

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

In re Applications of)	
)	
SILENT MINORITY GROUP, INC.)	
(Assignor))	
)	
and)	File Nos. BAPCT-960517ID-IE
)	
COMCORP OF BRYAN LICENSE CORP.)	
(Assignee))	
)	
For Consent to the Assignment)	
of the Construction Permit of Station)	
KYLE(TV), Bryan, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: November 19, 1996

Released: November 19, 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 above-captioned applications for the assignment of the construction permit¹ of station KYLE(TV) (WBN), Channel 28, Bryan, Texas, from Silent Minority Group, Inc. (SMG) to ComCorp of Bryan License Corp. (ComCorp-Bryan), which is indirectly controlled by Thomas R. Galloway, Sr.² Mr. Galloway also owns 100% of the stock of ComCorp of Texas License Corp., licensee of station KWKT-TV (FOX), Channel 44, Waco, Texas. The Grade B contours of stations KYLE(TV) and KWKT-TV overlap in contravention of Section 73.3555(b) of the Commission's Rules. However, ComCorp-Bryan intends to operate KYLE(TV) as a satellite of KWKT-TV, rebroadcasting its FOX programming, and requests grant of the application pursuant to the exception to the duopoly prohibition for satellite operation as set forth in Note 5 of Section 73.3555. The satellite proposal and assignment applications are unopposed.

¹On May 8, 1996, Silent Minority Group, Inc. filed a license application (BLCT-960508KG), to cover the construction permit, which was granted on November 8, 1996.

²The assignee of the Form 314 assignment application, ComCorp of Bryan, Inc., concurrently filed a pro forma application (Form 316) to assign the license to a wholly-owned subsidiary corporation, ComCorp of Bryan License Corp.

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2. In support of its request, ComCorp-Bryan contends that the operation of KYLE(TV) as a satellite of KWKT-TV meets the three criteria established by the Commission in *Television Satellite Stations Review of Policy and Rules*, 6 FCC Rcd 4212 (1991), *on reconsideration Second Further Notice of Proposed Rule Making* in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991), *on further reconsideration Review of the Commission's Regulations Governing Television Broadcasting*, 10 FCC Rcd 3524 (1995). Pursuant to that policy, an applicant for satellite status is entitled to a presumption that the proposed operation is in the public interest if it meets the following three criteria: (1) there is no City Grade contour 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 proposed satellite as a full-service station. *Television Satellite Stations*, 6 FCC Rcd at 4213-14. Applications meeting this criteria, when un rebutted, will be viewed favorably by the Commission. *Id.* at 4214.

3. With respect to the first criterion, a review of the authorized facilities of the stations demonstrates that the City Grade contours of KYLE(TV) and KWKT-TV do not overlap. With respect to the second criterion, an applicant can use two different tests to demonstrate that an area is underserved. Under the "transmission test," a proposed satellite community of license is considered underserved if there are two or fewer full service stations already licensed to it. *Id.* at 4215. Our records show that only one other full-service television station is licensed to Bryan, Texas, KBTX-TV, which is also a satellite. Therefore, ComCorp-Bryan's proposal meets the first two criteria for the satellite presumption.

4. As to the third criterion, an applicant must demonstrate that no alternative operator is ready and able to construct or purchase and operate the proposed satellite as a full service station. In order to demonstrate its satisfaction of the third criterion, ComCorp-Bryan submits the declaration of Rodger B. Watkins, president and a majority stockholder of SMG. Watkins has owned and managed stations in the Bryan-College Station area for 35 years. According to Watkins, although SMG commenced operation of KYLE(TV) on a stand-alone basis, it has been a financial struggle, with the station losing money each month. Watkins asserts that SMG has exhausted its financial resources; and, while it has explored numerous alternatives for raising capital, including banks and investors, it has been unable to produce additional funds to finance the operation of the station. Additionally, Watkins states that SMG attempted to sell the station on a stand-alone basis, but was unable. Over a period of approximately one year, Watkins avers, SMG had discussions with at least eleven parties, but none of them made an offer to purchase the station. Watkins also asserts that, although SMG contacted two brokers concerning the sale of KYLE(TV), neither expressed an interest in listing the station.

5. ComCorp-Bryan also submits letters from one of the brokers, Bill Whitley, president of Whitley Media, who has fifteen years of experience in the broadcast industry. When approached by Watkins regarding the status and potential sale of KYLE(TV), Whitley states that he was not enthusiastic about listing the station or trying to sell it on a stand-alone basis. He indicated to Watkins his belief that a sale of KYLE-TV as a stand-alone facility was unlikely. Further, during the time that he was aware of the station being on the market, he found no

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expression of interest in the station as a stand-alone operation. Based on the information provided, we believe that the applicant has adequately demonstrated the unlikelihood of finding an alternative operator willing and able to operate KYLE(TV) as a stand-alone facility. See *New England Television, Inc.*, 10 FCC Rcd 7241 (1995). Thus, we conclude that the applicant has satisfied the third criterion of the satellite presumption.

6. For the foregoing reasons, we find that the operation of KYLE(TV) as a satellite of KWKT-TV is consistent with our current satellite policy and is in the public interest. However, in a recent *Notice of Proposed Rulemaking*, the Commission has undertaken a reexamination of its broadcast television ownership policies, including the continued exemption of satellite stations from broadcast ownership restrictions. See *Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91-221 and 87-8, FCC 96-438 (released November 7, 1996). Accordingly, we will condition the grant of this satellite waiver on whatever action is taken in that proceeding. In view of the foregoing, and having determined that the applicant is qualified in all respects, we find that the assignment of the construction permit held by SMG to ComCorp-Bryan will serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, that the request for operation of station KYLE(TV), Bryan, Texas, pursuant to the satellite exception to Section 73.3555(b) of the Commission's Rules, IS GRANTED, subject to the outcome of the Commission's pending broadcast television ownership rulemaking in MM Docket Nos. 91-221 and 87-8.

8. IT IS FURTHER ORDERED, that the above-captioned applications (BAPCT-960517ID-IE) for assignment of the construction permit for station KYLE(TV) from Silent Minority Group, Inc. to ComCorp of Bryan License Corp., ARE GRANTED.

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Roy J. Stewart
Chief, Mass Media Bureau