

and the waiver request are unopposed. For the reasons set forth below, we grant both the waiver request and the assignment application.

BACKGROUND

2. South Jersey is currently the licensee of UHF television station WMGM(TV) (NBC affiliate), Wildwood, New Jersey; WMGM(FM), Atlantic City, New Jersey; WOND(AM), Pleasantville, New Jersey; and WTKU(FM), Ocean City, New Jersey. In 1981, the Commission approved a one-to-a-market waiver permitting South Jersey to own WMGM-TV, WMGM(FM) and WOND(AM).⁴ Subsequently, in 1995, the Commission approved another one-to-a-market waiver permitting South Jersey to acquire WTKU(FM) (formerly WKTU(FM)).⁵ South Jersey now seeks an additional permanent waiver to acquire station WUSS(AM).⁶

3. South Jersey bases its waiver request on the one-to-a-market waiver standards adopted in the Second Report and Order in MM Docket 87-7, 4 FCC Rcd 1741 (1989) ("Second Report and Order"), recon. granted in part and denied in part, 4 FCC Rcd 6489 (1989) ("Second Report and Order Recon."). Under these standards, the Commission will presume that waiver of the rule will serve the public interest in cases involving stations serving the top 25 markets where at least 30 separately owned, operated and controlled stations will remain after the proposed combination ("top 25 market/30 voice standard").⁷ See 47 C.F.R. § 73.3555, n. 7. The Commission also makes this public interest presumption in cases involving "failed" broadcast stations (stations that have not been operating for a substantial period of time, or that are involved in bankruptcy proceedings). Id. Other waiver requests are evaluated on a more rigorous case-by-case basis, as set forth in the Second Report and Order.

4. We review South Jersey's waiver request under the case-by-case standard because the proposed transaction involves the common ownership of more than one same service radio station in the same market and, therefore, as explained in paragraph 11, infra, invokes local radio ownership limits. See In re Revision of Radio Rules and Policies, 7 FCC Rcd 6387, 6394, n. 40 (1992). Under the case-by-case standard, we make a public interest determination based upon

⁴ See Jersey Broadcasting Corp., 85 FCC 2d 654 (1981), recon. denied, 89 FCC 2d 984 (1982).

⁵ See Atlantic Morris Broadcasting, Inc. ("Atlantic Morris"), 10 FCC Rcd 9495 (1995).

⁶ Although South Jersey contends that a waiver is not necessary as WUSS(AM)'s community of license, Atlantic City, is not entirely encompassed by the Grade A signal contour of WMGM-TV, we note that the only portion of Atlantic City's corporate boundaries not covered by WMGM-TV's Grade A contour is a very small area consisting of water and an uninhabited wildlife preserve. Because the entire listening population of Atlantic City is encompassed by WMGM-TV's Grade A contour, we believe that application of our case-by-case waiver criteria is appropriate in this instance.

⁷ The Commission has been directed to "extend its [one-to-a-market] waiver policy to any of the top 50 markets, consistent with the public interest, convenience, and necessity." See Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(d), 110 Stat. 56 (1996) ("Telecom Act"). A proposal to implement this extension of our waiver policy is pending. Second Further Notice of Proposed Rulemaking in MM Docket Nos. 91-221 and 87-8, FCC 96-438 (released November 7, 1996) at para. 66.

the following criteria: (1) the potential public service benefits of joint operation of the facilities such as the economies of scale, cost savings and programming and service benefits; (2) the types of facilities involved; (3) the number of media outlets owned by the applicant in the relevant market; (4) the financial difficulties of the stations involved; (5) the nature of the relevant market in light of the level of competition and diversity after the joint operation is implemented. See Second Report and Order, 4 FCC Rcd at 1753-54. South Jersey addresses each of the case-by-case factors in its pleadings.

5. **Public Service Benefits.** South Jersey contends that its acquisition of a bankrupt and silent station will benefit innocent creditors of the former licensee of WUSS(AM), James Cuffee. South Jersey also contends that the proposed combination of WUSS(AM), WOND(AM), WMGM(FM), WTKU(FM), and WMGM-TV will create efficiencies by combining management personnel, as well as news, programming and production staffs, with savings of \$6,000 per month. South Jersey states that additional savings will be realized by consolidating the transmitter site of WUSS(AM) with that of WOND(AM),⁸ as well as by consolidating sales offices, sharing equipment, and securing volume discounts on purchases of supplies and programming services. Station WUSS(AM) would relocate its studio and business office to South Jersey's existing headquarters, thus reducing the station's expenses for rent, utilities, audience surveys, transportation, dues and subscriptions and other miscellaneous items by over \$5,000 per month. In total, South Jersey projects savings of approximately \$11,000 per month, or \$132,000 per year, as a result of its acquisition of WUSS(AM).

6. South Jersey asserts that the savings achieved as a result of its acquisition of WUSS(AM) will result in public service and programming benefits made possible by returning WUSS(AM) to the air and providing public affairs programming over WUSS(AM). WUSS(AM)'s public affairs programming would consist of news programs, weather reports (including marine weather), traffic reports, daily local public service announcements, and regularly scheduled public affairs programming. South Jersey states that after the proposed sale, WUSS(AM) would have access to South Jersey's established radio and television news departments, which focus on the gathering and presentation of local news. South Jersey also states that WUSS(AM) would benefit from the company's experience in the local employment market, particularly South Jersey's access to recruitment sources and knowledge of hiring conditions.

7. **Types of Facilities.** South Jersey submits that WUSS(AM) is a Class C AM station operating on 1490 kHz with 290 watts. Station WOND(AM) is a Class C AM facility which operates non-directionally on 1400 kHz with a full-time power of 1,000 watts. Station WTKU(FM) is a Class A FM station operating on 98.3 MHz with 3.0 kw effective radiated power ("ERP") at 100 meters HAAT (height above average terrain). Station WMGM(FM) is a Class B FM station on 103.7 MHz with 50 kw ERP at 106 meters HAAT. WMGM-TV is a UHF station operating on channel 40 with 741 kw ERP (visual) from 128 meters HAAT. South Jersey contends that the proposed combination of facilities is comparable to others in the area. South Jersey asserts that since there are 11 AM stations and 19 FM stations with comparable

⁸ See File No. BP-961031AB.

technical facilities in the Atlantic-Cape May-Cumberland county ("Tri-County Area") radio market, there is no danger that South Jersey will dominate that market. Further, South Jersey states that its television station, WMGM-TV, is a UHF station like 14 other UHF competitors in the Philadelphia DMA, competing with four more powerful VHF television stations.

8. *Other Media Outlets.* South Jersey reports that it owns WOND(AM), Pleasantville, New Jersey; WMGM(FM), Atlantic City, New Jersey; WTKU(FM), Ocean City, New Jersey; and WMGM-TV, Wildwood, New Jersey.⁹ South Jersey also reports that it is the permittee of low-power television station, WO7CE, Atlantic City, New Jersey. South Jersey has no newspaper or cable television interests.

9. *Financial Condition.* Station WUSS(AM) is bankrupt and has been off the air since February 28, 1996. Furthermore, South Jersey states that WUSS(AM) has lost its transmitter site lease. South Jersey asserts that pursuant to the Communications Act of 1934, as amended by the Telecom Act, WUSS(AM)'s license will be revoked on February 28, 1997 by operation of law if the station does not return to the air by that time.¹⁰ South Jersey contends that it now offers a viable means of returning WUSS(AM) to the air.

10. *Competition and Diversity.* The final factor is the nature of the relevant market in light of the Commission's concerns about diversity and competition. South Jersey asserts that the Philadelphia DMA, which is the fourth largest DMA in the country, consists of 19 television stations, including WMGM-TV, which are licensed to 18 separate owners. With respect to radio, South Jersey contends that there are currently 30 radio stations (11 AM and 19 FM) licensed within the Tri-County Area, including WUSS(AM), WOND(AM), WMGM(FM) and WTKU(FM), with 19 separate owners.¹¹ South Jersey presents this alternative showing, based on the Tri-County Area radio market rather than the Philadelphia television metro market, because all of the radio stations involved in the present transaction are licensed to smaller communities that fall outside the Philadelphia television metro market and the principal community contours of the radio stations involved do not reach that metro market.¹² Thus, considering radio stations licensed within the Tri-County Area and television stations within the Philadelphia DMA, there are a total of 49 broadcast stations with 37 different licensees. South Jersey further submits that cable penetration is 73.3% in the Philadelphia DMA and 78.3% in the Tri-County Area, and that 81.7% of the households in the Philadelphia DMA are equipped with

⁹ South Jersey states that it also owns WONZ(AM), Hammonton, New Jersey but states that WONZ(AM) is not a part of the one-to-a-market combination under consideration because the relevant signals of WONZ(AM) and of South Jersey's other stations do not overlap. Additionally, the 2 mV/m contour of WONZ(AM) does not encompass WMGM-TV's community of license (Wildwood, New Jersey) and the Grade A contour of WMGM-TV does not encompass WONZ (AM)'s community of license (Hammonton, New Jersey).

¹⁰ See 47 U.S.C. § 312(g).

¹¹ According to South Jersey, listeners in the Tri-County Area also receive 13 FM and 3 AM stations which are licensed outside of the Tri-County Area, but within the Philadelphia television metro market.

¹² Typically, we will consider the relevant television metro market for radio stations and the relevant DMA for television stations. See Second Report and Order, 4 FCC Rcd at 1760, n. 101.

VCR machines. South Jersey also submits that there are 3 locally published daily newspapers and 15 locally published weekly newspapers in the Tri-County Area. Numerous other daily newspapers published outside the Tri-County Area are also sold within these counties, such as the Philadelphia Inquirer, the Philadelphia Daily News, and the New York Times.

DISCUSSION

11. We turn first to South Jersey's compliance with our local radio ownership rules. South Jersey has submitted data to indicate that the Tri-County Area radio market contains 30 stations. Under our rules, in a radio market with 30-44 commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service. See 47 C.F.R. Section 73.3555(a)(1)(ii), as amended by Broadcast Radio Ownership, FCC 96-90 (released March 8, 1996). South Jersey's proposal to own, operate, or control four commercial radio stations, two FM and two AM, therefore complies with our numerical local radio ownership limits.

12. Turning to the substance of South Jersey's one-to-a-market waiver request, we note initially that as in Atlantic Morris, where we granted South Jersey's request for a one-to-a-market-waiver in connection with its acquisition of WTKU(FM), we find reasonable South Jersey's methodology of counting only those radio stations in the Tri-County Area radio market for the purpose of determining "voices." See Atlantic Morris, 10 FCC Rcd at 9497. This treatment is consistent with past Commission decisions in which we have accepted alternative methods for determining the number of relevant "voices" when the relevant Area of Dominant Influence (the previous television market measurement device employed by the Commission prior to the use of DMAs) was very large but the stations involved in a transaction competed only in a relatively small local community. Glendive Broadcasting Corporation, 10 FCC Rcd 2708, 2711 (1994); Duane J. Polich, 4 FCC Rcd 5596, 5597 (1989).

13. In the past, the Commission has held that significant cost savings and economies of scale are "precisely the type of public interest benefit from common station ownership which [the Commission] envisioned as warranting a waiver of the one-to-a-market rule." Great American Television and Radio Co., Inc., 4 FCC Rcd 6347, 6349 (1989). South Jersey demonstrates that common ownership of WUSS(AM), WOND(AM), WMGM(FM), WTKU(FM), and WMGM-TV will create efficiencies resulting in significant cost savings and the potential for enhanced programming and service benefits. In particular, the company will save approximately \$132,000 annually and will use this money to enhance WUSS(AM)'s public affairs programming. Further, after the consummation of the transaction, WUSS(AM) will have access to the local news gathering abilities of South Jersey's other radio and television stations. Finally, the station to be acquired by South Jersey, WUSS(AM), is currently bankrupt and silent. We are persuaded that common ownership of WUSS(AM), WTKU(FM), WOND(AM), WMGM(FM), and WMGM-TV would serve the public interest by returning a bankrupt and silent station to the air.


14. With respect to the types of facilities involved, the Commission's "concern with the types of facilities emerging under the authority of a one-to-a-market waiver reflects our interest in assessing the potential impact of a proposed combination of stations in a given market in order that we might predict and avoid any significant adverse effect on diversity or competition from

too powerful a combination." Great American Television and Radio Co., Inc., 4 FCC Rcd 6347, 6349-50 (1989). Regarding South Jersey's media holdings, we note that South Jersey would own 2 AM stations and 2 FM stations, in addition to WMGM-TV, a UHF station. Nevertheless, we find that the proposed combination would not create undue concentration of ownership and control in the Tri-County Area. The Tri-County Area, which is located within the Philadelphia DMA, is highly competitive, both in terms of the number of broadcast stations and the relevant market shares of the stations involved in this transaction.¹³ Based on South Jersey's showing, 30 radio stations are licensed to communities within the Tri-County Area. Further, the Tri-County Area is served by 19 television stations from within the Philadelphia DMA. Following the proposed acquisition of WUSS(AM), those 49 broadcast outlets will be owned and operated by 36 separate entities. Other "voices" in the Tri-County Area are also plentiful, with at least three locally published daily newspapers, 15 locally published weekly newspapers, numerous non-local major daily newspapers and cable television, which has a penetration rate of 78.3 percent.

15. We believe that the applicant has made a persuasive traditional showing in support of a permanent waiver. We conclude, based on the record, that granting a permanent waiver will not unduly affect competition or diversity in the Tri-County Area radio market or the Philadelphia DMA. These markets are both diverse and highly competitive, and South Jersey's ownership of a UHF television station, two FM stations and two AM stations constitutes a level of cross-service ownership within that permitted even under one-to-a-market waiver cases decided before the substantial relaxation of radio ownership limits effected by the Telecom Act. See, e.g., Louis C. DeArias, 11 FCC Rcd at 3666 (2 AM-2 FM-VHF combination). Under our revised local radio ownership rules, South Jersey has demonstrated that it would be entitled to hold the licenses for at least seven commercial radio stations. While South Jersey's commonly-owned facilities will be significant in technical terms, comparable competing facilities do exist. Moreover, South Jersey has demonstrated that there are economic efficiencies and program service benefits to be gained that support grant of a permanent waiver.

16. Accordingly, IT IS ORDERED, that the request for a waiver of the Commission's one-to-a-market rule, 47 C.F.R. §73.3555(c), IS GRANTED, and having found the parties thereto otherwise qualified, the application for assignment of license (BAL-960710GH) of WUSS(AM) Atlantic City, New Jersey, from Allan B. Mendelsohn, Trustee to South Jersey Radio, Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Roy J. Stewart
Chief, Mass Media Bureau

¹³ As South Jersey shows, in the Spring 1996 Arbitron "Target Listener Trends, Persons 12+, Monday-Sunday, 6 a.m.-midnight," for the Atlantic City-Cape May radio survey area, WOND(AM) was shown with a 3.5 share of average quarter hour listenership (AQH); WMGM(FM) with a 3.7 share of AQH; and WTKU(FM) with a 3.7 share of AQH. WUSS(AM) did not receive any points in the ratings book.