



Federal Communications Commission
Washington, D.C. 20554

DA 14-1583
Released: October 31, 2014

Nexstar Broadcasting, Inc.
Elizabeth Ryder
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062

Estate of Milton Grant (Cabell Williams, Admin. Ad Litem)
c/o Kenneth E. Satten
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Applications for Transfers of Control of Licenses
WFXR(DT), Roanoke, VA, Fac. ID No. 24813
WWCW(DT), Lynchburg, VA, Fac. ID No. 24812
WZDX(DT), Huntsville, AL, Fac. ID No. 28119
KGCW(DT), Burlington, IA, Fac. ID No. 7841
WLAX(DT), La Crosse, WI, Fac. ID. No. 2710
WEUX(DT), Chippewa Falls, WI, Fac. ID No. 2709
File Nos. BTCCDT-20131120ADN, ADO, ADF, ADV,
ADQ, ADT

Dear Counsel:

This letter grants the above-captioned applications for the transfer of control of six television licenses from the Estate of Milton Grant (Cabell Williams, Admin. Ad Litem) (“Grant”) to Nexstar Broadcasting, Inc. (“Nexstar”) and in connection with the sale, grants: (1) waiver of Section 73.3555(b), the local television ownership rule, to permit Nexstar’s common ownership of KGCW(DT), Burlington, Iowa and WHBF-TV, Rock Island, Illinois, based on KGCW(DT)’s status as a “failing station;”¹ (2) authority to operate station WEUX(DT), Chippewa Falls, Wisconsin, as a satellite of WLAX(DT), La Crosse, Wisconsin, pursuant to the satellite exemption to the local television ownership rule;² and (3) continued authority to operate station WWCW(DT), Lynchburg, Virginia, as a satellite of WFXR(DT), Roanoke, Virginia, pursuant to the satellite exemption of the local television ownership rule.

Failing Station Waiver. Section 73.3555(b)(2) of the Commission’s rules permits common ownership of two full-power television stations licensed in the same Nielsen Designated Market Area

¹ 47 C.F.R. § 73.3555, Note 7.

² 47 C.F.R. § 73.3555, Note 5.

(“DMA”), the Grade B contours of which overlap, 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.³

The Commission’s *Local Ownership Order* set forth the following criteria for a waiver of the television duopoly rule for a “failing station,”⁴ defined as one which has been struggling for an “extended period of time both in terms of its audience share and financial performance.”⁵

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.⁶

A waiver will be presumed to be in the public interest if the applicant satisfies each criterion.⁷

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). In the *2010 Quadrennial Review Report and Order and NPRM*, the Commission confirmed that the digital NLSC is an accurate measure of a station’s current service area and proposed a modified rule whereby the analog Grade B contour would be replaced with the digital NLSC, such that within a DMA an entity could own or operate two stations in a market if the digital NLSCs of those stations did not overlap. *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*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4383 (2014) (“*2010 Quadrennial Review Report and Order and NPRM*”). While this rulemaking is still pending, 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 local television ownership rule. See, e.g., *Colins Broadcasting Corporation*, Letter Order, 28 FCC Rcd 1282, 1282 n.3 (Vid. Div. MB 2013) (“*Colins Letter*”). In this instance, the digital NLSC contours of the stations overlap, and we again undertake the same Grade B contour approximation in applying this rule. File No. BTCCDT-20131120ADV, Application, Exh. 20, Failing Station Waiver Request at 1 (“KGCW Waiver Request”).

⁴ *Review of the Commission Regulations Governing Broadcasting*, Report and Order, 14 FCC Rcd 12903 (1999) (“*Local Ownership Order*”).

⁵ *Id.* at 12939.

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

⁷ *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

We find that the KGCW Waiver Request meets all four prongs of this test. First, Nexstar submits Nielsen ratings for the three years preceding the filing of the application, and KGCW(DT)'s highest audience share was 1.9.⁸

With regard to the second criterion, the Nexstar has 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.

Third, Nexstar states that the proposed combination of WHBF-TV and KGCW(DT) would benefit the public interest by (1) increasing local news and public affairs programming; and (2) expanding non-broadcast public outreach activities to reach the community and promote charitable causes.⁹ Specifically, Nexstar asserts that common ownership would allow KGCW(DT) to augment its current local news, weather, and sports programming. Currently, KGCW(DT) airs a late-night thirty-minute newscast that is a repeat of a third-party produced newscast from a commonly-owned station, as well as an early morning syndicated agricultural news program. According to KGCW(DT), grant of a waiver would, among other things, allow KGCW(DT) to augment this programming by broadcasting an additional nightly newscast during prime time; providing statewide news coverage in both Iowa and Illinois on a regular basis by joining with other Nexstar-owned stations; and providing additional local emergency information and weather coverage. KGCW(DT) also anticipates that it will begin broadcasting local political debates, and holding regular "ascertainment" meetings with community stakeholders. Additionally, following its acquisition, KGCW(DT) anticipates co-sponsoring various community events, such as blood drives and food bank donation programs. 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 KGCW(DT) 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 programming.¹⁰

With regard to the fourth criterion, Nexstar submits that KGCW(DT)'s parent company began to seek an out-of-market buyer for KGCW(DT) beginning in May 2012, and engaged Kalil & Co., Inc. ("Kalil"), a television brokerage company, to solicit interest in KGCW(DT).¹¹ Kalil contacted approximately 25 potential out-of-market parties, of which 19 signed a non-disclosure agreement. While all of the stations were marketed together, parties were encouraged to submit offers for specific stations, but none of those 19 parties submitted an offer specifically for KGCW(DT). Kalil states its view that the likelihood of finding a purchaser of a standalone CW affiliate is small, and that "[a]fter following up with these prospects, it became clear that KGCW(DT)-TV was an albatross among the Grant stations."¹² Kalil concludes that based on an extensive marketing process and significant outreach to prospective buyers, it is unlikely that KGCW(DT) could be sold to an out-of-market buyer on a standalone basis.¹³ Consistent with previous decisions, we find that Nexstar is the only reasonably available candidate willing and able

⁸ KGCW Waiver Request at 2; *see also Colins Letter*, 28 FCC Rcd at 1283.

⁹ KGCW Waiver Request at 3-5.

¹⁰ *Local Ownership Order*, 14 FCC Rcd at 12939, para. 80.

¹¹ KGCW Waiver Request at 5-6; *id.* at Att. D., Decl. of Fred Kalil ("Kalil Decl.").

¹² Kalil Decl. at 2.

¹³ *Id.*

to acquire and operate KGCW(DT), and selling the station to an out-of-market buyer would result in an artificially depressed price.¹⁴

WEUX(DT) Satellite Authorization. According to the WEUX Satellite Waiver Request, WEUX(DT) traditionally operated as a *de facto* satellite of WLAX(DT) for 17 years, rebroadcasting FOX programming to the edge of the La Crosse-Eau Claire, WI DMA. Prior to the transition to digital television, common ownership did not implicate the local television multiple ownership rule because there was no analog Grade B contour overlap. The digital NLSC contour covers a much larger area, and thus there is DTV contour overlap between the two stations.¹⁵ Nexstar therefore requests formal authority to permit WEUX(DT) to operate as a satellite of WLAX(DT) in order to continue to air FOX programming to portions of the La Cross-Eau Claire DMA.

In *Television Satellite Stations*, the Commission adopted “a presumption that TV satellite operations are in the public interest if individual applicants can satisfy certain public interest criteria.”¹⁶ The presumptive satellite exemption to the duopoly rule is therefore met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.¹⁷ If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis and grant the application if there are compelling circumstances that warrant approval.¹⁸

With regard to the first criterion, we recognize 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, as we stated previously, the Principal Community Contour is not an equivalent standard to use in determining whether a proposed satellite qualifies for the presumptive satellite exemption to the duopoly rule.¹⁹ Nexstar submits that, prior to the digital transition, the analog

¹⁴ See, e.g., *Pappas Arizona License, LLC*, Letter Order, 28 FCC Rcd 17048, 17049 (Vid. Div. MB 2013) (finding fourth criterion satisfied where out of 40 out-of-market prospective buyers contacted, only one made an offer, which was seen as having an unreasonable contingency); *Venture Technologies Group LLC*, Letter Order, 28 FCC Rcd 1992, 7993 (Vid. Div. MB 2013) (finding fourth criterion met where no offers made out of several dozen out-of-market prospective buyers contacted).

¹⁵ 47 C.F.R. § 73.3555(b)(1). See, also, *2010 Quadrennial Review Report and Order and NPRM*, 29 FCC Rcd at 4385 (2014) (“Consistent with the tentative conclusion in the NPRM, however, we propose to grandfather ownership of existing combinations of television stations, if any, that would exceed the ownership limit as a result of the change to the digital NLSC test we propose herein.”).

¹⁶ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212, 4213 (1991) (subsequent history omitted) (*Television Satellite Stations*).

¹⁷ *Id.* at 4213-14.

¹⁸ *Id.* at 4212.

¹⁹ See, e.g., *Local TV Holdings, LLC, Transferor and Tribune Broadcasting Company II, LLC, Transferee and Dreamcatcher Broadcasting LLC, Transferee*, Memorandum Opinion and Order, 28 FCC Rcd 16850, 16852 (MB 2013).

City Grade contours of WEUX(DT) and WLAX(DT) did not overlap, but that subsequent to the digital transition the digital protected contours of the station now do overlap.²⁰

With regard to the second criterion, Nexstar has demonstrated that WEUX(DT) is located in an underserved area. The “transmission” test deems an area underserved where there are two or fewer full-service television stations licensed to a proposed satellite’s community of license.²¹ Here, according to Nexstar, WEUX(DT) is the only full-power television station licensed to Chippewa Falls, Wisconsin.²² Nexstar represents that residents of Eau Claire are able to receive FOX network programming that they would not otherwise be able to view over-the-air.²³

Regarding the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.²⁴ Here, Nexstar does not present any evidence of any attempt to sell WEUX(DT) separately as a full-service station. Instead, Nexstar submits a letter from Brian E. Cobb of CobbCorp LLC, a brokerage and appraisal firm.²⁵ Mr. Cobb states that if WEUX(DT) were to attempt to operate as a standalone station without a “big 4” network affiliation, and with a signal that did not cover the most populous areas of the DMA, it would be unable to capture enough revenue to survive. Specifically, he points out that the DMA is ranked 128th in television revenue, with five stations fighting for just \$30,000,000 in advertising revenue. He asserts that there is no qualified prospective buyer that would be willing to operate a station at such a competitive disadvantage.

While the instant requests do not satisfy all of the criteria of the Commission’s presumptive satellite standard, we find that the Nexstar has set forth information sufficient to warrant satellite status for WEUX(DT) pursuant to our *ad hoc* analysis. Given the station’s long history as a satellite of WLAX(DT), its limited signal that does not reach the more populated areas of the DMA, the small size of its market and limited advertising revenues, and the fact that all of the major networks are broadcast in the respective DMAs at issue, it is unlikely that an alternative operator would be willing and able to operate the station as a stand-alone facility. We see no evidence in the record that allowing a satellite exemption will harm competition in the market. Indeed, we find that doing so will benefit the public interest by promoting access to broadcast services which may otherwise not be feasible. For the reasons discussed above, we find that the operation of WEUX(DT) as a satellite of WLAX(DT) would be in the public interest.

WWCW(DT) Continued Satellite Authorization. Pursuant to *Television Satellite Stations*, applicants seeking to transfer or assign satellite stations must justify continued satellite status by

²⁰ File No. BTCCDT-20131120ADT, Application, Exh. 20, Request for Satellite Status (“WEUX Satellite Waiver Request”) at 1-2 (citing Att. A: “WLAX-WEUX Contour Overlap Map”).

²¹ *Television Satellite Stations*, 6 FCC Rcd at 4215.

²² WEUX Satellite Waiver Request at 3 (citing *Television & Cable Factbook 2012* at A-1411).

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ WEUX Satellite Waiver Request, at Att. B, Letter from Brian E. Cobb, President, CobbCorp, LLC to Chief, Video Division, Media Bureau, FCC (dated Nov. 4, 2013). Mr. Cobb states he has more than 40 years in the broadcast industry, and that during the last 30 years, he has been personally involved in the brokerage of more full-power television stations than any other broker.

complying with the same three public interest criteria necessary for an initial satellite exemption. With regard to the first criterion, Nexstar submits that the analog City Grade Contours of WFXR(DT) and WWCW(DT) have always overlapped.²⁶ Nexstar explains that the previous waivers for WWCW(DT) are based on the situation of WWCW(DT) and WFXR(DT)'s transmitters on atypical terrain – the opposite sides of the Blue Ridge Mountains – so that the “real world” analog overlap of the two stations was considerably smaller than the predicted overlap.²⁷

With regard to the second criterion, Nexstar has demonstrated that WWCW(DT) is located in an underserved area. Here, according to Nexstar, WWCW(DT) is the only one of two television stations licensed to Lynchburg, Virginia.²⁸

Regarding the third criterion, the WWCW Satellite Waiver Continuation Request does not present any evidence that the respective licensees have attempted to sell WWCW(DT) separately as a full-service station. Instead, Nexstar submits a letter from Brian E Cobb.²⁹ Mr. Cobb states that WWCW(DT) carries the CW network on its main channel and FOX on its secondary digital channel; WFXR(DT) carries FOX on its main channel and the CW network on its secondary digital channel. Mr. Cobb states that if WWCW(DT) were a standalone operation without one of the big four networks, it would be doubtful if they could obtain cable coverage throughout the DMA. He further states that even if WWCW(DT) could retain the CW affiliation, it could not cover enough of the market over the air or via cable to compete and garner enough revenue to adequately serve the community. Mr. Cobb concludes that it is his opinion that there would not be a qualified operator available to change the station into a viable standalone.

While the instant request does not satisfy all of the criteria of the Commission's presumptive satellite standard, we find that the Nexstar has set forth information sufficient to warrant continued satellite status for WWCW(DT) pursuant to our *ad hoc* analysis. Given WWCW(DT)'s long history as a satellite of WFXR(DT), the geographically challenging nature of their coverage areas, and the fact that all of the major networks are broadcast in the respective DMAs at issue, it is unlikely that an alternative operator would be willing and able to operate the WWCW(DT) as a stand-alone facility. We see no evidence in the record that continuing the satellite exemption will harm competition in the market. Indeed, we find that doing so will benefit the public interest by promoting access to broadcast services which may otherwise not be feasible. For the reasons discussed above, we find that the continued operation of WWCW(DT) as a satellite of WFXR(DT) would be in 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 WHBF-TV, Rock Island, Illinois, and KGCW(DT), Burlington, Iowa, IS GRANTED.

²⁶ File No. BTCCDT-20131120ADO, Application, Exh. 20, Request for Continuation of Satellite Status (“WWCW Satellite Waiver Continuation Request”) at 2-3 & Att. A: WFXR-WWCW Contour Overlap Map.

²⁷ WWCW Satellite Waiver Continuation Request at 3 (citing *Letter to Roanoke-Lynchburg TV Acquisition Corp.*, File Nos. BALCT-19930212KE/KF (MB Video Div. 1993)). WWCW(DT) has been authorized to operate as a satellite of WFXR(DT) since 1990. *Family Group V., Ltd, Debtor-in-Possession*, Memorandum Opinion and Order, 5 FCC Rcd 5547 (1990).

²⁸ WWCW Satellite Waiver Continuation Request at 3-4 (citing *Television & Cable Factbook 2012* at A-1343).

²⁹ WWCW Satellite Waiver Continuation Request at Att. B, Letter from Brian E. Cobb, President, CobbCorp, LLC to Chief, Video Division, Media Bureau, FCC (dated Nov.19, 2013).

IT IS FURTHER ORDERED, That the request to operate WEUX(DT), Chippewa Falls, WI, as a satellite of WLAX(DT), La Crosse, Wisconsin, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

IT IS FURTHER ORDERED, That the request for the continued operation of WWCW(DT), Lynchburg, Virginia, as a satellite of WFXR(DT), Roanoke, Virginia, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

FURTHERMORE, the above-referenced applications for consent to transfer control of the licenses of WFXR(DT), Roanoke, Virginia; WWCW(DT), Lynchburg, Virginia; WZDX(DT), Huntsville, Alabama; KGCW(DT), Burlington, Iowa; WLAX(DT), La Crosse, Wisconsin; WEUX(DT), Chippewa Falls, Wisconsin (File Nos. BTCCDT-20131120ADN, ADO, ADF, ADV, ADQ, ADT) ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau