



Federal Communications Commission
Washington, D.C. 20554

DA 17-1208
Released: December 15, 2017

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Re: Application for Consent to Assignment of License
WBIN-TV, Derry, New Hampshire, Facility ID
No. 14682, File No. BALCDT-20170614AAQ

Dear Counsel:

By this letter, we grant the above-captioned application (the “Application”) for the assignment of television broadcast station WBIN-TV, Derry, New Hampshire (the “Station”) from WBIN, Inc. (“WBIN”) to Univision Local Media, Inc. (“Univision”) (collectively, the “Applicants”). We also dismiss as moot the Comments to the Application filed by NCTA – The Internet & Television Association (“NCTA”).¹

Background. WBIN and Univision filed the Application on June 14, 2017.² When WBIN submitted its application to participate in the reverse incentive auction, it certified to an intent to channel share and also submitted a “Channel Sharing and Facilities Agreement” (“CSA”) with Unimas Boston LLC (“Unimas”), a wholly-owned subsidiary of Univision and licensee of WUTF-DT, Marlborough, Massachusetts.³ The Station subsequently agreed to relinquish its 6 MHz channel of broadcast spectrum

¹ See Comments (filed Jul. 19, 2017).

² The Application was placed on Public Notice on June 19, 2017. See *Broadcast Applications*, Public Notice, Rept. No. 29009 (rel. Jun. 19, 2017). The Application has been amended several times, most recently on December 14, 2017.

³ See Application, Att. 5.

in the Commission's incentive auction.⁴ On May 4, 2017, WBIN applied for a construction permit to implement the CSA, and on May 23, 2017, the Commission granted that application and issued the construction permit.⁵

WBIN filed the license to cover the construction permit on September 18, 2017, and it was granted on September 27, 2017.⁶

On July 19, 2017, NCTA filed its Comments, in which it argues that "must-carry rights should not attach to broadcast stations that (1) relinquish their spectrum in the auction, and (2) elect to channel share with another broadcast station but seek to transfer their licenses before the station has constructed its shared channel facilities and commenced operations at the shared location."⁷ NCTA argues that the Spectrum Act's provisions providing for must-carry rights for channel sharees⁸ should be narrowly construed so as to apply only where a relinquishing licensee has not only obtained a construction permit, but has built out and commenced operation on its station's facilities.⁹ NCTA reasons that there is no policy justification to confer a windfall on a licensee that elects to sell its license before it has constructed its shared channel facilities.¹⁰

On July 28, 2017, the Applicants filed a response to the Comments, seeking dismissal of the Comments on four separate bases. First, the Applicants assert that NCTA's arguments are moot and do not require any Commission decision on the merits because the Station already holds a channel sharing construction permit, and the Applicants are actively making operational plans to implement the permit and file a license.¹¹ Second, Applicants argue that NCTA has not demonstrated how it or its members would be affected by a grant, because grant of the application and consummation will not result in any new or increased carriage rights for the Station.¹² Third, Applicants maintain that the Station's current valid election of must-carry status for the 2015-17 cycle on local cable systems will not subject any cable operator to any additional obligation post-transaction.¹³ Fourth, the Applicants contend that NCTA seeks to alter the plain language of the Spectrum Act to impose a policy-based condition that would suspend the

⁴ See *Incentive Auction Closing and Channel Reassignment*, Public Notice, 32 FCC Rcd 2786, 2867, App. A (2017).

⁵ See LMS File No. 0000024461.

⁶ LMS File No. 0000030000.

⁷ Comments at 1.

⁸ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) ("Spectrum Act").

⁹ Comments at 3-4.

¹⁰ Comments at 4 (citing *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 30 FCC Rcd 6668, 6676, para. 20 (2015) ("*Channel Sharing Reconsideration Order*") ("We agree that allowing term-limited CSAs will encourage channel sharing bids in the incentive auction by allowing parties to end the channel sharing relationship if they choose while still having the opportunity to continue operating.")).

¹¹ Response to Comments at 1-2.

¹² *Id.* at 2.

¹³ *Id.* The Station has also submitted several letters into its public inspection file electing mandatory carriage for the 2018-2020 cycle. See, e.g., Letter from Gerry McGavick, General Manager, WBIN-TV, to Comcast Communications, LLC (dated Sep. 7, 2017).

Station's must-carry rights on its current channel, and presumably restore those rights only when channel-sharing is implemented.¹⁴

At the time the application was filed, Univision held a veto right with respect to any sale of WUNI(TV), Worcester, Massachusetts, which is licensed to a subsidiary of Entravision Communications Corporation and is an affiliate of the Univision Television Network.¹⁵ In the 2003 *Hispanic Broadcasting* decision, the Commission found that such a relationship would result in attribution of an Entravision television station to Univision.¹⁶ Common attributable interests in WBIN-TV, WUNI(TV), and WUTF-DT, which are all licensed in the Boston, Massachusetts Designated Market Area ("DMA"), would violate the local television ownership rule.¹⁷ On December 14, 2017, the Applicants submitted as an amendment to the Application a Voting and Proxy Agreement altering Univision's right to veto the sale of WUNI(TV). We find that the Voting and Proxy Agreement renders any interest of Univision in WUNI(TV) nonattributable, consistent with Commission precedent.¹⁸

Discussion. To the extent the Comments can be considered an informal objection to the pending application, we dismiss them as moot. As mentioned above, since the Comments have been filed, a license to cover channel sharing operations for WBIN has been filed, granted, and the station is currently operating as a channel sharee. Thus, we find that the Applicants have effectively "commenced operations" as requested in the Comments. We dismiss, therefore, the Comments as moot. We condition this grant upon the Voting and Proxy Agreement between Univision and Entravision remaining in full force and effect.

Conclusion. Having reviewed the Application, pleadings, and other facts before us, we conclude that grant of the Application as requested will comply with the Commission's rules and section 310(d) of the Act. We conclude that Univision is fully qualified and that grant will serve the public interest, convenience, and necessity. Nevertheless, our conclusion here is without prejudice to any subsequently filed carriage complaint.

ACCORDINGLY, IT IS ORDERED, that the Comments filed by NCTA – The Internet & Television Association ARE DISMISSED.

¹⁴ Response to Comments at 3.

¹⁵ See Application, Exh. 16, "Attributable Station Interests" at 5 n.4

¹⁶ *Shareholders of Univision Communications Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 5842, 5845 n. 21, citing *Shareholders of Hispanic Broadcasting Corporation*, Memorandum Opinion and Order, 18 FCC Rcd 18834, 18852 (2003) ("*Hispanic Broadcasting*").

¹⁷ 47 C.F.R. § 73.3555(b) ("An entity may directly or indirectly own, operate, or control *two* television stations licensed in the same DMA . . . only under one or more of the following conditions . . .") (emphasis added).

¹⁸ *Consent to Transfer Control of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 183, 186, para. 5 n.15 (2017 MB, WCB) (relying on a Voting and Proxy Agreement between two related shareholders and Nexstar to ensure that their combined voting interest in Nexstar would not exceed the five percent attribution threshold).

IT IS FURTHER ORDERED, that the above-referenced applications for consent to assign the license of WBIN-TV, Derry, New Hampshire from WBIN, Inc. to Univision Local Media, Inc., File No. BALCDT-20170614AAQ, IS GRANTED, conditioned upon the Voting and Proxy Agreement between Univision and Entravision remaining in full force and effect.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau