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Ramar Communications, Inc.
c/o Dennis P. Corbett, Esq.
Telecommunications Law Professionals PLLC
1025 Connecticut Ave., NW
Suite 1011
Washington, D.C. 20036

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

Re: KLCW-TV, Wolfforth, Texas
Fac. ID No. 77719
File No. BALCDT-20201020AAW

Counsel:

This letter grants the above-captioned unopposed application (Application) for consent to assign the license of television station KLCW-TV, Wolfforth, Texas (KLCW), from Ramar Communications, Inc. (Ramar), to Gray Television Licensee, LLC (Gray) (collectively, the Applicants). In connection therewith, we also grant a waiver of section 73.3555(b) of the Commission's rules (Local Television Ownership Rule),[1] to permit common ownership of KLCW and KCBD(DT), Lubbock, Texas (KCBD), based on KLCW's status as a "failing" station.[2]

Background. Under the Local Television Ownership Rule, an entity may own, operate, or control two television stations within the same Nielsen Designated Market Area (DMA) if: (1) the digital noise limited service contours (NLSC) of the stations do not overlap; or (2) at least one of the stations is not ranked among the top four stations in the DMA based on the most recent all-day audience share, and at least eight independent full-power television stations would remain in the DMA after the transaction.[3]

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[1] 47 CFR § 73.3555(b).

[2] *See* 47 CFR § 73.3555, note 7.

[3] 47 CFR § 73.3555(b). *See also 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 et al., Order, 34 FCC Rcd 12360 (2019) (reinstating the Local Television Ownership Rule as it existed in the *2014 Quadrennial Review Order - Review of the Commission's Broadcast Ownership Rules and*

The proposed common ownership of KLCW and KCBD would violate the Local Television Ownership Rule.[4] First, the NLSC contours of KLCW and KCBD overlap.[5] Second, while KLCW is not a top-four station in the Lubbock DMA, fewer than eight independent full-power television stations would remain after the transaction.[6] Thus, the Applicants have requested a failing station waiver of the Local Television Ownership Rule pursuant to note 7 of section 73.3555 of the Commission's rules.[7]

A failing station is defined as one that "has been struggling for an extended period of time both in terms of its audience share and in its financial performance."[8] Failing station waivers are granted on a "case-by-case basis"[9] and "may be of particular assistance to struggling stations in smaller markets that are not covered by the eight voice/top-four ranked station test."[10] The criteria for a failing station waiver are: (1) one of the merging stations has had a low all-day audience share (i.e. 4% or lower); (2) the station has had a negative cash flow for the previous three years; (3) the merger will 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.[11] A waiver will be presumed to be in the public interest if an applicant satisfies each of these criteria.[12]

Discussion. We find that the Applicants satisfy all four prongs of the above test and qualify for a failing station waiver. First, the Applicants provided ratings data showing that KLCW has averaged an all-day audience share below 1% for the last 12 months.[13] These ratings are well below the waiver standard's 4% threshold. Accordingly, we find that the first prong of the failing station waiver test is

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Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50 et al., Second Report and Order, 31 FCC Rcd 9864 (2016)).

[4] The Asset Purchase Agreement (APA) also contemplates the sale from Ramar to Gray of television stations KMYL-LD, Lubbock, Texas (KMYL), KLBB-LD, Lubbock, Texas (KLBB), KXTQ-CD, Lubbock, Texas (KXTQ), and KABI-LD, Snyder, Texas (KABI). Because KMYL and KLBB are both low power stations they do not count toward the television station ownership limits delineated in 47 CFR § 73.3555(b). *See* 47 CFR § 74.732(b). Similarly, as a Class A station KXTQ is exempt from 47 CFR § 73.3555(b)'s ownership limits. *See Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6392 (2000). Lastly, KABI is not relevant to this analysis because it is outside of the Lubbock DMA and, in any event, is a translator station which is not counted for purposes of 47 CFR § 73.3555(b). *See* 47 CFR § 74.732(b).

[5] KLCW Application for Consent to Assignment of Broadcast Station Construction Permit or License, Attachment 18 - Request for Failing Station Waiver, File No. BALCDT-20201020AAW, at 1 (filed October 21, 2020) (KLCW Waiver Request).

[6] *Id.*

[7] 47 CFR § 73.3555, note 7. *See also Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903, 12939, para. 81 (1999) (*Local Ownership Order*), *recon. granted in part*, 16 FCC Rcd 1067 (2001).

[8] *Local Ownership Order*, 14 FCC Rcd at 12938, para. 79.

[9] *See* 47 CFR § 73.3555, note 7.

[10] *Local Ownership Order*, 14 FCC Rcd at 12939, para. 79.

[11] *See* 47 CFR § 73.3555, note 7; *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

[12] *See Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

[13] KLCW Waiver Request at 1-2, 6. Certain ratings and financial information has been submitted to the Commission with a request for confidential treatment under 47 CFR § 0.457(d). A redacted version of the filing is available in the public file.

satisfied.

Second, the Applicants submitted KLCW's financial statements for the years 2017, 2018, and 2019.[14] Staff analysis of these financial statements reveals that KLCW has operated with a negative cash flow in each of the previous three years. Accordingly, we find that the Applicants have satisfied the second prong of the failing station waiver test.

Third, the Applicants maintain that common ownership of the two stations will provide tangible public interest benefits, principally in the form of additional local news programming which, combined with additional resources and investment from Gray, will transform KLCW into a more viable competitor in the Lubbock DMA.[15] Currently, KLCW is the 8th ranked station by all-day audience share in an already small market,[16] and Ramar does not broadcast any originally produced, unique local news on KLCW.[17] Gray plans to integrate KLCW into KCBD's already established local news brand and to add new, original local news to KLCW's programming lineup. Furthermore, Gray intends to focus on airing news on KLCW during time blocks in which no local news airs on KCBD due to KCBD's commitments to air national affiliate programming.[18] As a result, the transaction should lead to more original local news programming than is currently available.[19] Relatedly, the addition of local news to KLCW should benefit local advertisers and businesses. Gray reports that KLCW's local news programming will replace national syndicated programming. This should result in additional local advertising slots in the Lubbock market because national programming typically includes a number of national barter spots sold by the syndicator, whereas, local news only includes local commercial slots.[20] Based on the above, we find that the combined operation of the stations should produce tangible and verifiable public interest benefits. We also believe these proposed public interest benefits outweigh any potential risk of harm to competition and diversity, because they will allow KLCW to become a more viable local voice in the Lubbock DMA.[21] Consequently, the third prong of the failing station waiver test is satisfied.

Fourth, to satisfy the last prong of the waiver standard the Applicants submitted a declaration prepared by Fred Kalil, Vice President of Kalil & Co., Inc. (Kalil), who served as the broker for the sale of Ramar's television stations in the Lubbock market.[22] Kalil is a media brokerage firm with over 40 years of experience, and Mr. Kalil has been involved in thousands of broadcast property transactions. Mr. Kalil's declares that in his professional opinion, the odds of finding an out-of-market buyer for KLCW are "essentially zero" and even if one were found, the sale would be at a severely depressed price.[23] For background, he notes that as a CW affiliate KLCW has never achieved a competitive position in the very

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[14] *Id.* at 2, 7.

[15] *See id.* at 2-4, 9-10.

[16] The Lubbock DMA is the 142nd ranked television market in the United States. *Id.* at 2.

[17] *See id.* at 2-3, 10.

[18] *Id.* at 2-3

[19] *Id.*

[20] *Id.*

[21] *See, e.g.*, *Venture Techs. Grp., LLC, and WNYT-TV, LLC*, Letter Order, 28 FCC Rcd 7992, 7994 (MB 2013) (finding the third prong satisfied where allowing a station to "operate in tandem with a stronger station will help it to become a viable local voice in the market, through a definite improvement in locally produced news").

[22] *See* KLCW Waiver Request at 9-10.

[23] *See id.*

small Lubbock DMA and has earned just over 1% of the total advertising share over the last five years. Given KLCW's low revenues, limited assets and facilities, as well as the fact that all major networks already have a broadcast partner in the Lubbock DMA, Mr. Kalil contends that KLCW is of limited appeal to an out-of-market buyer and is not viable as a standalone full-power station.[24] Indeed, Mr. Kalil marketed Ramar's Lubbock television stations to several out-of-market buyers, but not one expressed interest in acquiring KLCW as a standalone station.[25] Based on this report, we find that Gray is the only reasonably available candidate willing and able to acquire and operate KLCW, and that selling the station to an out-of-market buyer would result in an artificially depressed price.[26] Therefore, the fourth prong of the failing station waiver test is satisfied.

Conclusion. Because the Applicants have satisfied all four prongs of the failing station waiver test, we are persuaded that a grant of a failing station waiver permitting common ownership of KLCW and KCBD is warranted.[27] We note that our findings are limited to the specific facts and circumstances of this case. Furthermore, in light of the above discussion, we find that Gray is fully qualified and conclude that the grant of the unopposed Application would serve the public interest.[28]

ACCORDINGLY, IT IS ORDERED that the request for a failing station waiver of the Local Television Ownership Rule, section 73.3555(b), to permit Gray Television Licensee, LLC, to own and operate both KLCW-TV, Wolfforth, Texas, and KCBD(DT), Lubbock, Texas, **IS GRANTED**. **IT IS FURTHER ORDERED** that the application to assign the licenses of KLCW-TV, Wolfforth, Texas; KMYL-LD, Lubbock, Texas; KLBB-LD, Lubbock, Texas; KXTQ-CD, Lubbock, Texas; and KABI-LD, Snyder, Texas from Ramar Communications, Inc., to Gray Television Licensee, LLC (File No. BALCDT-20201020AAW), **IS GRANTED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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[24] *See id.*

[25] *See id.* at 10.

[26] *See, e.g.*, *Fireweed Communications LLC, and Gray Television Licensee, LLC*, Letter Order, 31 FCC Rcd 6997, 6999-7000 (MB 2016) (finding the fourth prong satisfied where applicant submitted a declaration describing failed efforts to market the station and a broker letter stating that in the broker's professional opinion an "effort to find a qualified out-of-market buyer would either be fruitless or at a very depressed price" because operating the station on a standalone basis was not viable); *Nexstar Broadcasting, Inc., and Estate of Milton Grant*, Letter Order, 29 FCC Rcd 13522, 13524 (MB 2014) (finding the fourth prong satisfied based on, *inter alia*, a broker declaration that detailed unsuccessful attempts to sell a standalone CW affiliate, opined that "the likelihood of finding a purchaser of a standalone CW affiliate is small," and concluded that in the broker's opinion it is unlikely the station "could be sold to an out-of-market buyer on a standalone basis").

[27] *See* 47 CFR § 73.3555, note 7.

[28] *See* 47 U.S.C. § 310(d).