

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

In re Request of)
)
Benedek Broadcasting Corporation)
)
For Conditional Waiver of the Duopoly Rule)
)
WTRF-TV, Wheeling, West Virginia)
WYTV(TV), Youngstown, Ohio)
WTAP-TV, Parkersburg, West Virginia)

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 1997

Released: August 18, 1997

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 unopposed request for extension of divestiture period and for conditional waiver of the Commission's television duopoly rule. This request is related to *Brissette Broadcasting Corporation.*, 11 FCC Rcd 6319 (1996), in which the Commission approved the transfer of control of Brissette Broadcasting Corporation and its broadcast stations to Benedek Broadcasting Corporation. Because the Grade B contour of Benedek's WTRF-TV, Channel 7 (CBS), Wheeling, West Virginia overlaps the Grade B contours of Brissette's WTAP-TV, Channel 15 (NBC), Parkersburg, West Virginia and WYTV(TV), Channel 33 (ABC), Youngstown, Ohio, Benedek sought and was granted a temporary six-month period to come into full compliance with the television duopoly rule.¹ Since that time and within that six-month waiver period, the Commission has proposed changes to its television duopoly rule and adopted an interim waiver policy that would permit common ownership of WTRF-TV, WTAP-TV and WYTV(TV).² See *Review of the Commission's Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making*, FCC 96-438 (released November 7, 1996) (*Television Ownership Second Further Notice*). In light of that proposed rule making, Benedek requests extension of its divestiture period by grant of conditional duopoly waivers to allow common ownership of WTRF-TV and WTAP-TV, and WTRF and WYTV(TV), subject to the outcome of the Commission's local television ownership rulemaking proceeding.

2. Currently, the Commission is reexamining its broadcast television ownership policies, including the duopoly rule. In January 1995, the Commission proposed a new analytical

¹ The television duopoly rule, 47 C.F.R. §73.3555(b), proscribes common ownership of television stations with overlapping Grade B contours.

² We note that neither the Grade B nor the Grade A contours of WTAP-TV and WYTV(TV) overlap.

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 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 the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996) (Telecomm Act). In response to this Congressional directive and to update the record, the Commission released the *Review of the Commission's Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making*, FCC 96-438 (released November 7, 1996) (*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 Designated Market Areas (DMAs) and whose Grade A contours do not overlap. *Television Ownership Second Further Notice* at ¶57.

3. 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. It also noted its tentative conclusion that the record in that proceeding "supports relaxation of the geographic scope of the duopoly rule from its current Grade B overlap standard to a standard based on DMAs supplemented with a Grade A overlap criterion." *Id.* at ¶57. The Commission further stated that "we do not believe granting waivers satisfying the proposed standard, and conditioning them on the outcome of this proceeding, will adversely affect our competition and diversity goals in the interim." *Id.* Additionally, the Commission gave the staff delegated authority to act on applications seeking waivers consistent with this interim policy. *Id.*

4. In *Brissette Broadcasting Corporation* the Commission determined that Benedek's requests for temporary waiver of the duopoly rule to permit common ownership of WTRF-TV and WYTV(TV), as well as WTRF-TV and WTAP-TV, were in the public interest. It based its determinations on the proposals' consistency with the factors set out in our previous duopoly waiver cases. See, e.g., *Iowa State University*, 9 FCC Rcd at 487-88. In its review of each duopoly, the Commission took into account the numerous other television stations and other broadcast services in the overlap area, as well as the distinctness of the markets served by the each of the three stations. Specifically, the Commission noted that WTRF-TV is licensed to Wheeling, West Virginia, the 138th television DMA, while WYTV(TV) is licensed to Youngstown, Ohio, the 94th television DMA, and WTAP is licensed to Parkersburg, West Virginia, the 185th television DMA. The Commission also looked at the extent of the overlap for each duopoly. With regard to the WTRF/WYTV duopoly, the overlap represented 10.8% of the service area and 10.5% of the population within the WTRF-TV Grade B contour and 27.2% of the service area and 24.6% of the population within the WYTV(TV) Grade B contour. The overlap created by the WTRF/WTAP duopoly represented 10% of the area and 1.5% of the population within the WTRF-TV Grade B contour and 32.7% of the area and 15.6% of the population within the WYTV(TV) Grade B contour. Further, the Commission noted that 22 other

stations provide Grade B or better service to all or part of the WTRF/WYTV overlap and three stations serve the entire overlap area. With regard to the WTRF/WTAP overlap area, the Commission recognized that seven other television stations provide Grade B or better service to that overlap area. Finally, the Commission took into account the fact that Benedek pledged to "enhance the operation of each of these smaller market stations, including their news, other informational and community involvement programming." *Brisette Broadcasting Corporation*, 11 FCC Rcd at 6324. Accordingly, it granted Benedek six months to file application(s) with the Commission to bring itself into full compliance with our rules.

5. Regarding the instant requests for conditional waiver, Benedek has submitted an engineering exhibit which shows that the predicted Grade A contours of stations WTRF-TV, WTAP-TV and WYTV(TV) do not overlap. Further, as stated in its original duopoly request, stations WTRF-TV, WYTV(TV) and WTAP-TV are located in the separate DMAs of Wheeling, Youngstown and Parkersburg, respectively. See also *Brisette Broadcasting Corporation*, 11 FCC Rcd at 6323. Benedek contends that the Commission staff has granted similarly situated parties permission to obtain and hold the same type of common ownership pending resolution of the rulemaking proceeding. See *Fox Television Stations, Inc.*, DA 96-1852 (released November 7, 1996); *KNSD License, Inc.*, DA 96-1848 (released November 7, 1996).³

6. Based on the Commission's interim ownership policy outlined in the *Television Ownership Second Further Notice*, we believe grant of conditional waivers of the duopoly rule, subject to the outcome of the pending ownership rulemaking, is justified. Because WTRF-TV and WYTV(TV) are in separate DMAs and their Grade A contours do not overlap, the continued common ownership of these stations is consistent with the interim policy set forth in the *Television Ownership Second Further Notice*. See also *WHOA-TV, Inc.*, FCC 96-458 at ¶¶ 12-13; 27 (released December 10, 1996). Likewise, because WTRF-TV and WTAP-TV are in separate DMAs and the stations' Grade A contours do not overlap, the continued common ownership of WTRF-TV and WYTV(TV) is also consistent with the Commission's interim policy. *Id.* Moreover, our examination of the record, including Benedek's original waiver requests, reveals nothing suggesting that we should not follow the established interim policy in this case. Accordingly, we conclude that grant of temporary waivers, conditioned upon the resolution of the pending broadcast television ownership rulemaking, will serve the public interest, convenience and necessity. Any requests to extend these conditional waivers should be filed at least 45 days prior to the end of the six-month period and will be closely scrutinized.

7. Accordingly, IT IS ORDERED, That the requests for conditional waiver of the television duopoly rule, Section 73.3555(b) of the Commission's rules, to permit the common ownership by Benedek Broadcasting Corporation of television stations WTRF-TV, Wheeling, West Virginia,

³ In *KNSD, License Inc.*, and *Fox Television*, the Commission granted the parties conditional waiver of the duopoly rule, subject to the outcome of the pending television ownership rulemaking, to permit common ownership of two stations whose Grade B contours overlapped. The Commission found these common ownership proposals to be consistent with the interim policy because, in both cases, the two stations were in separate DMAs and their Grade A contours did not overlap.

WYTV(TV), Youngstown, Ohio and WTAP-TV, Parkersburg, West Virginia ARE GRANTED, subject to the outcome of the Commission's pending broadcast ownership rulemaking, (*Second Further Notice of Proposed Rulemaking*, in MM Docket No. 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 No. 91-221 and 87-8, an application for Commission consent to dispose of such station(s) as would be necessary for Benedek Broadcasting Corporation to come into compliance with the rules as provided in the final order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau