



Federal Communications Commission  
Washington, D.C. 20554

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**DA 13-233**  
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Re: KSNB-TV, Superior, NE, ID No. 21161  
File No. BALCDT-20121121AOO.

Dear Counsel:

This letter is in reference to the unopposed, above-captioned application to assign the license of digital television station KSNB-TV, Superior, Nebraska, from Colins Broadcasting Corporation (Colins) to Gray Television Licensee, LLC (Gray). Gray is the licensee of KOLN(TV), Lincoln, Nebraska, a CBS affiliate.<sup>1</sup> Nielsen Media Research (Nielsen) assigns both stations to the Lincoln & Hastings-Kearney Designated Market Area (Lincoln DMA).

Section 73.3555(b)(2) of the Commission's rules<sup>2</sup> permits common ownership of two full-power television stations licensed in the same DMA, the Grade B contours of which overlap,<sup>3</sup> provided that, at the time the application to acquire the station(s) is filed: (1) at least one of the two stations is not ranked among the top four stations in the DMA, based on the most recent all-day audience share; and (2) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA after the merger. While KSNB-TV is not ranked among the top four stations

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<sup>1</sup> Gray is also the licensee of KGIN(TV), Grand Island, Nebraska, which serves as a satellite of KOLN. As an authorized satellite station, KOLN is not relevant to this proceeding. See 47 C.F.R. § 73.3555, Note 5.

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

<sup>3</sup> Although the rule refers to Grade B contours, we note that, following the digital transition, the Commission has developed the digital noise-limited contour to approximate the same probability of service as the analog Grade B contour and that it has stated that the two are roughly equivalent. See 47 C.F.R. § 73.622(e); 2010 *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*, Notice of Inquiry, 25 FCC Rcd 6086, 6117 (2010). In this instance, both the historic analog Grade B contours and the digital noise-limited contours of the stations overlap.

in the market, there are fewer than eight independent licensees in the Lincoln DMA. Gray therefore requests a waiver of the rule, pursuant to the “failing station” standard.<sup>4</sup>

*Waiver Request.* The Commission has defined 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>5</sup> The criteria for a “failing station” waiver of the television duopoly rule are:<sup>6</sup>

1. One of the merging stations has an all-day audience share of no more than four per cent;
2. The station has had a negative cash flow for the previous three years;
3. The merger would produce tangible and verifiable public interest benefits; and
4. 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.

A waiver will be presumed to be in the public interest if the applicant satisfies each criterion.

The applicants provide Nielsen ratings demonstrating that KSNB-TV had no reportable audience share during the July 2012 sweeps. They also submit financial data confirming the station’s persistent financial difficulties, made manifest by a large negative cash flow for each of the previous three years.<sup>7</sup> These showings satisfy the first two criteria of the waiver standard.

With respect to the public interest benefits attendant to its ownership of KSNB-TV, Gray states that it will spend significant sums to upgrade the station’s facilities, which currently are incapable of broadcasting live, locally-produced programming in high definition. It further commits to increasing the station’s service to Superior and other communities west of Lincoln in the geographically expansive DMA by airing a live, 30-minute daily newscast, as well as providing KSNB-TV viewers with improved local news and weather alerts and educational and informational children’s programming during weekday time slots. This showing is consistent with those we have found acceptable in previous decisions.<sup>8</sup>

Finally, Dr. Thomas F. Mitts (Mitts) states in his Declaration that Colins first explored the possibility of selling KSNB-TV in February 2010 and engaged media brokerage firm Patrick Communications as part of its efforts. Although the broker was unable to identify any purchasers,

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<sup>4</sup> 47 C.F.R. § 73.3555, Note 7. *See also Review of the Commission’s Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903 (1999) (*Local Ownership Order*).

<sup>5</sup> *Local Ownership Order*, 14 FCC Rcd at 12939.

<sup>6</sup> 47 C.F.R. § 73.3555, Note 7; *Local Ownership Order*, 14 FCC Rcd at 12939.

<sup>7</sup> Colins states that on November 4, 1996, it entered into a Time Brokerage Agreement (TBA) with Pappas Telecasting of Central Nebraska (Pappas), pursuant to which KSNB-TV rebroadcast FOX network programming. Pappas terminated the TBA on December 1, 2009, ending the station’s access, not only to such programming, but also to the facilities and equipment required for its operation. Though KSNB-TV has not earned any meaningful revenue since the termination of the TBA, Colins notes that it invested significant sums toward the goal of returning the station to full-power operations as a viable, stand-alone voice in the market, resulting in substantial operating losses.

<sup>8</sup> *See, e.g., WBUI(TV)*, 22 FCC Rcd 16852 (MB 2007).

Colins's independent efforts yielded two prospects expressing interest. In the end, however, only Gray was willing to enter into good faith negotiations regarding a reasonable purchase price and acceptable terms. Mitts states that Colins received no serious expression of interest from an out-of-market buyer and concludes that Gray is the only potential *bona fide* purchaser of KSNB-TV. This showing is also consistent with those we have found acceptable in previous decisions.<sup>9</sup>

*Discussion.* We find that the applicants have submitted detailed information sufficient to show that KSNB-TV is a "failing station." Consistent with the *Local Ownership Order*, we believe that the combined operation of the stations will pose minimal harm to our interest in diversity and competition and that allowing KSNB-TV to operate in tandem with a stronger station will help it to become a viable voice in the market, through a definite improvement in facilities and programming. This outcome clearly will benefit the public interest.

In light of the above discussion, we find that the applicants are fully qualified and conclude that the grant of the assignment application would serve the public interest.

ACCORDINGLY, IT IS ORDERED That the request for a "failing station" waiver of Section 73.3555(b)(2) of the Commission's rules to permit the common ownership of KSNB-TV, Superior, Nebraska, and KOLN(TV), Lincoln, Nebraska, IS GRANTED. IT IS FURTHER ORDERED That the application for assignment of the license of KSNB-TV, Superior, Nebraska, from Colins Broadcasting Corporation to Gray Television Licensee, LLC, (File No. BALCDT-20121121AOO) IS GRANTED.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>9</sup> See, e.g., *Minden Television Company*, Letter, 24 FCC Rcd 10151 (MB 2009) (seller engaged consultant to market station whose efforts yielded no credible out-of-market buyer).