



Federal Communications Commission
Washington, D.C. 20554

February 12, 2019

DA 19-72
Released: February 12, 2019

Legacy Broadcasting, LLC
c/o Sally A. Buckman, Esq.
Lerman Senter PLLC
2001 L Street, NW
Suite 400
Washington, DC 20036

Gray Television Licensee, LLC
c/o Henry Wendel
Cooley LLP
1299 Pennsylvania Ave, NW
Suite 700
Washington, DC 20004

Re: KNHL(DT), Hastings, Nebraska
File No. BALCDT-20180913AAE
Facility ID No. 48003

Counsel:

This letter is in reference to the above-captioned application for assignment of the license of station KNHL(DT), Hastings, Nebraska (KNHL), from Legacy Broadcasting, LLC (Legacy), to Gray Television Licensee, LLC (Gray). Gray requests authority to operate KNHL as a satellite of KSNB-TV, Superior, Nebraska, pursuant to the satellite exception to the local television ownership rule.¹ For the reasons set forth below, we grant the request for satellite authority and the application.

The Local Television Ownership Rule allows an entity to own two television stations licensed to the same Nielsen Designated Market Area (DMA) if: (1) the digital noise limited service contours (NLSCs) of the stations (as determined by Section 73.622(e) of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable, accepted audience ratings service.² Within the Lincoln & Hastings-Kearney Nielsen Designated Market Area (DMA), Gray also owns and operates KOLN(DT), Lincoln, Nebraska and its full power television satellite station KGIN(DT), Grand Island, Nebraska. Gray states that it "uses KGIN(DT) to rebroadcast the

¹ See 47 CFR 73.3555, Note 5; see also *Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations*, Notice of Proposed Rulemaking, MB Docket Nos. 17-105, FCC 18-63 (rel. March 23, 2018) (proposing to streamline the process for reauthorizing television satellite stations).

² 47 CFR § 73.3555(b)(1).

signal of KOLN(DT) as it plans to do with KNHL(DT) and KSNB-TV.”³

In *Television Satellite Stations*,⁴ the Commission stated that licensees are entitled to a “presumptive” satellite exception to the local television ownership rule 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.⁵ 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.⁶ The Commission acknowledged in the *Quadrennial Report and Order* that “there is no digital counterpart to a station’s analog [C]ity [G]rade contour” and, accordingly, stated that “consistent with case law developed after the digital transition, we [will] evaluate all future requests for new or continued satellite status on an *ad hoc* basis.”⁷ Therefore, criterion one is no longer relevant in the digital context.

Gray acknowledges that the stations’ City Grade contours overlapped prior to cessation of analog operations. As to the second criterion, Gray demonstrated, using our transmission test, that the respective area is underserved. The transmission test deems an area is underserved if there are two or fewer full-service stations licensed to a proposed satellite’s community of license.⁸ Gray asserts that KNHL is one of only two full power television stations licensed to Hastings, Nebraska.

Regarding the third criterion, Gray notes that “[t]he Lincoln & Hastings-Kearney DMA is the 106th ranked DMA in the country,” and “is comprised of 48 counties ... span[ning] an area of 37,684 square miles.”⁹ Gray further states that both the population and economic activity in the DMA is centered around Lincoln, which is 100 miles to the west of Hastings,” KNHL’s community of license. Thus, according to Gray, “of the 707,500 people that live within the Lincoln & Hastings Kearny DMA, KNHL(DT) reaches just 273,586, which is less than 40% of the DMA’s population.”¹⁰ In support of its waiver request, Gray also submits a broker letter from David Honig, President of MMTC Media and Telecom Brokers. Honig states that he held discussions with two potential buyers in 2017, but was unable to reach an agreement because of the station’s low ratings and inability to broadcast an over-the-air signal to Lincoln, where the market is centered.¹¹

We find that the application has set forth information sufficient to warrant satellite operation of KNHL(DT), Hastings, Nebraska under our *ad hoc* analysis. We find that the size of the Lincoln &

³ File No. BALCDT-20180913AAE, Exh. 18 at 1, n.1.

⁴ *Television Satellite Station Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4214, 4215 (1991) (subsequent history omitted) (“*Television Satellite Stations*”).

⁵ *Id.* at 4213-14.

⁶ *Id.* at 4212.

⁷ 2014 *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 et al.*, MB Docket No. 14-50, Report and Order, 31 FCC Rcd 9864, 9876 n. 72 (2016) (*Quadrennial Report and Order*), *recon. granted in part and denied in part*, 32 FCC Rcd 9802 (2017).

⁸ *Television Satellite Stations*, 6 FCC Rcd at 4215.

⁹ File No. BALCDT-20180913AAE, Exh. 18 at 1.

¹⁰ *Id.* at 4.

¹¹ *Id.* at Letter of David Honig, President, MMTC Media and Telecom Brokers at 1.

Hastings-Kearney DMA and KNHL's distance from the population center of the DMA constitute a compelling circumstance justifying grant of the exception. Moreover, we credit Gray's statement that it will use KNHL to rebroadcast KSNB's programming throughout the expansive DMA. Finally, we find that granting satellite authority will provide local newscasts to more than 85,000 additional viewers in an underserved area. Based on the above, we find that the operation of KNHL as a satellite of KSNB-TV would be in the public interest. In view of the foregoing, and having determined that Gray is qualified in all respects, we find that a grant of the above-referenced application would serve the public interest, convenience and necessity.

ACCORDINGLY, the request of Gray Television Group, Inc. and Gray Television Licensee, LLC for the operation of KNHL(DT), Hastings, Nebraska as a satellite of KSNB-TV, Superior, Nebraska, 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 assign the license of KNHL(DT), Hastings, Nebraska (File No. BALCDT-20180913AAE) **IS GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau