**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In re Applications of<br><br>**KNSD License, Inc.**<br>(Assignor)<br><br>and<br><br>**Outlet Broadcasting Company, Inc.**<br>(Assignee)<br><br>For Assignment of Licenses of<br>Station KNSD(TV), San Diego,<br>California and Station KBNT-LP,<br>La Jolla, California | File Nos. BALCT-960606IA<br>BALTTL-960606IB |

## MEMORANDUM OPINION AND ORDER

**Adopted:** November 7, 1996 **Released:** November 7, 1996

**By the Chief, Mass Media Bureau:**

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the unopposed applications to assign the licenses of KNSD(TV), Channel 39, San Diego, California and KBNT-LP, Channel 62, La Jolla, California from KNSD License, Inc., a subsidiary of New World Television, Inc., to Outlet Broadcasting Company, Inc. (Outlet Broadcasting), a subsidiary of the National Broadcasting Company (NBC).[1] NBC is also the licensee of KNBC(TV), Channel 4, Los Angeles, California. Because the Grade B contours of KNSD(TV), San Diego and KNBC(TV), Los Angeles overlap, NBC requests a permanent waiver of the Commission's duopoly rule, Section 73.3555(b), to allow common ownership of the two stations. In the alternative, NBC seeks a conditional waiver of the duopoly rule, subject to the outcome of the pending broadcast television ownership rulemaking concerning the duopoly and other multiple ownership rules. *See Review of the Commission's Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making*, FCC 96-438 (released

[1] Outlet Broadcasting is a wholly owned subsidiary of Outlet Communications, Inc., which is a wholly owned subsidiary of NBC.

Nov. 7, 1996) *(Television Ownership Second Further Notice)*.[2]

2. ***Duopoly Waiver Request.*** NBC contends that grant of its requested duopoly waiver would be consistent with Commission precedent and would serve the public interest. More specifically, NBC presents four primary arguments to support its waiver request.

3. First, NBC asserts that the degree of overlap between KNSD(TV), San Diego and KNBC(TV), Los Angeles is well within the range of Grade B overlaps that have been permitted in several previous Commission duopoly decisions. According to NBC's engineering study, the predicted Grade B overlap encompasses 2039 square kilometers, representing 5.6 percent and 20.5 percent of the land area within the KNBC(TV) and KNSD(TV) Grade B contours, respectively, and 376,612 people, representing 2.6 percent and 14.9 percent of the populations within the Grade B contours of KNBC(TV) and KNSD(TV), respectively.[3]

4. Second, NBC identifies a large number of television stations and other media available to residents of the Los Angeles and San Diego markets generally and to residents of the KNSD/KNBC overlap area specifically. A total of 21 television stations are licensed to communities within the Los Angeles Designated Market Area (DMA), including 17 commercial stations. An additional eight stations (of which seven are commercial) are licensed to communities within the San Diego DMA. According to NBC's engineering study, a total of 27 television stations, in addition to KNBC(TV) and KNSD(TV), serve all or part of the overlap area with at least a Grade B signal, and over 90 percent of the overlap area receives a Grade B signal from at least 12 other television stations. NBC asserts that this number of broadcast television stations serving at least a portion of the overlap area is comparable to other cases in which the Commission has approved duopoly waivers. Moreover, NBC notes the high level of cable penetration in the Los Angeles and San Diego DMAs, the considerable number of radio stations licensed in these markets, and the existence of several daily newspapers in the area.

5. Third, NBC asserts that KNBC(TV) and KNSD(TV) serve separate and distinct markets (the second and 27th largest DMAs, respectively, in the United States), and are located in demographically different cities with disparate service needs. To demonstrate this market independence, NBC's submissions include a study showing that KNBC(TV) and KNSD(TV) have separate viewing audiences and do not directly compete with each other for viewers. NBC additionally states that the independence of KNBC(TV) and KNSD(TV) will be maintained; each station will have its own general manager and will be run autonomously, with separate news and programming operations.

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[2] In a September 24, 1996 amendment to its application, NBC expressed its commitment to proceed pursuant to the requirements of the rules and policies adopted in this pending television ownership rulemaking. Specifically, NBC has committed to filing an application for Commission consent to sell either KNSD(TV) or KNBC(TV) within six months from the release of the rulemaking order, should divestiture be required as a result of the rules adopted in such rulemaking.

[3] The predicted Grade A contours of the two stations do not overlap.

6. Fourth. NBC contends that permitting common ownership of KNBC(TV) and KNSD(TV) will benefit the viewers of each station as well as those in the overlap area. Specifically, these viewers will, according to NBC, benefit from its commitment to relocate and expand its Orange County bureau, to increase the amount of locally originated news coverage by KNSD(TV), to construct an additional microwave link between KNBC(TV) and KNSD(TV), to institute a minority internship program at KNSD(TV), and to increase coverage of particular issues of interest to both the Los Angeles and San Diego markets, especially education.

7. ***Discussion***. The television duopoly rule, 47 C.F.R. § 73.3555(b), generally prohibits the common ownership of television stations whose Grade B contours overlap. The objective of the duopoly rule is to promote diversity in programming sources and viewpoints and to prevent an undue concentration of economic power by fostering economic competition in broadcasting. *Multiple Ownership Rules*, 22 FCC 2d 306, 307 (1970), *recon. granted in part*, 28 FCC 2d 662 (1971). In adopting the duopoly rule's fixed standard of a prohibited overlap of Grade B service contours, the Commission expressly acknowledged the need for "flexibility" in that rule's application, noting that waivers should be granted where rigid conformance to the rule would be "inappropriate." *Multiple Ownership of Standard, FM and Television Broadcast Stations*, 45 FCC 1476, 1479 n.12, *recon. granted in part*, 3 RR 2d 1554 (1964). The Commission has accordingly developed a set of factors to be considered when evaluating an applicant's request for permanent or temporary waivers of the duopoly rule, including the extent of the overlap, the number of media voices available in the overlap area, the distinctiveness of the respective markets, the independence of the stations' operations, and the concentration of economic power resulting from the combination. Assessment of a temporary waiver request relies on the same factors considered for a permanent waiver, but these factors may be accorded different weight and may be analyzed differently due to the limited duration of the proposed combination.[4] After weighing these various factors, the Commission considers whether the public interest benefits that would be gained from waiving the duopoly rule outweigh any detrimental effects that would result from the overlap.[5] As with any waiver, it will only be granted if the Commission concludes that the waiver is in the public interest.

8. The Commission is currently reexamining its broadcast television ownership policies, including the duopoly rule. In January 1995, the Commission proposed a new analytical framework within which to evaluate our broadcast television ownership rules. *See Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524 (1995) (*Television Ownership Further Notice*). Subsequent to the release of that *Television Ownership Further Notice*, Congress directed the Commission to

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[4] *See, e.g., John H. Phipps, Inc.*, FCC 96-395 at ¶ 12 (released Sept. 27, 1996); *Stockholders of CBS Inc.*, 11 FCC Rcd 3733, 3755 (1995).

[5] *See, e.g., Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5863 (1996); *Stockholders of CBS Inc.*, 11 FCC Rcd 3733, 3759 (1995); *Iowa State University Broadcasting Corporation*, 9 FCC Rcd 481, 487-488 (1993), *aff'd sub nom., Iowans for WOI-TV, Inc. v. FCC*, 50 F.3d 1096 (D.C. Cir. 1995); *H & C Communications, Inc.*, 9 FCC Rcd 144, 146 (1993).

conduct a rulemaking proceeding to determine whether to retain, modify or eliminate existing limitations on the number of television stations that an entity may control within the same television market. *See* Section 202(c) of Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996) (Telecomm Act).[6] In response to these Congressional directives in the Telecomm Act and to update the record, the Commission recently released the *Television Ownership Second Further Notice*. In that *Second Further Notice*, the Commission tentatively concluded to authorize common ownership of television stations that are in separate DMAs and whose Grade A contours do not overlap. *Television Ownership Second Further Notice* at ¶ 57. Common ownership of KNSD(TV) and KNBC(TV) by NBC would be authorized under the rule proposed in the *Television Ownership Second Further Notice*, as the two stations are in separate DMAs and their Grade A contours do not overlap.

9. The Commission stated in the *Television Ownership Second Further Notice* that it will be inclined, during the pendency of the television ownership proceeding, to grant duopoly waivers involving stations in different DMAs with no overlapping Grade A contours, conditioned on coming into compliance with the outcome of the proceeding within six months of its conclusion. Commission staff, moreover, now has delegated authority to act on applications seeking waivers consistent with this interim policy. *See id.* at ¶ 57. Given the clearly articulated policy in the *Television Ownership Second Further Notice*, we do not believe that an unconditional grant of NBC's permanent duopoly waiver request is appropriate. We conclude, however, that grant of a conditional waiver of the duopoly rule, subject to the outcome of the pending television ownership rulemaking, is justified. NBC's alternative temporary waiver request is consistent with the interim policy set forth in the *Television Ownership Second Further Notice*, and our examination of NBC's showings, as summarized above, reveals nothing suggesting that the Commission should not follow the established interim policy in this case.

10. Having determined that the applicants are qualified in all respects, we find that grant of the application to assign the license of KBNT-LP to Outlet Broadcasting will serve the public interest, convenience and necessity. We also find that grant of the application to assign the license of KNSD(TV) to Outlet Broadcasting, conditioned upon the resolution of the pending broadcast television ownership rulemaking, will serve the public interest, convenience and necessity.

11. Accordingly, IT IS ORDERED, That the request for permanent waiver of the duopoly rule, Section 73.3555(b) of the Commission's rules, to permit common ownership of stations KNSD(TV) and KNBC(TV) IS DENIED.

12. IT IS FURTHER ORDERED, That the request for conditional waiver of the duopoly rule IS GRANTED, subject to the outcome of the Commission's pending broadcast television

[6] In addition to this specific directive to review the television duopoly rule, Congress mandated in the Telecomm Act that the Commission conduct a biennial review of all its broadcast ownership rules. *See* Section 202(h) of the Telecomm Act.

ownership rulemaking (MM Docket Nos. 91-221 and 87-8). Should divestiture be required as a result of that proceeding, the licensee is directed to file, within six months from the release of the final order in MM Docket Nos. 91-221 and 87-8, an application for Commission consent to dispose of such station as would be necessary for the National Broadcasting Company to come into compliance with the rules as provided in the final order.

13. IT IS FURTHER ORDERED, That the applications to assign the licenses of KBNT-LP and KNSD(TV) from KNSD License, Inc. to Outlet Broadcasting Company, Inc. ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau