



Federal Communications Commission
Washington, D.C. 20554

May 29, 2014

DA 14-727

Released: May 29, 2014

Soda Mountain Broadcasting, Inc. & KEZI, Inc.
c/o Shelly Sadowsky, Esq.
Sciarrino & Shubert, PLLC
5938 Dorchester Way
Rockville, MD 20852

Oregon TV License Company, LLC
c/o Russell M Blau
Bingham McCutchen, LLP
2020 K Street, N.W.
Washington, D.C. 20006

Re: File Nos. BALCDT-20140311ACJ;
BALCDT-20140311ACZ; BALCDT-
20140311ADA

Dear Counsel:

By this letter we grant the above-captioned uncontested applications for consent to the assignment of the licenses of station KEZI(TV), Eugene, Oregon, from KEZI, Inc., to Oregon TV License Company, LLC (Oregon TV) and stations KDKF(TV), Klamath Falls, Oregon (KDKF), and KDRV(TV) Medford, Oregon (KDRV), from Soda Mountain Broadcasting, Inc., to Oregon TV. We also grant Oregon TV authority to continue operating KDKF as a satellite station of KDRV in the Medford-Klamath Falls, Oregon, Nielsen Designated Market Area ("DMA"), pursuant to Note 5 of Section 73.3555 of the Commission's rules.¹

In *Television Satellite Stations*,² 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.³ Applications meeting these three criteria, when un rebutted, 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.⁴ No objections have been filed against the requested continued "satellite exemption."

¹ 47 C.F.R. § 73.3555, Note 5.

² *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212 (1991), *subsequent history omitted (Television Satellite Stations)*.

³ *Id.* at 4213-4214.

⁴ *Id.* at 4214.

With regard 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. Accordingly, Oregon TV notes that there was no City Grade contour overlap between the parent and the satellite, and that there is only a *de minimis* overlap between the station's digital contours.⁵ An engineering analysis included with the applications estimates the extent of overlap between KDRV and KDKF to be only 179 persons.⁶ As we have stated previously, the digital Principal Community contour is not an equivalent standard to use in determining whether a proposed satellite qualifies for the presumptive satellite exemption.⁷ While the engineering analysis provided by Oregon TV has no bearing on our analysis for the evaluating compliance with the first criterion of the presumptive satellite exemption, we will take into consideration the substance of this exhibit as part of our *ad hoc* analysis.

Regarding the second criterion, Oregon TV cites to the Commission's "reception" test in order to demonstrate that it provides service to an underserved area.⁸ Under the "reception test," an applicant must demonstrate that 25% or more of the area with the satellite station's Grade B analog contour, but outside of the parent's Grade B analog contour receives four or fewer television services, not counting the satellite station.⁹ According to Oregon TV, KDKF has "historically satisfied this test by showing that 46% of the relevant analog area was served by four or fewer services."¹⁰ Following the digital transition, stations no longer have Grade B contours. However, Oregon TV notes that no new station has been licensed since the Commission last considered a satellite exemption for KDKF.¹¹ We will take this into consideration as part of our *ad hoc* analysis.

Under the third criterion, an applicant must show that no alternative operator is ready and able to purchase and operate the proposed satellite as a full-service station.¹² Oregon TV contends that KDKF is not viable as a stand-alone station.¹³ In support of its request, Oregon TV includes a letter written by Mr.

⁵ File No. BALCDT-20140311ACZ, Attachment 18 ("Satellite Exemption Request") at 1-2.

⁶ *Id.* at Attachment 1, p. 2. The engineering analysis estimates the total population coverage of both KDRV and KDKF at 415,310 persons. This includes an estimated population coverage of 353,044 persons for KDRV and 62,266 persons for KDKF.

⁷ *New Young Broadcasting Holding Company, Inc.*, Letter Decision, 25 FCC Rcd 7518, 7519 (Vid. Div. 2010).

⁸ In evaluating the second criterion the Commission also uses the "transmission test." Under the transmission test an area is deemed to be underserved if there are two or fewer full-service television stations licensed to a proposed satellites community of license. *Television Satellite Stations*, 6 FCC Rcd at 4215. Here that test is not satisfied as KDKF-DT is one of three full-power television stations in Klamath Falls, Oregon. See Satellite Exemption Request at 2.

⁹ *Television Satellite Stations*, 6 FCC Rcd at 4215.

¹⁰ Satellite Exemption Request at 2 (citing *Sunshine Television, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 4428 (1993)).

¹¹ Satellite Exemption Request at 2.

¹² *Television Satellite Stations*, 6 FCC Rcd at 4215.

¹³ Satellite Exemption Request at 2 (stating that the station is "unlikely to obtain a network affiliation if operated on a standalone basis" and "would not be economically successful on its own").

W. Lawrence Patrick, Managing Partner, Patrick Communications.¹⁴ Based on specific market data, such as historical advertising revenue shares, competition in the market, the unique geography of the DMA, and the station's coverage area, Mr. Patrick concludes that attempts to sell KDKF as a standalone station would be "unsuccessful."¹⁵ In particular, Mr. Patrick notes that as a standalone station KDKF would be unable to provide a signal to Medford, the largest city in the DMA, and that all four major broadcast networks already have affiliates in the DMA, making it unlikely that KDKF would be able to obtain a network affiliation. Mr. Patrick goes on to highlight that KDVR needs KDKF as a satellite to "effectively compete" and continue to provide the "same level of service" to communities throughout the market.¹⁶

Although the instant request does not satisfy the Commission's presumptive satellite exemption standard, Oregon TV has provided information sufficient to warrant continued satellite operation for KDKF under our *ad hoc* analysis. KDKF has operated as a satellite since it began operation in 1989 and we see no evidence in the record that a continued "satellite exemption" will harm competition in the Medford-Klamath Falls, Oregon DMA.¹⁷ We find the geography and population size of the market, the competitive landscape of the DMA, and the low likelihood that an alternative operator is ready and able to operate the station on a stand-alone basis constitute compelling circumstances for grant of a continuing satellite exemption in this instance, and conclude that grant of a continuing satellite exemption for KDKF to operate as a satellite of KDRV would be in the public interest.

Furthermore, having reviewed the application, pleadings, and other facts before us, we conclude that, not only will grant of the applications comply with Commission rules, but that grant will serve the public interest, convenience, and necessity.

ACCORDINGLY, IT IS ORDERED, That the above-captioned applications to assign the licenses of station KEZI(TV), Eugene, Oregon, from KEZI, Inc., to Oregon TV License Company, LLC (File No. BALCDT-20140311ACJ) and stations KDKF(TV), Klamath Falls, Oregon, and KDRV(TV), Medford, Oregon, from Soda Mountain Broadcasting, Inc., to Oregon TV License Company, LLC (File Nos. BALCDT-20140311ACZ and BALCDT-20140311ADA), pursuant to 47 U.S.C. § 310(d), **ARE GRANTED**.

IT IS FURTHER ORDERED, That Oregon TV's request for a continuing satellite exemption to operate KDKF(TV), Klamath Falls, Oregon, as a satellite of KDRV(TV), Medford, Oregon, pursuant to 47 C.F.R. § 73.3555, Note 5, **IS GRANTED**.

Sincerely,

Barbara Kreisman
Chief, Video Division
Media Bureau

¹⁴ Mr. Patrick states that his familiarity with the Medford-Klamath Falls, Oregon market and experience in brokering stations makes him qualified to evaluate the viability and marketability of KDKF as a standalone station. *Id.* at Attachment 2.

¹⁵ *Id.* at Attachment 2, p. 3.

¹⁶ *Id.* at Attachment 2, p. 2.

¹⁷ *See* File No. BLCT-19891026KE.