Federal Communications Commission
Washington, D.C. 20554

DA 96-1585

September 20, 1996

The Walt Disney Company
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RE: KCAL-TV, Los Angeles, CA
File No. BTCCT-960603IA

Dear Applicants:

This refers to the above-captioned application to transfer control of Fidelity Television, Inc. (Fidelity), licensee of television station KCAL-TV, Los Angeles, California, from The Walt Disney Company (Disney)[1] to Young Broadcasting of Los Angeles (Young), which is a wholly owned subsidiary of Young Broadcasting, Inc. (YBI). The National Hispanic Media Coalition (NHMC) filed a petition to deny contending that this application should be held in abeyance pending judicial review of the Commission's renewal of KCAL-TV's license; and/or should be denied as contrary to the public interest, because Disney's relationship with YBI violates the Commission's cross-interest policy and results in a undue concentration of media control. The National Broadcasting Company, Inc.'s subsidiary, KNBC-TV, Inc., licensee of KNBC-TV Los Angeles (KNBC), "commented" on the cross-interest implications of this application. Both Young and Disney filed responses. Additionally, Young has a petition pending before the Commission's Cable Services Bureau for a temporary waiver of the Commission's cable

[1] On February 8, 1996, the Commission granted Disney's application to merge with Capital Cities/ABC (CC/ABC). *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841 (1996). Because CC/ABC was the licensee of KABC-TV, Los Angeles, California, whose Grade B service contour overlapped that of KCAL-TV, Disney was directed to file an application for Commission consent to assign the license of KCAL-TV within six months of consummation, pursuant to a temporary waiver of the television duopoly rule, 47 C.F.R. § 73.3555(b). *Id.* at 5902. The instant application, filed within the six month period, is timely.

television/broadcast television cross-ownership rule, 47 C.F.R. § 76.501, because Michael Willner, a director of YBI, also holds cable interests in the Los Angeles market.

Pending Appeal of KCAL's License Renewal

In 1993, NHMC filed a petition to deny Fidelity's application to renew the license for KCAL-TV, alleging violation of the Commission's EEO requirements. After considering NHMC's opposition, the Commission renewed KCAL-TV's license, subject to conditions,[2] and NHMC appealed this decision to the U.S. Court of Appeals for the D.C. Circuit where it is currently pending.[3] NHMC now contends, without citing precedent, that this application should be denied or held in abeyance pending resolution of this matter. Young and Disney both respond that deferring consideration of this transfer application is not necessary to protect NHMC's rights on appeal, nor will such delay serve the public interest. Indeed, it is well-settled that once the Commission has found a licensee qualified for license renewal, an appeal for judicial review will not justify deferring consideration of an application to assign or transfer the license. *Pinelands, Inc.*, 7 FCC Rcd 6058 (1992), *appeal dismissed,* 996 F.2d 386 (D.C. Cir. 1993). Section 402(h) of the Communications Act, of 1934, as amended, explicitly subjects Commission decisions to grant license renewals to judicial review and remand. Because potential legal redress or review by appeal is not precluded, our procedural policy enhances the concept of transferability of licenses, as embodied in Section 310(d) of the Communications Act. *See Pinelands* 7 FCC Rcd at 6062. Therefore, NHMC's pending judicial appeal of KCAL's license renewal does not impede consideration of this transfer application.

Cross-Interest Policy

Disney has disclosed that through its subsidiary CC/ABC, it currently owns 1.5 million shares of YBI Class C non-voting Common Stock, comprising approximately 14.3% of YBI's total equity, and owns warrants to purchase an additional 7,500,000 shares. If Disney converted its non-voting stock into Class A voting stock as is generally permitted,[4] Disney would hold 23.5% of YBI's Class A stock or 5.6% of the total voting shares of YBI. In addition to this ownership interest, Disney supplies programming to KCAL-TV and anticipates that this will continue after transfer to Young. Disney and YBI also report that they share network/affiliate relationships in markets outside of California.

NHMC contends that Disney's interests in two VHF stations in one of the country's largest markets would violate the cross-interest policy and result in an "undue concentration of media control" contrary to the public interest. KNBC "does not oppose the proposed transfer, or

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2 *Fidelity Television, Inc.*, 11 FCC Rcd 6766 (1996).

3 *National Hispanic Media Coalition v. FCC*, No. 96-1236 (D.C. Cir. filed July 5, 1996).

4 But Disney reports that the shares "could not be converted to attributable voting status unless they were sold to a third party" due to a specific condition in YBI's "Class C Common Stock Subscription Agreement" that prevents conversion if it would cause YBI to violate any of the Commission's rules, regulations or policies.

contend that a grant would clearly violate the cross-interest policy" but it submits that the Commission should condition grant of the transfer application on the outcome of its pending attribution rulemaking proceeding and impose specific safeguards designed to ensure the separateness of KABC-TV and KCAL-TV, such as a prohibition on joint program buying or licensing, and separate management, personnel, and advertising sales operations. Both NHMC and KNBC express concern over the fact that Disney will continue to supply programming to KCAL, and that Disney and YBI are involved in network/affiliate relationships outside the Los Angeles market.

In the transfer application, the applicants specifically address the Commission's cross-interest policy, which examines the potential adverse effects on competition and diversity in situations where a party owns an attributable interest in one media outlet and enjoys a "meaningful relationship" with another media outlet serving "substantially the same area." *Reexamination of the Commission's Cross-Interest Policy*, 2 FCC Rcd 3699, 3700 (1989). Disney reports that its equity interest in YBI falls below the 33% non-attributable equity benchmark established in *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd.), *review denied*, FCC 83-235 (May 18, 1983), *aff'd sub nom. Cleveland Television Corp. v. FCC*, 732 F.2d 962 (D.C. Cir. 1984). Furthermore, Disney contends that the Commission has previously evaluated and approved this ownership interest when CC/ABC applied to acquire stations in Toledo, Ohio and Flint, Michigan with service contours that overlapped a Lansing, Michigan station owned by YBI. *Media/Communications Partners Limited Partnership*, 10 FCC Rcd 8116, 8119, n.6 (1995). Disney reports that it has no right to representation on YBI's Board of Directors, and 76.8% of YBI's outstanding voting rights are owned by Adam and Vincent Young, the father and son team that founded YBI over a decade ago. Although both stations are located in the Los Angeles DMA, Disney contends that the highly competitive and diverse Los Angeles DMA, second largest in the country, and the distinct "personalities" of each station, KABC-TV as a west coast network 'flagship' and KCAL-TV as an independently programmed station emphasizing local news and sports, will minimize any potential effect on competition and diversity. While Disney anticipates continuing to supply programming to KCAL-TV, this relationship is characterized as similar to programming relationships Disney shares with other stations throughout the country. Pledging that each station has, and will continue to have, separate management and staffs operated without any mutual relationships or ties, Disney and Young conclude that the proposed transaction will not violate the Commission's cross-interest policy.

In a subsequent amendment to the application, Disney has committed to sell its ownership interest in YBI. Disney has submitted a declaration signed by Laurence J. Shapiro, as Executive Counsel of Disney, dated August 8, 1996 and amended August 9, 1996, that confirms Disney's intent to enter into a binding agreement to sell its interests in YBI by November 9, 1996 and to close the transaction by February 9, 1997.[5] Young has also filed a copy of an agreement dated September

[5] This declaration followed Disney's July 30, 1996 letter to the Department of Justice (DOJ) confirming Disney's intent to sell its interest in YBI and DOJ's intent to withdraw a request for additional information issued in connection with DOJ's evaluation of Disney's Hart-Scott-Rodino Notification and Report form regarding the transaction as initially proposed by Disney and YBI.

3, 1996 whereby Disney agreed to sell all its shares of Class C non-voting Common Stock and warrants to YBI as part of YBI's planned public offering.[6]

The cross-interest policy was developed to scrutinize relationships not proscribed by the multiple ownership rules but which nevertheless trigger Commission concerns for full competition and diversity of viewpoint. *See Minnesota Broadcasting Corp.*, 13 F.C.C. 672 (1949); *United Community Enterprises, Inc.*, 37 F.C.C. 2d 953 (Rev. Bd. 1972). Although the policy is currently the subject of a rulemaking proceeding, *Review of the Commission's Regulations Governing Attribution of Broadcast Interests,* 10 FCC Rcd 3606, 3642-53 (1995), until modified, we shall abide by our case-by-case approach for addressing cross-interest situations. *Telemundo Group, Inc., Debtor-In-Possession,* 10 FCC Rcd 1104, 1107 (1995). As originally contemplated, this application proposed that Disney would hold attributable interests in Los Angeles stations KABC-TV, KABC(AM), KLOS(FM) and KMPC(AM),[7] while holding a non-attributable equity interest in KCAL-TV, a station in the same market. Additionally, Disney intends to provide some programming to KCAL-TV, which will continue to operate as an independent station, and maintain network/affiliate relationships with YBI in other markets outside of Los Angeles. While Disney's non-attributable, non-voting equity interest is below the 33% benchmark established in *Cleveland Television, Corp.*, that equity interest coupled with the other facts and circumstances present in the instant transaction raise greater concerns about the potential effect on competition and diversity than those considered in *Media/Communications Partners Limited Partnership*, 10 FCC Rcd 8116 at 8119, n.6. But even if we were to conclude that the cross-interest policy were violated here, that determination would not pose a bar to grant of this application because of the temporary nature of the relationships between Disney and YBI. Allowing those relationships to exist for a short period of time will not adversely affect competition or diversity in the highly competitive and well-served Los Angeles market. There is no showing that KABC-TV and KCAL-TV will compete other than at arm's-length either prior to or after Disney's divestiture of its equity interest in YBI. Similarly, there is no indication that YBI has in any way relinquished its unfettered right to either accept or reject any programming that may be proffered by Disney. Moreover, we have no reason to question the sincerity of Disney's and Young's commitments that KABC-TV and KCAL-TV will continue to be operated by independent station staffs and management without any mutual relationships or ties. Accordingly, we do not believe that further conditioning this transaction as suggested by KNBC is appropriate.

Cable Television/Broadcast Television Cross-Ownership

Michael Willner, a director of YBI, is also the President and Chief Executive Officer of Insight Communications Company, L.P. (Insight), which operates several cable systems, including systems located in the Los Angeles market. Section 76.501 of the Commission's rules generally

[6] While no date was set for the public offering, the agreement is subject to automatic termination if the public offering has not occurred by October 7, 1996, extendable to October 22, 1996, and is subject to minimum price limitations.

[7] Pursuant to a permanent waiver of the Commission's one-to-a-market rule, Section 73.3555(b). *Capital Cities/ABC Inc., supra.*

prohibits ownership or control of a television station whose Grade B contour overlaps the service area of a commonly-owned cable system. However, YBI has requested from the Commission's Cable Services Bureau a temporary 18-month waiver of Section 76.501 for Insight's interests in the Los Angeles market (File No. CSR-4801-X); and a permanent waiver of Section 76.501 for Insight's interests in a Norfolk, Virginia cable system that overlaps the Grade B contour of YBI's WRIC-TV, Petersburg Virginia (File No. CSR-4781-X). Further, YBI states that unless Insight no longer holds cable systems within the Grade B contour of KCAL or such cable interests are no longer in conflict with applicable Commission rules, "Mr. Willner will resign his position as a member of the YBI Board of Directors prior to the date YBI consummates its acquisition of KCAL-TV." Under these circumstances, we will grant this application subject to YBI's compliance with Section 76.501 prior to consummation of the instant transaction.

Accordingly, the National Hispanic Media Coalition's Petition to Deny and the National Broadcasting Company's "Comments" **ARE DENIED**. As the applicants are otherwise qualified in all respects and grant of the application would be in the public interest, convenience and necessity, the application to transfer control of Fidelity Television, Inc., the licensee of KCAL-TV, Los Angeles, California from The Walt Disney Company to Young Broadcasting of Los Angeles, Inc. **IS GRANTED** subject to the conditions that (1) The Walt Disney Company will have, as represented, disposed of its interests in Young Broadcasting, Inc. by February 9, 1997; and (2) before consummation, Young Broadcasting, Inc. will certify that it has complied with the Commission's cable television/broadcast television cross-ownership rule, 47 C.F.R. § 76.501, either by submitting that Mr. Willner has resigned from the Board of Directors or that a waiver has been issued. Grant of this application is effective on this date.

Sincerely,

Barbara A Kreisman
Chief, Video Services Division
Mass Media Bureau

cc: National Broadcasting Company, Inc.
National Hispanic Media Coalition