*, MB Docket No. 13-191 (filed Aug. 9, 2013).

<sup>20</sup> *Opposition to Informal Objection by Young Broadcasting*, MB Docket No. 131-191 (filed Aug. 19, 2013) (“*Young Opposition*”).

<sup>21</sup> *Reply to Opposition by Spartan-TV*, MB Docket No. 13-191 (filed Aug. 16, 2013) (“*Spartan Reply*”).

<sup>22</sup> Spartan also has entered into a JSA/SSA arrangement with WLNS-TV. *Spartan Objection* at 2.

<sup>23</sup> We note that contrary to Spartan’s claims, the Commission has not adopted formal rules governing attribution as it relates to SSAs. As part of the 2010 *Quadrennial Regulatory Review*, the Commission sought comment on how SSAs and other similar agreements should be treated under the Commission’s rules and what attribution standards should apply, if any. 2010 *Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership*

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Post-Merger Media General absent affirmation by Young and WLAI(TV) as to their compliance with Commission rules and precedent governing SSAs and JSAs. In particular, the Informal Objection alleges there is insufficient economic and operational independence between WLNS-TV and WLAI(TV).<sup>24</sup> While Spartan does not cite violation of any specific Commission rules or precedent, we interpret their Informal Objection to allege a violation of our main studio rule<sup>25</sup> and our rule prohibiting unauthorized transfers of control.<sup>26</sup> Spartan has not objected to the broader transfer of control of Media General and Young at issue in this proceeding.

8. From an economic perspective, Spartan notes that WLAI-TV, LLC, the licensee of WLAI(TV), is ultimately controlled by Mr. Sheldon H. Galloway, a retired board member of Young.<sup>27</sup> Spartan also claims that Young, as a guarantor, has a “controlling interest” in the debt that WLAI-TV, LLC, used to acquire WLAI(TV).<sup>28</sup> According to Spartan the “debt” is being transferred as part of the proposed merger transaction.<sup>29</sup> From an operational perspective, Spartan alleges that upon entering into the SSA/JSA with WLNS-TV, WLAI(TV) shutdown its website, redirecting traffic to WLNS-TV’s website, and canceled its local newscast replacing it with a simulcast of the WLNS-TV newscast.<sup>30</sup> Furthermore, Spartan contends that “there does not appear to be an independent management structure in place for WLAI, with the two employees assigned to WLAI appearing to report to WLNS employees.”<sup>31</sup> Spartan requests that prior to the grant of WLNS-TV’s transfer application that Young and WLAI(TV) make specific certifications, under penalty of perjury, that the SSA/JSA arrangement complies with relevant Commission rules and precedent.<sup>32</sup>

9. Subsequently, Young filed an Opposition arguing that Spartan lacks standing,<sup>33</sup> that its Informal Objection is conclusory and filed without any first-hand knowledge of or support for its

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*Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, 17569-70, ¶¶ 204-08 (2011).

<sup>24</sup> *Comprehensive Exhibit* at 3.

<sup>25</sup> See 47 C.F.R. § 73.1125. *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616, ¶¶ 8-9 (1991), clarified, 7 FCC Rcd 6800, 6801-02, ¶¶ 9-11 (1992)(To qualify as a main studio, the studio must be staffed by at least one management-level employee and one staff-level employee at all times during “regular business hours.”).

<sup>26</sup> 47 C.F.R. § 73.3540; See also 47 U.S.C. § 310(d).

<sup>27</sup> Mr. Galloway is the managing member of Shield Media Lansing, LLC, the parent company of WLAI-TV, LLC, the licensee of WLAI(TV). See *Ownership Report for Commercial Broadcast Stations*, File No. BOS-20130401ATF.

<sup>28</sup> *Spartan Objection* at 2, note 3. The “controlling interest in debt” referenced by Spartan in its pleadings is in the form of a loan guarantee.

<sup>29</sup> *Spartan Reply* at 3.

<sup>30</sup> *Spartan Objection* at 2-3.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> Spartan requests that Young and WLAI(TV) certify that (1) There are at minimum two employees reporting to the licensee; (2) WLAI(TV) manages its employees and takes an active final role in all programming decisions and station management; (3) WLAI(TV) employees do not report to WLNS-TV management and WLNS-TV management does not take any role in on-air production or branding; (4) WLAI(TV) makes all programming decisions at its sole discretion and that there is no “piggy backing” of syndicated programming; (5) WLAI(TV) maintains a separate web presence. *Spartan Objection* at 3-4. Spartan does not reference any specific Commission precedent or rules that correlate to any of the five certifications.

<sup>33</sup> *Young Opposition* at 3.

assertions;<sup>34</sup> and that Spartan failed to make the *prima facie* case that granting the transfer application would not be in the public interest.<sup>35</sup> Young contends that Spartan has ulterior motives for submitting its Informal Objection, directly related to the JSA/SSA between Spartan and Young stations (WHTV(TV) and WLNS-TV respectively) that is set to expire on December 31, 2013. Young claims the Informal Objection is “an obvious attempt by Spartan to abuse the Commission processes to coerce Young into extending [Spartan’s SSA and JSA] to avoid FCC procedural delay of the Young/Media General merger.”<sup>36</sup> Finally, Young challenges Spartan’s requested “certifications” as irrelevant to the current proceeding and not accurately representing the current state of Commission law and policy regarding such agreements.<sup>37</sup> Young requests that the Commission dismiss, deny, or disregard without consideration the Informal Objection for lack of relevance, pursuant to our authority under Section 73.3584(e) of the Commission’s rules.<sup>38</sup>

10. In response, Spartan filed a Reply stating that in its Informal Objection it made a sufficient *prima facie* showing by “present[ing] evidence that Young has assumed actual (*de facto*) control over WLAJ(TV) in violation of the Commission’s rules governing broadcast ownership and unauthorized transfers of control.”<sup>39</sup> Spartan supplements its allegations with copies of three e-mails sent from Mr. Robert M. Simone, Vice President and General Manager of WLNS-TV, purportedly to employees of WLNS-TV and WLAJ(TV).<sup>40</sup> Spartan points out that in two of the e-mails Mr. Simone holds himself out as General Manager of *both* WLNS-TV and WLAJ(TV) in his e-mail signature block (*emphasis added*).<sup>41</sup> In the third e-mail, dated eight days after Spartan filed its Informal Objection with the Commission, Spartan notes that the reference to WLAJ(TV) in Mr. Simone’s signature block had been removed.<sup>42</sup> In its Reply, Spartan also provides a declaration by Ms. Kristine Melser, Station Manager of WHTV. Ms. Melser claims that WLAJ(TV) was without a Station Manager until August 16, 2013, when Mr. Chuck Toner was purportedly appointed Station Manager of WLAJ(TV).<sup>43</sup> Spartan goes on to reiterate its request for “assurances” that the SSA/JSA between WLNS-TV and WLAJ(TV) complies with Commission rules and policies and that absent such action the relationship is investigated and proposed merger held in abeyance.<sup>44</sup>

11. On October 25, 2013, Dish filed an Informal Objection opposing the transaction in its entirety. Dish alleges that as part of ongoing retransmission consent negotiations the Applicants have engaged in “improper coordination” and conduct that constitutes breach of a broadcaster’s duty to negotiate in good faith.<sup>45</sup> These are restatements of issues raised by Dish as part of the *Verified*

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<sup>34</sup> *Id.* at 5-6.

<sup>35</sup> *Id.* at 4-6. Young contends that “Spartan presents two groups of irrelevancies, both of which relate entirely to the operation of WLAJ(TV) by WLAJ-TV, LLC (which is *not* a party to this proceeding).” *Id.* at 4.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> *Id.* at 6-8. *See supra* note 23.

<sup>38</sup> *Id.* at 9.

<sup>39</sup> *Spartan Reply* at 2.

<sup>40</sup> *Id.* at Exhibits A, B, and C.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at Declaration of Kristine Melser.

<sup>44</sup> *Id.* at 3-4.

<sup>45</sup> *Informal Objection of Dish Network, LLC*, MB Docket No. 13-191, at 1 (filed Oct. 25, 2013) (“*Dish Objection*”).

*Retransmission Complaint* that has been filed with the Commission.<sup>46</sup> Dish also claims that the Applicants' actions in the context of ongoing retransmission consent negotiations demonstrate a "propensity to engage in further anticompetitive behavior that is relevant to the Commission's public interest evaluation."<sup>47</sup> Dish requests that we gather information from the Applicants and designate the transaction for hearing if we determine the merger is actually being used as a means to obtain higher retransmission consent fees.<sup>48</sup> Dish also requests that, at minimum, we condition the merger on "baseball-style arbitration" and a "standstill provision,"<sup>49</sup> as the Commission adopted in NBC-Comcast transaction.<sup>50</sup>

### III. DISCUSSION

12. Section 310(d) of the Communications Act of 1934 ("the Act") provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby. In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act,<sup>51</sup> other applicable statutes, and the Commission's rules.<sup>52</sup> If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>53</sup> The Commission then employs a balancing process, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>54</sup> The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.<sup>55</sup> If the Commission is unable to find that the proposed transaction serves the public

<sup>46</sup> *DISH Network LLC, Verified Retransmission Complaint*, MB Docket No. 12-1 at 7-8 (filed Oct. 18, 2013) ("*Verified Retransmission Complaint*").

<sup>47</sup> *Dish Objection* at 1.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.*

<sup>50</sup> *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4260, ¶ 52 (2011).

<sup>51</sup> Section 310(d) requires that the Commission consider the applications as if the proposed transferee were applying for the licenses directly. 47 U.S.C. § 310(d). See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*"); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 ¶ 16 (2005) ("*Verizon-MCI Order*"); *Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("*Sprint-Nextel Order*"); *News Corp.-Hughes Order*, 19 FCC Rcd at 483 ¶ 15; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26.

<sup>52</sup> See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, 19 FCC Rcd 2570, 2580-81 ¶ 24 (2004); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002) ("*EchoStar-DIRECTV HDO*").

<sup>53</sup> See *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

<sup>54</sup> See *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *News Corp.-Hughes Order*, 19 FCC Rcd at 483 ¶ 15; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26.

<sup>55</sup> See *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Comcast-AT&T Order*, 17 FCC Rcd at 23255 ¶ 26; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574 ¶ 25.

interest, or if the record presents a substantial and material question of fact, Section 309(e) of the Act requires that the applications be designated for hearing.<sup>56</sup> Based on the record before us and upon denial of the Informal Objections submitted by Spartan and Dish, we find grant of the transaction is in the public interest, as required by Section 310(d) of the Act.

#### A. Informal Objections.

13. The Commission applies a two-step analysis when it evaluates a petition to deny, or in this case an informal objection, under the public interest standard.<sup>57</sup> First, we must determine whether the informal objection contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>58</sup> The first step “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged...were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established.”<sup>59</sup> If the specific allegations make a *prima facie* case, we next examine and weigh the evidence presented, to determine “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”<sup>60</sup> If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.

##### 1. Spartan Informal Objection

14. As an initial matter, we find dismissing Spartan’s Informal Objection due to lack of standing or solely under Section 73.3584(e) of the Commission’s rules, as requested by Young, would be inappropriate. Spartan has filed its pleading as an Informal Objection, which under Commission rules is not required to comply with the same formal procedural requirements as a Petition to Deny.<sup>61</sup> Therefore, it is irrelevant whether Spartan’s supplement to its Informal Objection and the declaration contained therein was filed with the Commission in a timely manner or whether Spartan is a party in interest.<sup>62</sup>

15. The Commission analyzes *de facto* control issues on a case-by-case basis.<sup>63</sup> In determining whether an entity has *de facto* control of an applicant or a licensee, we examine the policies governing station programming, personnel, and finances.<sup>64</sup> While a licensee may delegate day-to-day

<sup>56</sup> 47 U.S.C. § 309(e); *see also News Corp.-Hughes Order*, 19 FCC Rcd at 483 n.49; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574 ¶ 25.

<sup>57</sup> 47 U.S.C. §309(d)(1), (2); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>58</sup> 47 U.S.C. §§309(d)(1) and 310(d).

<sup>59</sup> *Gencom, Inc. v. FCC*, 832 F. 2d 171, 181 (D.C. Cir. 1987).

<sup>60</sup> *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

<sup>61</sup> *See* 47 C.F.R. §73.3587 (Removing numerous procedural and pleading requirements needed for a petition to deny.).

<sup>62</sup> Spartan is the licensee of a competitor and thereby under established Commission precedent would have been considered to have had the requisite standing. *See FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 476-77 (1940). Additionally, as a competitor Spartan is not required to demonstrate direct injury, as Young claims is required of Spartan. *See Letter to Waterman Broadcasting Corporation of Florida*, 17 FCC Rcd 15742, 15744 n.2 (Vid. Div. 2002) *citing American Mobilephone, Inc. and Ram Technologies, Inc.*, Order, 10 FCC Rcd 12297, 12298, ¶ 8 (1995). Spartan correctly asserts that it has standing, though in the current context standing is not required because we are evaluating an Informal Objection. *See Spartan Reply* at note 1.

<sup>63</sup> *Shareholders of Hispanic Broadcasting Corporation*, Memorandum Opinion and Order, 18 FCC Rcd 18834, 18843, ¶ 21 (2003).

<sup>64</sup> *See, e.g., Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 87 (1981).

operations, ultimate authority over the policies governing programming, personnel and finances must rest with the licensee.<sup>65</sup> Spartan's Informal Objection alleges violations of the programming and financial arrangements between WLNS-TV and WLAJ(TV) (and their respective licensees) that have already been reviewed and approved by the Commission.<sup>66</sup> Having reviewed the entire record before us, we find that Spartan has failed to raise a substantial and material question of fact as to whether Young acquired unauthorized *de facto* control over WLAJ(TV).

16. With respect to personnel, Spartan argues that "there does not appear to be an independent management structure in place for WLAJ, with the two employees assigned to WLAJ appearing to report to WLNS employees."<sup>67</sup> Spartan contends that Mr. Simone's signature block holding himself out as "Vice President/General Manager of Young Broadcasting-Lansing for stations WLNS and WLAJ" coupled with the events surrounding the "hasty appointment" of Mr. Toner as WLAJ(TV) station manager show that Young was exerting *de facto* control over WLAJ(TV). We do not find the substance of the e-mails to be representative of any exertion of improper control by Mr. Simone. While the signature block coupled with other evidence may have been persuasive evidence of *de facto* control, the content of the signature block alone is not sufficient to make such a finding. Furthermore, Spartan does not provide any evidence that the decision to hire Mr. Toner was not conducted by WLAJ(TV), LLC, the licensee of WLAJ(TV).

17. Spartan has further failed to present any evidence that Young has ultimate authority over WLAJ(TV)'s programming decisions. The simulcasting of WLNS-TV's local news on WLAJ(TV) or use of a common website, as raised by Spartan,<sup>68</sup> is not in itself a violation of Commission rules or precedent governing JSAs or SSAs. Spartan does not provide any evidence that the 15% weekly programming limit set forth in our Local Marketing Agreement ("LMA") attribution standard has been exceeded here.<sup>69</sup> Furthermore, the Commission has no restrictions that uniquely apply to websites and "the content of station websites is wholly irrelevant to the determination of station control."<sup>70</sup> It does not

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<sup>65</sup> See, e.g., *Southwest Texas Public Broadcasting Council*, Memorandum Opinion and Order, 85 FCC 2d 713 (1981); *Alabama Educational Television Commission*, Memorandum Opinion and Order, 33 FCC 2d 495 (1972); Cf. *Hicks Broadcasting of Indiana, LLC*, Hearing Designation Order, 13 FCC Rcd 10662 (1998) (Loosing ultimate control over programming, personnel or finances is sufficient to find that another entity has gained *de facto* control.).

<sup>66</sup> See *Application for Consent to Assignment*, File No. BALCDT-20121011AAP ("WLAJ Assignment Application") (granted on December 4, 2012). See *WLAJ Assignment Application* at Joint Sales Agreement (Attachment 13), Section 4.7 ("Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge and agree that during the term, Licensee will maintain ultimate control and authority over the station, including, specifically, control and authority over the Station's operations, finances, personnel and programming."). See *SagamoreHill of Corpus Christi Licenses, LLC*, Letter, 25 FCC Rcd 2809, 2813 (MB 2010) ("Sagamore Hill") (referring to provision in Shared Services Agreement that provided licensee with ultimate control over programming decisions and policies); See also *Nexstar Broadcasting, Inc.*, Letter, 23 FCC Rcd 3528, 3533 (Vid. Div. 2008) ("Nexstar Broadcasting") (Noting that Joint Sales Agreement and Shared Services Agreement both contained language indicating that the licensee will maintain control over Station KFTA-TV.).

<sup>67</sup> *Spartan Objection* at 2.

<sup>68</sup> See *Id.* at 2-3.

<sup>69</sup> See 47 C.F.R. §73.3555, Note 2(j)(2) (prohibiting broker stations from controlling more than 15% of the broadcast time per week of the brokered station); See *WLAJ(TV) Assignment Application*, at Joint Sales Agreement (Attachment 13), Section 4.7 ("Young shall provide Licensee for broadcast, simulcast or rebroadcast on the Station local news and other programming...which Delivered Programming shall be less than fifteen percent (15%) of the Station's broadcast hours for any week.").

<sup>70</sup> *Kathryn R. Schmeltzer, Esq.*, Letter, 19 FCC Rcd 3897, 3900 (MB 2004); See also, *Secret Communications II, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 9139, 9149, ¶ 24 (2003) ("While we recommend that licensees (continued....)



appear the website arrangement described by Spartan in its Informal Objection violates the express terms of the JSA/SSA or our rules.<sup>71</sup>

18. Likewise, Spartan has failed to provide any evidence that the financial decisions for WLAJ(TV) are improperly dictated by Young. Spartan's allegation that Young is exerting financial control through its "interest" in the debt of Shield Media Lansing, LLC ("Shield"), the parent company of the licensee of WLAJ(TV),<sup>72</sup> is based solely on the fact that Young is a guarantor of Shield's debt and that Mr. Galloway is a former Young Board member. The mere fact that Mr. Galloway is a former Young Board member does not itself raise a substantial and material question of fact as to financial control.<sup>73</sup> In this case, Spartan does not demonstrate that Galloway lacked independence in his role. Furthermore, the Commission has long held that guarantees are not attributable until exercised, which has not occurred.<sup>74</sup> The Commission has already determined, as evidenced by the grant of the *WLAJ(TV) Assignment Application*,<sup>75</sup> that the consideration provided by Young in exchange for the guarantee does not amount to attribution under our Equity/Debt Plus standard.<sup>76</sup> Lastly, under the terms of the JSA,<sup>77</sup> WLAJ(TV) retains 70% of cash flow resulting from operation of the station, a split that the Bureau has previously approved.<sup>78</sup> Spartan does not present any evidence that demonstrates the licensee fails to retain the economic incentive to control programming aired over its station,<sup>79</sup> that the representations made in WLAJ(TV)'s the assignment application were inaccurate, or that the terms of the JSA/SSA have been violated.

19. We agree with Young that requiring the Applicants and WLAJ(TV) to make the certifications requested by Spartan is inappropriate in the context of this proceeding.<sup>80</sup> The certifications

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(...continued from previous page)

be attentive to their website depictions, we find that...allegations based on internet website idiom are speculative and inadequate to raise a substantial and material question of fact.").

<sup>71</sup> See *WLAJ(TV) Assignment Application* at Shared Services Agreement (Attachment 13), Section 5.2 (Permitting the combination of websites so long as such efforts are coordinated and the licensee has a right to supplement effort.).

<sup>72</sup> See *Merger Applications* at Transaction Documents (Attachment 6), Agreement and Plan of Merger, Sections 2.12(a)(ii), 4.2(f), and 8.3(bbb),(lll) and (hhh).

<sup>73</sup> See, e.g., *Paxson Management Corporation and Lowell W. Paxson*, Memorandum Opinion and Order, 22 FCC Rcd 22224, 22232-33, ¶¶ 23-26 (2007).

<sup>74</sup> See, e.g., *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Memorandum Opinion and Order, 16 FCC Rcd 1097, 1112-13, ¶¶ 31-32 (2001) ("Attribution MO&O") (Loan guarantees do not confer an interest upon the guarantor requiring attribution, except any consideration paid for the guarantee would be considered as part of the calculation under the Equity/Debt Plus ("EDP") standard.).

<sup>75</sup> File No. BALCDT-20121011AAP.

<sup>76</sup> *Attribution MO&O*, 16 FCC Rcd at 1112-13, ¶¶ 31-32.

<sup>77</sup> *WLAJ(TV) Assignment Application* at Joint Sales Agreement (Attachment 13), Section 3.1 ("Young shall have the right to retain an amount equal to thirty percent (30%) of the total amount of net Sales Revenue... Young shall pay over to the Licensee an amount equal to the remaining seventy percent (70%) of the total amount of Net Sales Revenue....")

<sup>78</sup> See *SagamoreHill*, 24 FCC Rcd at 2810 ("In exchange for its sales representation, Evening Post will retain the lesser of the revenues it collects minus a set Base Rate, or 30% of all revenues."); *Nexstar Broadcasting* 23 FCC Rcd at 3534 (Licensee receives "70% of all revenue attributable to commercial advertisements.").

<sup>79</sup> See *KHNL/KGMB License Subsidiary, LLC & HTIV License Subsidiary, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 26 FCC Rcd 16087, 16093, ¶ 19 (MB 2011) (Concluding that licensee has retained sufficient economic incentive to control programming aired on its licensed stations.).

<sup>80</sup> See *Young Opposition* at 7-8.

requested by Spartan relate to the operation of WLAJ(TV) by the licensee. WLAJ-TV, LLC, is not a party to the current proceeding and this is not the appropriate venue to address the alleged rule violations of WLAJ(TV). In particular, Spartan contends that WLAJ(TV) does not maintain the appropriate independent management structure and employees in violation of our main studio rule.<sup>81</sup> It is the licensee of the brokered station (WLAJ(TV)), not the licensee of the broker station (WLNS-TV) who is responsible for ensuring compliance with maintaining a meaningful management and staff presence. In light of the issues raised by Spartan, we are concerned by the conduct of WLAJ(TV). Therefore, Video Division staff will examine, as part of WLAJ(TV)'s pending license renewal application,<sup>82</sup> whether WLAJ(TV) has violated the main studio rule.<sup>83</sup> The staff will then take action as is deemed appropriate.

## 2. Dish Informal Objection

20. Dish claims that Media General and Young's behavior<sup>84</sup> demonstrates a "propensity to engage in further anticompetitive behavior that is relevant to the Commission's public interest evaluation."<sup>85</sup> Beyond this generalized statement, Dish fails to demonstrate how granting the proposed transaction would violate our rules and be inconsistent with the public interest.<sup>86</sup> Although Dish does not clearly state the harms that would be caused as a result of the approval of this transaction, we read Dish's Informal Objection to imply that grant of the merger may result in higher retransmission fees.<sup>87</sup> Such a claim is speculative and is improper in the context of this adjudicatory proceeding.<sup>88</sup>

21. Furthermore, we will not take action in the context of this limited proceeding that will pre-judge the outcome of another proceeding pending before us.<sup>89</sup> Granting Dish's Informal Objection would require us to make conclusions pertaining to issues raised in Dish's *Verified Retransmission Compliant*, which is the appropriate venue for addressing the issues alleged by Dish. If any of Dish's allegations are found to be true upon consideration of its *Verified Retransmission Compliant*, appropriate remedies can be pursued at that time. Our decision to deny Dish's Informal Objection should not be taken to represent a determination as to the validity of any questions of fact or law raised by Dish's

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<sup>81</sup> 47 C.F.R. § 73.1125.

<sup>82</sup> *Application for Renewal of Broadcast Station License*, File No. BRC DT-20130524AGI.

<sup>83</sup> 47 C.F.R. § 73.1125.

<sup>84</sup> *See supra* ¶ 11 and note 45.

<sup>85</sup> *Dish Objection* at 1.

<sup>86</sup> *See* 47 C.F.R. §309(d)(1) (Requiring that the Commission determine whether an informal objection contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.).

<sup>87</sup> *Dish Objection* at 2. ("The Commission should therefore request information on all communications between the applicants regarding retransmission agreements and negotiations with DISH in particular, and regarding retransmission strategy in general, and any documents relating to an expectation of higher retransmission fees as a result of the merger, and in particular the possibility of extracting higher fees for the Young stations.")

<sup>88</sup> *See Applications for Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, Memorandum Opinion and Order, 17 FCC Rcd 23246, 23310, ¶ 165 (2002) (disregarding purported harms that are speculative and not merger specific.); *Acme Television Licenses of Ohio, LLC et al.*, Letter, 26 FCC Rcd 5198, 5200 (VD 2011) (Finding purported harms arising from the potential for increased retransmission fees as speculative and thereby unavailing.).

<sup>89</sup> *See Free State Communications*, Letter, 26 FCC Rcd 10310, 10312 (VD 2011)(Declining to reach a decision on an issue that would pre-judge the substance of a pending rulemaking proceeding.).

*Verified Retransmission Compliant* or commentary on how that proceeding should be resolved.<sup>90</sup>

**B. Continuing “Satellite Exceptions” for WCDC-TV, KDLO-TV and KPLO-TV.**

22. The Applicants have requested authorization to continue operating WCDC-TV as a satellite of WTEN(TV),<sup>91</sup> and KDLO-TV and KPLO-TV as satellites of KELO-TV,<sup>92</sup> pursuant to Note 5 of Section 73.3555 of the local television ownership rule.<sup>93</sup> WCDC-TV has operated as a satellite of WTEN(TV) since 1956. KDLO-TV and KPLO-TV have operated as satellites of KELO-TV since 1955 and 1957, respectively. The satellite status for WCDC-TV was most recently reauthorized in 2010<sup>94</sup> and the satellite status for KDLO-TV and KPLO-TV was most recently reauthorized in 2012.<sup>95</sup>

23. In *Television Satellite Stations*,<sup>96</sup> the Commission stated that applicants seeking to transfer or assign a television satellite station are entitled to a “presumptive” exemption from Section 73.3555(b) of the Commission’s rules if the parent/satellite combination meets three criteria: (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>97</sup> Applications meeting these criteria, when unrebutted, will be viewed favorably by the Commission. If an applicant cannot 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>98</sup> No objections have been filed against the requested “satellite exemptions.”

24. With respect to the first criterion, we note that, following the digital transition, full-power television stations have a digital Principal Community contour that serves a much larger area than their former analog City Grade contour. Thus, the principle community contour is not an equivalent standard to use in determining whether a satellite qualifies for the presumptive satellite exemption to the duopoly rule.

25. Under the second criterion, the Applicants have demonstrated compliance using our “transmission test” in order to show that the proposed satellite communities are underserved. The “transmission test” deems an area underserved if there are two or fewer full-service television stations licensed to a proposed satellites community of license.<sup>99</sup> According to the Applicants, WCDC-TV, KDLO-TV, and KPLO-TV are all the only television stations licensed to their respective communities of

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<sup>90</sup> See *Applications of MMM Holdings, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 6838, 6845, ¶ 44 (1989) (“[The Commission’s] unwillingness to resolve all of those allegations in the context of this limited proceeding, in short, should not and does not pre-judge the outcome of that broader complaint proceeding.”).

<sup>91</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20130703AED and BTCCDT-20130703AEE.

<sup>92</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20130703AES, BTCCDT-20130703AET, and BTCCDT-20130703AEU.

<sup>93</sup> 47 C.F.R. § 73.3555(b).

<sup>94</sup> See *New Young Broadcasting Holding Company, Inc.*, Letter, 25 FCC Rcd 7518 (MB 2010) (“*2010 Young Assignments*”).

<sup>95</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20120809ACM and BTCCDT-20120809ACN.

<sup>96</sup> *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212 (1991), *subsequent citations omitted* (“*Television Satellite Stations*”).

<sup>97</sup> *Id.* at 4213-4214, ¶ 12.

<sup>98</sup> *Id.* at 4214, ¶ 14.

<sup>99</sup> *Id.* at 4215, ¶ 19.

license—Adams, Massachusetts; Florence, South Dakota; and Reliance, South Dakota, respectively. This is in line with our previous findings regarding compliance with the second criterion for these three stations.<sup>100</sup>

26. Regarding the third criterion, an applicant must show that no alternative operator is ready and able to assume operation of these satellite stations as a full-service station. The Applicants do not provide any evidence that they have attempted to sell WCDC-TV, KDLO-TV, or KPLO-TV. Instead, the Applicants argue that “finding a buyer to operate the stations on a stand-alone basis is not feasible.”<sup>101</sup> In support of this contention, the Applicants provide two separate letters, both dated September 12, 2012, from Brian E. Cobb, President of CobbCorp, LLC, a media brokerage firm specializing in television station transactions.<sup>102</sup> Mr. Cobb asserts that he has more than 40 years experience in the broadcast industry and he has been involved in the brokerage of more television stations than any other individual. In his letters, Mr. Cobb concludes that he does not “envision a scenario” where WCDC-TV, KDLO-TV and KPLO-TV would survive as a standalone station. The findings asserted by Mr. Cobb were affirmed in two subsequent letters filed with the Commission on October 21, 2013.<sup>103</sup>

27. With regards to WCDC-TV, Mr. Cobb concludes that “a standalone station licensed to Adams could not support a full service station let alone be able to provide local news.”<sup>104</sup> WCDC is precluded from obtaining a major network affiliation as all the major networks are already broadcast in the Albany-Schenectady-Troy DMA by other stations with primary signals covering a much broader portion of the DMA. Mr. Cobb also notes that without the satellite coverage provided by WCDC-TV, WTEN(TV) would be “handicapped trying to compete with other full-serve station’s in the market and provide the level of service that they provide.”<sup>105</sup>

28. Likewise, Mr. Cobb finds that KDLO-TV and KPLO-TV could not support standalone stations given the rural nature and spread out population of the Sioux Falls-Mitchell DMA.<sup>106</sup> All the full-service stations in the market with network affiliations, including KELO-TV, are licensed to Sioux Falls, South Dakota. Therefore, according to Mr. Cobb neither KDLO-TV nor KPLO-TV would be able to obtain a network affiliation since they are both already in the Sioux Falls-Mitchell DMA.<sup>107</sup> For the aforementioned reasons, Mr. Cobb claims that both stations will be “hard pressed” to obtain meaningful advertising revenues, produce local news to their community and thereby survive independently.<sup>108</sup>

29. Based on our review of the materials submitted, we find that the Applicants have not met our “presumptive” satellite standard. Nonetheless, the Applicants have provided sufficient information to authorize WCDC-TV, KDLO-TV and KPLO-TV continued satellite operation under our *ad hoc* analysis. All three stations have a 55-plus year history as satellites and the Commission’s recent approval of all three stations for continued operation as satellites constitutes compelling circumstances justifying a continuing “satellite exemption” to the television ownership rule. We see no evidence in the record that

<sup>100</sup> 2010 *Young Assignments*, 25 FCC Rcd at 7519.

<sup>101</sup> *Comprehensive Exhibit* at Attachment B, 1.

<sup>102</sup> *Id.* at 4-7.

<sup>103</sup> See *Applications for Transfer of Control*, File Nos. BTCCDT-20130703AED, BTCCDT-20130703AEE, BTCCDT-20130703AES, BTCCDT-20130703AET, and BTCCDT-20130703AEU.

<sup>104</sup> *Comprehensive Exhibit* at Attachment B, 5.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 6-7.

<sup>107</sup> *Id.* at 6.

<sup>108</sup> *Id.* at 7.

the “satellite exemptions” will harm competition in any television market. Indeed, we find that the “satellite exemptions” will benefit the public interest by encouraging investment in the broadcast industry and promoting access to broadcast services where without the satellite waiver it may otherwise not be feasible. For the reasons discussed above, we find that grant of continuing “satellite exemptions” to our broadcast television ownership rule for WDCB-TV, as a satellite of WTEN(TV), and KDLO-TV and KPLO-TV, as satellites of KELO-TV, is in the public interest.

### C. Continuation of Existing “Failing” Station Waiver for WYCW(TV).

30. The Applicants request continuation of the “failing” station waiver for WYCW(TV), Asheville, North Carolina, pursuant to Note 7 of Section 73.3555 of the Commission’s rules.<sup>109</sup> Currently, Media General operates both WYCW(TV) and WSPA-TV, Spartanburg, South Carolina, which are both located in the Greenville-Spartanburg-Asheville DMA.<sup>110</sup> WYCW(TV) has been operating pursuant to a “failing” station waiver since 2002.<sup>111</sup> For the reasons below, we permit continued co-ownership of WSPA-TV and WYCW(TV), pursuant to a “failing” station waiver.

31. Under the local television ownership rule,<sup>112</sup> two television stations licensed in the same DMA that have Grade B overlap<sup>113</sup> may be commonly owned if: (1) at least one of the stations is not ranked among the top four stations in the DMA; and (2) at least eight independently owned and operating, full power commercial and non-commercial educational television stations would remain in the DMA after the merger.<sup>114</sup> According to Nielson Media, at the time the transfer of control applications were filed WYCW(TV) and WSPA-TV were ranked first and fifth in audience share, respectively, in the Greenville-Spartanburg-Asheville DMA. However, the Greenville-Spartanburg-Asheville DMA would be left with only seven independently owned and operated full-power television voices and as such common ownership of both WYCW(TV) and WSPA-TV would violate the local television ownership rule.<sup>115</sup> As a result, the Applicants are requesting continued co-ownership of WSPA-TV and WYCW(TV) on the basis that WYCW(TV) is a “failing” station.<sup>116</sup>

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<sup>109</sup> 47 C.F.R. § 73.3555(b); *See K. Rupert Murdoch*, Memorandum Opinion and Order, 21 FCC Rcd 11499, 11500, ¶ 5 (2006) (A failing station waiver must be reevaluated, de novo, in the context of a long-form change of control application).

<sup>110</sup> The Greenville-Spartanburg-Asheville DMA is ranked 43rd in revenue and 34th in population according to BIA.

<sup>111</sup> *See Application of Pappas Telecasting of the Carolinas (Assignor) and Media General Broadcasting of South Carolina Holdings, Inc. (Assignee) For Consent to the Assignment of the License for Station WASV-TV, Asheville, North Carolina*, Memorandum Opinion and Order, 17 FCC Rcd 842 (MB 2002) *aff’d by*, Memorandum Opinion and Order, 17 FCC Rcd 20879 (MB 2002).

<sup>112</sup> 47 C.F.R. § 73.3555(b)(2).

<sup>113</sup> “The stations’ historic analog Grade B contours overlapped. In these circumstances, absent substantial evidence of relevant change in the service area of the stations whose analog contours conflicted with the television duopoly rule, we will presume continued conflict with the rule for those stations in digital mode.” *Applications of Tribune Co. & Its Licensee Subsidiaries, Debtors in Possession, et al.*, Memorandum Opinion and Order, 27 FCC Rcd 14239, 14257, fn 123 (MB 2012)(“*Tribune Bankruptcy Order*”).

<sup>114</sup> 47 C.F.R. § 73.3555(b)(2).

<sup>115</sup> Beginning in July 2011, Nielson re-assigned WUGA-TV, Toccoa, Georgia from the Greenville-Spartanburg-Asheville DMA to the Atlanta DMA. *See WUGA-TV, About WUGA-TV*, available at <http://www.wugatv.org>. But for WUGA-TV’s DMA being re-assigned, co-ownership of WYCW(TV) and WSPA-TV would have been permitted under our local television ownership rule because WYCW(TV) is not ranked among the top four stations in the market and there would have been eight independently owned and operating, full power commercial and non-commercial educational television stations in the DMA after the merger.

<sup>116</sup> *Application for Transfer of Control*, File No. BTCCDT-20130703ACH.

32. The Commission's *Local Ownership Order*<sup>117</sup> established the criteria for a waiver of the local television ownership rule for a "failing" station, as one that has been struggling for "an extended period of time both in terms of its audience share and financial performance."<sup>118</sup> These criteria are: (a) one of the merging stations has had a low all-day audience share (*i.e.* 4% or lower); (b) the financial condition of one of the merging stations is poor; (c) the merger will produce public interest benefits; and (d) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station and selling the station to an out-of-market buyer would result in an artificially depressed price.<sup>119</sup> If the applicant satisfies each criterion, a waiver of the duopoly rule will be presumed to be in the public interest. However, in furtherance of our statutory obligation under Section 309(d), we will "not permit the transfer of a duopoly, unless it meets a rule or waiver standard in effect at the time of transfer."<sup>120</sup> We must evaluate the transfer of duopolies at the time of transfer because although a combination was approved in the past, market conditions may have changed in a way that could adversely affect current competition and diversity in the marketplace.<sup>121</sup>

33. As for the first criterion, the Applicants have provided evidence demonstrating WYCW(TV)'s audience share according to Nielson Media for the sweeps periods for all of 2012 and February 2013 "remain decidedly low," and is well below 4%.<sup>122</sup> While according to the Applicants WYCW(TV) has shown "significant improvement in the station's public service performance" since the "failing" station waiver was first granted in 2002, the Applicants note that such gains would not have been possible if not for the grant of "failing" station waiver.<sup>123</sup>

34. With respect to WYCW(TV)'s financial condition, the Applicants have submitted financial data demonstrating negative cash flow for the station for calendar years 2011 and 2012.<sup>124</sup> The Applicants explain that "economies of scale from joint operation with WSPA-TV have significantly expanded WYCW(TV)'s service to its viewing audience..."<sup>125</sup> Moreover, the Applicants state that if independent, WYCW(TV) would "operate at a substantial and nonsustainable annual loss."<sup>126</sup> This claim is demonstrated through adjusted and unadjusted financial statements that have been submitted to the Commission by Media General under a request for confidential treatment. Upon review of the information, we agree that WYCW(TV)'s financial condition would have been poor but for common ownership with WSPA-TV.

35. In furtherance of the third criterion, the Applicants contend that grant of the waiver will produce tangible and verifiable public interest benefits for the local community. In particular, they state that common ownership of WYCW(TV) and WSPA-TV has allowed "Media General to broadcast a thirty-five minute newscast specifically for WYCW(TV) at 10pm, seven days a week. The WYCW(TV)

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<sup>117</sup> *Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd 12903 (1999) ("*Local Ownership Order*"), *recon. granted in part*, 16 FCC Rcd 1067 (2001) ("*Local Ownership Order Reconsideration*").

<sup>118</sup> *Id.* at 12938, ¶ 79.

<sup>119</sup> *Id.* at 12939-40, ¶ 81.

<sup>120</sup> *Local Ownership Order on Reconsideration*, 16 FCC Rcd at 1079, ¶ 36.

<sup>121</sup> *Id.*

<sup>122</sup> *Comprehensive Exhibit* at Attachment C, 1-2 and Exhibit 1.

<sup>123</sup> *Id.* at 2.

<sup>124</sup> *Id.* at 2-3.

<sup>125</sup> *Id.* at 2.

<sup>126</sup> *Id.*

newscasts are not merely rebroadcasts of WSPA-TV's newscasts."<sup>127</sup> Additional public interest benefits that have resulted from the combined ownership of WYCW(TV) and WSPA-TV include: a two hour newscast Monday through Friday from 7am-9am on WYCW(TV); engagement with viewers through social media; special investigative reports and special feature news segments that cover local events and issues of interest to the residents of Asheville, North Carolina; supporting community outreach activities; and responding to community issues of interest through the production of public service announcements concerning local organizations and announcing events.<sup>128</sup> Finally, Applicants have noted that Media General has invested one million dollars in WYCW(TV)'s facilities between 2007 and June 2012.<sup>129</sup> According to the Applicants, if not for this investment, it is clear that many of the program-related benefits would not have been possible. Based on this information provided, we believe that the "failing" station waiver has produced and will continue to produce public interest benefits.

36. As to the fourth criterion, Applicants note that when the "failing" station waiver was originally granted to WYCW(TV) in 2002, Media General was not required to demonstrate compliance with the fourth criterion because a preexisting LMA had been in place prior to the adoption of the *Local Ownership Order*.<sup>130</sup> The Commission created this exception on reconsideration of the *Local Ownership Order* because it recognized the unique difficulty of retrospectively trying to demonstrate compliance with the fourth criterion under these circumstances.<sup>131</sup> Although the fourth criterion was not evaluated when the "failing" station waiver was originally granted in 2002, because the LMA between these two stations is no longer in existence, the LMA exception does not apply and the Applicants must demonstrate compliance with the fourth criterion.

37. Applicants have submitted a letter a letter dated June 20, 2013, sent from Mr. Louis McDermott, Vice President of Kalil & Co. ("Kalil"), a media brokerage firm with over 40 years of experience, to Mr. Andrew Carrington, Vice President, General Counsel and Secretary of Media General.<sup>132</sup> Media General commissioned Kalil to conduct a review analyzing the marketability of WYCW(TV)—a CW affiliate. In his letter Mr. McDermott, who has worked as a media broker for the past 11 years,<sup>133</sup> concludes that "if Media General were to market WCYW, an in-market buyer would be the only reasonably available candidate willing and able to acquire and operate the station, and selling the station to an out-of-market buyer... would result in a depressed price."<sup>134</sup> Although we do not generally accept predictive judgments by brokers or analysts, we find Mr. McDermott's letter to be sufficient based on his examination of actual in-market data and evaluation of similarly situated out-of-market station sales over a substantial period of time.

38. In the course of conducting its due diligence, Media General engaged Kalil to "evaluate

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<sup>127</sup> *Id.* at 3.

<sup>128</sup> *Id.* at 4.

<sup>129</sup> *Id.*

<sup>130</sup> *Local Ownership Order Reconsideration*, 16 FCC Rcd at 1077, ¶ 28. According to the Applicants, WYCW(TV) and WSPA-TV had been engaged in an LMA since March 1996. *Comprehensive Exhibit* at Attachment C, 6.

<sup>131</sup> *Local Ownership Order Reconsideration*, 16 FCC Rcd at 1077, ¶ 28 (Agreeing with Petitioner's that as a practical matter it would be difficult for a waiver applicant to prove that prior to the LMA it was the only buyer willing and able to operate the station, and that sale of the station to an out-of-market buyer would result in an artificially depressed price.).

<sup>132</sup> *Comprehensive Exhibit* at Attachment C, Exhibit 3.

<sup>133</sup> *Id.* at 1.

<sup>134</sup> *Id.* at 2.

the prospect for sale” of WYCW(TV).<sup>135</sup> In the analysis conducted by Mr. McDermott, he examines actual in-market challenges, including: the geography of the DMA, which will lead to increased costs for filling in gaps in coverage and reaching cable system head ends; a lack of desirability with regards to advertisers due to the station’s network affiliation and rank in the DMA; and the prohibitive costs associated with filling out a complete programming schedule given the station’s affiliation and poor financial condition.<sup>136</sup> The analysis also evaluated actual out-of-market sales data, which included six years of station sales from other top 50 DMAs and revealed that there are “no instances of an out-of-market buyer purchasing a standalone CW affiliate,” such as WYCW(TV), and “[t]he CW affiliates sold were either purchased as a group, by an in-market buyer or by an entity with a Shared Services Agreement or a Joint Services Agreement in place with another station in the market.”<sup>137</sup>

39. A station’s qualification for a “failing” station waiver is reviewed on a “case-by-case basis.”<sup>138</sup> Based on the totality of the circumstances and the unique structure of this individual transaction,<sup>139</sup> we find the Applicants have made an adequate showing. Mr. McDermott’s evaluation is indicative of the due diligence that a licensee customarily engages in when they are actively determining the feasibility of selling a station. Note 7 of Section 73.5555 of the Commission’s rules identifies *one way* to demonstrate compliance with the fourth criterion to include “an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit and that no reasonable offer from an entity outside the market has been received” (*emphasis added*).<sup>140</sup> Our rules do not identify this as the only way. We find that in the context of this transaction it would be contrary to the public interest to require a licensee to needlessly go through the process of putting its “failing” station up for sale when an independent broker, as part of the due diligence process and based on actual, recent, and comparable market data, has concluded that an in-market buyer is the only reasonable candidate to buy the station and that selling to an out-of-market buyer would result in an artificially depressed price.

40. Based on the showings submitted under the “failing” station waiver standard established in the *Local Ownership Order*,<sup>141</sup> we are persuaded that continuation of WYCW(TV)’s “failing” station waiver is warranted. We find that continued combined operations of WYCW(TV) and WSPA-TV will pose minimal harm to our diversity and competition goals because WYCW(TV)’s financial situation hampers its ability to be a viable voice in the market absent a “failing” station waiver. Under these circumstances, allowing the continuation of the combined ownership, which has already resulted in improved news and public affairs coverage, will benefit the public interest.

#### D. Status of Media General NBCO Waivers.

41. Following adoption of the *2007 Ownership Order*, a Petition for Reconsideration was filed by Common Cause, the Benton Foundation, Consumers Action, Massachusetts Consumers Coalition, NYC Wireless, James J. Elekes, and the National Hispanic Media Coalition (collectively “*Common Cause, et al.*”) challenging the Commission’s grant of permanent NBCO waivers, including

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<sup>135</sup> *Id.* at 1.

<sup>136</sup> *See Id.* at 2-3.

<sup>137</sup> *Id.* at 3.

<sup>138</sup> 47 C.F.R. § 73.3555, Note 7.

<sup>139</sup> *Tribune Bankruptcy Order*, 27 FCC Rcd at 14261, ¶ 52 (MB 2012)(Finding that under the totality of the circumstances predictive judgments by brokers or analysts, may be sufficient in some unique circumstances for demonstrating compliance with the fourth criterion.)

<sup>140</sup> 47 C.F.R. § 73.35555, Note 7.

<sup>141</sup> *Local Ownership Order*, 14 FCC Rcd at 12938-40, ¶¶ 78-82.



those granted to Media General.<sup>142</sup> The Media Bureau also issued a letter granting the license renewal applications for WBTW(TV), WRBL(TV), and WJHL-TV, which were all granted permanent NBCO waivers in the *2007 Ownership Order*,<sup>143</sup> and dismissed several pleadings opposing the grant of the license renewal applications.<sup>144</sup> On April 24, 2008, Free Press and the National Association for the Advancement of Colored People filed a joint Application for Review requesting Commission review of the Bureau's grant of the license renewals.<sup>145</sup> Both the Application for Review and Petition for Reconsideration remain pending. As Applicants point out, Berkshire Hathaway will no longer hold an attributable interest in Media General,<sup>146</sup> and WBTW(TV), WRBL(TV), and WJHL-TV will longer raise a NBCO issue. Therefore, the pending Application for Review and Petition for Reconsideration, as they relate to Media General's permanent NBCO waivers, appear to be moot.

#### E. Pending Broadcast License Renewals.

42. It is Commission policy in multi-station transactions, to grant transfer of control application while renewal applications are pending "as long as there are no basic qualification issues pending against the transferor or transferee that could not be resolved in the context of the transfer proceeding, and the transferee explicitly assents to standing in the stead of the transferor in the pending renewal proceeding."<sup>147</sup> We find that application of this policy is appropriate with respect to the transaction at hand. There are currently five Young<sup>148</sup> and three Media General<sup>149</sup> television broadcast stations with license renewal applications pending. Commission action on Young license renewal applications has been stayed due to pending indecency complaints and because some applications are still within the renewal application processing period. The three Media General renewals remain pending due to the unresolved Application for Review that now appears to be mooted by approval of the instant transaction.<sup>150</sup>

43. Post-Merger Media General has submitted a statement explicitly agreeing to stand in the stead of the assignor in any renewal application that is pending at the time of the consummation of the assignment.<sup>151</sup> As to the license renewal applications that have been held for indecency issues, we find that none would pose character qualification issues that would prevent grant of the instant transfer of control applications. We recognize that certain stations that are the subject to this transaction may need to

<sup>142</sup> *Petition for Reconsideration of Common Cause, et al.*, MB Docket Nos. 06-121, *et al.* (filed March 28, 2008).

<sup>143</sup> *2007 Ownership Order*, 23 FCC Rcd at 2055-56, ¶ 77.

<sup>144</sup> *See Application for Renewal of License File Nos. BRCT-20050401BYS, et al.*, Letter, 23 FCC Rcd. 4480 (Vid. Div. 2008).

<sup>145</sup> *Application for Review of Free Press and NAACP*, File Nos. BRC DT-20130327ABR, *et al.* (filed April 24, 2008).

<sup>146</sup> *Comprehensive Exhibit* at 15.

<sup>147</sup> *Shareholders of CBS Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 16072, 16072-16073, ¶ 3 (2001).

<sup>148</sup> *See Application for Renewal of Broadcast Station License*, File Nos. BRC DT-20130401APB, BRC DT-20120531AFS, BRC DT-20130801ASL, BRC DT-20130930BCP and BRC DT-20130603AHW.

<sup>149</sup> *See Application for Renewal of Broadcast Station License*, File Nos. BRC DT-20130327ABR, BRC DT-20121203AKY, BRC DT-20120730ABZ.

<sup>150</sup> *See supra* ¶ 41 and note 145.

<sup>151</sup> "The shareholders of Media general and Young, for themselves and their proposed licensee subsidiaries, hereby agree to succeed to the position of the transferors in any pending license renewal applications and to assume the consequences thereof, consistent with the procedures set forth in *Shareholders of CBS Corporation....*" *Comprehensive Exhibit* at 14.

file license renewal applications prior to consummation of the transaction, and certain applications are currently pending for reasons not related to indecency. Such a circumstance has been considered to fall within the precedent established by *Shareholders of CBS Corporation*.<sup>152</sup>

#### IV. CONCLUSION

44. We have reviewed the proposed merger and related pleadings and conclude that grant of the applications as requested will comply with our rules and Section 310(d) of the Act. We conclude that the applicants are fully qualified and that grant of the transfer of control of Young and Media General from its current shareholders to Post-Merger Media General will serve the public interest, convenience, and necessity.

#### V. ORDERING CLAUSES

45. Accordingly, **IT IS ORDERED** that, the applications listed in the attached Appendix seeking consent to transfer control of the licensee subsidiaries of New Young Broadcasting Holding Co., Inc., and Media General Communications Holdings, to the Post-Merger Shareholders Media General, Inc., pursuant to Section 301(d) of the Communications Act of 1934, 47 U.S.C. § 310(d) **ARE GRANTED**.

46. **IT IS FURTHER ORDERED** the Informal Objection filed by Spartan-TV, LLC, **IS DENIED**.

47. **IT IS FURTHER ORDERED** that, the Informal Objection filed by Dish Network, LLC, **IS DENIED**.

48. **IT IS FURTHER ORDERED** that, the requests for continued operation of Station WCDC-TV, Adams, Massachusetts, as a satellite of Station WTEN(TV), Albany, New York, and Stations KDLO-TV, Florence, South Dakota and KPLO-TV, Reliance, South Dakota, as satellites of Station KELO-TV, Sioux Falls, South Dakota, pursuant to the “satellite exception” of Note 5 to Section 73.3555 of the Commission’s rules, 47 C.F.R. § 73.3555, **ARE GRANTED**.

49. **IT IS FURTHER ORDERED** that, the request for a waiver of Section 73.3555 of the Commission’s rules, 47 C.F.R. § 73.3555, pursuant to Note 7, the “failing” station waiver standard, to permit co-ownership of WYCW(TV), Asheville, North Carolina and WSPA-TV, Spartanburg, South Carolina, **IS GRANTED**.

50. These actions are taken pursuant to Section 0.61 and 0.283 of the Commission’s rules, 47 C.F.R. §§ 0.61, 0.283, and Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d).

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<sup>152</sup> See *Cumulus Media, Inc. and Citadel Broadcasting Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 12956, 12959, ¶ 5 (2011).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A Kreisman  
Chief, Video Division  
Media Bureau

## APPENDIX A

**Broadcast Licenses to be Transferred from Media General Communications Holdings, LLC and  
the Licensee Subsidiaries of New Young Broadcasting Holding Co., Inc. to Post-Merger  
Shareholders of Media General, Inc.**

Licensee	Call Sign(s)	Facility ID Number(s)	File Number
Media General Communications Holdings, LLC	W02AG-D, Brevard, NC	61683	BTCDTV-20130703ACI
Media General Communications Holdings, LLC	W02AT-D, Burnsville, NC	66392	BTCDTV-20130703ACK
Media General Communications Holdings, LLC	W08AO-D, Canton, NC	66409	BTCDTV-20130703ACL
Media General Communications Holdings, LLC	W08AT-D, Cherokee, NC	66406	BTCDTV-20130703ACM
Media General Communications Holdings, LLC	W08BF-D, Spruce Pine, NC	66387	BTCDTV-20130703ACO
Media General Communications Holdings, LLC	W08BP-D, Beaver Dam, NC	66394	BTCDTV-20130703ACP
Media General Communications Holdings, LLC	W09AF-D, Sylva, NC	66408	BTCDTV-20130703ACQ
Media General Communications Holdings, LLC	W09AG-D, Franklin, NC	66405	BTCDTV-20130703ACR
Media General Communications Holdings, LLC	W09AR-D, Weaverville, NC	66397	BTCDTV-20130703ACS
Media General Communications Holdings, LLC	W10AD-D, Montreat, NC	66396	BTCDTV-20130703ACT
Media General Communications Holdings, LLC	W11AN-D, Bryson City, NC	66410	BTCDTV-20130703ACV
Media General Communications Holdings, LLC	W02AH, Mars Hill, NC	66401	BTCTTV-20130703ACJ

Media General Communications Holdings, LLC	W08AX, Marshall, NC	66393	BTCTTV-20130703ACN
Media General Communications Holdings, LLC	W10AJ, Greenville, SC	66388	BTCTTV-20130703ACU
Media General Communications Holdings, LLC	WFLA-TV, Tampa, FL	64592	BTCCDT-20130703ABQ
Media General Communications Holdings, LLC	WBTW, Florence, SC	10587	BTCCDT-20130703ABS
Media General Communications Holdings, LLC	WCMH-TV, Columbus, OH	50781	BTCCDT-20130703ABT
Media General Communications Holdings, LLC	WHLT, Hattiesburg, MS	48668	BTCCDT-20130703ABU
Media General Communications Holdings, LLC	WJAR, Providence, RI	50780	BTCCDT-20130703ABV
Media General Communications Holdings, LLC	WJBF, August, GA	27140	BTCCDT-20130703ABW
Media General Communications Holdings, LLC	WJHL-TV, Johnson City, TN	57826	BTCCDT-20130703ABX
Media General Communications Holdings, LLC	WJTV, Jackson, MS	48667	BTCCDT-20130703ABY
Media General Communications Holdings, LLC	WKRK-TV, Mobile, AL	73187	BTCCDT-20130703ABZ
Media General Communications Holdings, LLC	WNCN, Goldsboro, NC	50782	BTCCDT-20130703ACA
Media General Communications Holdings, LLC	WNCT-TV, Greenville, NC	57838	BTCCDT-20130703ACB
Media General Communications Holdings, LLC	WRBL, Columbus, GA	3359	BTCCDT-20130703ACC

Media General Communications Holdings, LLC	WSAV-TV, Savannah, GA	48662	BTCCDT-20130703ACD
Media General Communications Holdings, LLC	WSLS-TV, Roanoke, VA	57840	BTCCDT-20130703ACE
Media General Communications Holdings, LLC	WSPA-TV, Spartanburg, SC	66391	BTCCDT-20130703ACF
Media General Communications Holdings, LLC	WVTM-TV, Birmingham, AL	74173	BTCCDT-20130703ACG
Media General Communications Holdings, LLC	WYCW, Asheville, NC	70149	BTCCDT-20130703ACH
Young Broadcasting of San Francisco, Inc.	K25HI, Santa Rosa, CA	65532	BTCTT-20130703ADV
Young Broadcasting of Albany, Inc.	W04AE, Herkimer, NY	74421	BTCTTV-20130703AEF
Young Broadcasting of Albany, Inc.	K24DT, Aberdeen, SD	41979	BTCTTV-20130703AEV
Young Broadcasting of Lansing, Inc.	WLNS-TV, Lansing, MI	74420	BTCCDT-20130703ADG
Young Broadcasting of Green Bay, Inc.	WBAY-TV, Green Bay, WI	74417	BTCCDT-20130703ADI
Young Broadcasting of San Francisco, Inc.	KRON-TV, San Francisco, CA	65526	BTCCDT-20130703ADU
Young Broadcasting of Albany, Inc.	WTEN, Albany, NY	74422	BTCCDT-20130703AED
Young Broadcasting of Albany, Inc.	WCDC-TV, Adams, MA	74419	BTCCDT-20130703AEE
Young Broadcasting of Rapid City, Inc.	KCLO-TV, Rapid City, SD	41969	BTCCDT-20130703AEH
Young Broadcasting of Davenport, Inc.	KWQC-TV, Davenport, IA	6885	BTCCDT-20130703AEI
Young Broadcasting of Sioux Falls, Inc.	KELO-TV, Sioux Falls, SD	41983	BTCCDT-20130703AES

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Young Broadcasting of Sioux Falls, Inc.	KPLO-TV, Reliance, SD	41964	BTCCDT-20130703AET
Young Broadcasting of Sioux Falls, Inc.	KDLO-TV, Florence, SD	41975	BTCCDT-20130703AEU
WATE, G.P.	WATE-TV, Knoxville, TN	71082	BTCCDT-20130703AEZ
KLFY, L.P.	KLFY-TV, Lafayette, LA	35059	BTCCDT-20130703AFB
WKRN, G.P.	WRKN-TV, , Nashville, TN	73188	BTCCDT-20130703AFD
Young Broadcasting of Richmond, Inc.	WRIC-TV, Richmond, VA	74416	BTCCDT-20130703AFF