



Federal Communications Commission
Washington, D.C. 20554

December 23, 2013

DA 13-2460
Released: December 23, 2013

Pappas Arizona License, LLC
c/o Kathleen Victory
Fletcher Heald & Hildreth, PLC
1300 N. 17th Street
Suite 100
Arlington, VA 22209

Blackhawk Broadcasting LLC
c/o Dennis P. Corbett, Esq.
Lerman Senter PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006-1809

Re: KSWT, Yuma, Arizona, Fac. ID No. 33639
File No. BALCDT-20130722ADB

Dear Counsel:

This letter is in reference to the above-captioned application (Application) to assign the license of television station KSWT, Yuma, Arizona from Pappas Arizona License, LLC (Pappas) to Blackhawk Broadcasting LLC (Blackhawk) (collectively, the Applicants). Blackhawk is the authorized licensee of KYMA-DT, Yuma, Arizona.¹ Nielsen Media Research (Nielsen) assigns both stations to the Yuma, Arizona-El Centro, California Designated Market Area (Yuma DMA).

Section 73.3555(b)(2) of the Commission's rules² permits common ownership of two full-power television stations licensed in the same DMA, the Grade B contours of which overlap,³ provided that, at

¹ The Commission approved the application for assignment of KYMA-DT to Blackhawk on August 12, 2013. *See* Public Notice, Broadcast Actions, Report No. 48053 (rel. Aug. 15, 2013).

² 47 C.F.R. § 73.3555(b)(2).

³ Although the rule refers to Grade B contours, we note that, following the digital transition, the Commission has developed the digital noise-limited service contour (NLSC) 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). We have previously relied on the equivalency of these contours in using the NLSC overlap rather than the Grade B contour overlap to allow common ownership under the television duopoly standard. *See, e.g., Colins Broadcasting Corporation*, Letter, 28 FCC Rcd 1282, 1282 n.3 (Vid. Div. MB 2013) (*Colins Letter*). In this instance, the predicted noise-limited service contours of the stations overlap, and we again undertake the same

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 KSWT is not ranked among the top four stations in the market, there are fewer than eight independent voices in the Yuma DMA. Blackhawk therefore requests a waiver of the rule, pursuant to the “failing station” standard.⁴

Waiver Request. The criteria for a “failing station” waiver of the television duopoly rule are:

1. One of the merging stations has a low all-day audience share, (*i.e.*, 4 percent or lower);
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 that outweigh any harm to competition and diversity; 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.⁵

A waiver will be presumed to be in the public interest if the applicant satisfies each criterion.⁶

Informal Objection. On December 10, 2013, five months after the Applicants had executed an APA, and nearly five months after they submitted the Application, Abraham Telecasting Co., LLC (ATC) filed an informal objection with the Commission (ATC Objection). The ATC Objection included a one-paragraph statement indicating that on October 25, 2013, ATC submitted an unsolicited offer to Pappas to purchase KSWT. The e-mail correspondence appended to the objection indicates that on October 28, 2013, the Trustee for the Pappas Liquidating Trust acknowledged receipt of that unsolicited offer but rejected any consideration of it because (1) the transaction has been pending before the Commission for several months, and (2) the controlling APA bars Pappas from entertaining any offers or proposals regarding the sale of the station. The ATC Objection does not contain any legal argument, and merely states that the Statement is pertinent to the information provided in the waiver request.

Discussion. We find that the Application meets all four prongs of this test. First, Blackhawk submits Nielsen ratings of 3.7% for KSWT’s all-day audience share during the July 2012 sweeps period. We have accepted sweeps period audience share data in a recent evaluation of a failing station waiver request, and we similarly find that this showing satisfies the first criterion of the waiver standard.⁷

Grade B contour approximation in applying this rule. Application, Failing Station Waiver Request at 1 (Waiver Request).

⁴ 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, 12938-39, para. 79 (1999) (*Local Ownership Order*) (defining 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”), *recon. granted in part*, 16 FCC Rcd 1067 (2001).

⁵ 47 C.F.R. § 73.3555, Note 7; *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

⁶ *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

⁷ *Colins Letter*, 28 FCC Rcd at 1283.

With regard to the second criterion of financial condition, the Applicants have submitted financial data to demonstrate negative cash flow and operating losses at the station for the three years preceding the filing of the application. Staff analysis of the financial data in the record confirms that the station had a negative cash flow for 2010, 2011, and 2012. These submissions satisfy the second of the waiver standard criteria.

Third, Blackhawk states that consolidating the operation of KSWT and KYMA-DT will benefit the public interest by (1) preserving live local news programming geared to the local population, coupled with the use of new technology that will make the programming widely accessible on handheld devices, and (2) creating substantial cost savings.⁸ Specifically, a waiver would create economies of scale and facilitate the provision of a sustainable local television service by one owner where two separately owned stations have struggled for years. Blackhawk asserts that operating KSWT in tandem with KYMA, which would combine the two sets of studios and office buildings into one large facility, would strengthen both of these local CBS and NBC affiliates. Additionally, Blackhawk makes a commitment to preserve and enhance five hours of live weekday news programming. Blackhawk estimates that combining the facilities will result in saving of up to \$1,000,000. Consistent with the *Local Ownership Order*, we believe that the combined operation of the stations will pose minimal harm to diversity and competition and that allowing KSWT to operate in tandem with a stronger station will help it to become a more viable local voice in the market, through a definite improvement in facilities and programming.⁹

With regard to the fourth criterion, the Applicants submit that Pappas began to seek an out-of-market buyer for KSWT beginning in June 2012, and has made “active and serious efforts” to market the station and that no reasonable offer from an entity outside the market was received. Pappas engaged Kalil & Co., Inc. (Kalil), a television brokerage company, to solicit interest in KSWT. Kalil contacted more than 40 potential out-of-market parties, of which 15 signed a non-disclosure agreement. Only one made an offer for the station, which was contingent upon the buyer’s successful acquisition of another station in Yuma. Pappas viewed this contingency as unreasonable and rejected it accordingly. Given what they perceived to be a lack of bona fide interest in KSWT, Kalil and Pappas contacted three prospective in-market buyers, but only Blackhawk made an offer.¹⁰ Consistent with our previous decisions, we find that Blackhawk is the only reasonably available candidate willing and able to acquire and operate KSWT, and selling the station to an out-of-market buyer would result in an artificially depressed price. We dismiss the ATC Objection as irrelevant, and find that an unsolicited offer submitted several months after the conclusion of a comprehensive search does not indicate that an out-of-market party was “reasonably available.”

As discussed, based on the showings submitted under the “failing” station waiver criteria established in the *Local Ownership Order*, we are persuaded that grant of a waiver is warranted on the grounds that KSWT is a “failing” station. 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 KSWT, Yuma, Arizona, and KYMA-DT, Yuma, Arizona, IS GRANTED. IT IS FURTHER ORDERED That the application for

⁸ Waiver Request at 2-3, 6-9.

⁹ *Local Ownership Order*, 14 FCC Rcd at 12939, para. 80.

¹⁰ Application at 5-6; Waiver Request, Att. C, Decl. of Frank Higney.

assignment of the license of KSWT, Yuma, Arizona, from Pappas Arizona License, LLC to Blackhawk Broadcasting LLC (File No. BALCDT-20130722ADB) IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau