

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

In re Applications of)	
)	
Meredith Corporation)	
(Assignor))	
)	
and)	File Nos. BALCT-970609IA
)	BALTT-970609IB
Post-Newsweek Stations, Connecticut, Inc.)	
(Assignee))	
)	
For Assignment of Licenses of:)	
WCPX-TV, Orlando, Florida)	
W29AB, Ocala, Florida)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 1997

Released: August 27, 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 applications to assign the licenses of WCPX-TV, Channel 6 (CBS), Orlando, Florida and its translator station, W29AB, Ocala, Florida, from Meredith Corporation to Post-Newsweek Stations, Connecticut, Inc. ("Post-Newsweek"). Post-Newsweek is the parent of the licensee of WJXT(TV), Channel 4 (CBS), Jacksonville, Florida. Because the Grade B contours of WCPX-TV and WJXT(TV) overlap, Post-Newsweek requests a waiver of the Commission's television duopoly rule, Section 73.3555(b), to allow common ownership of WCPX-TV and WJXT(TV), conditioned upon 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 Nov. 7, 1996) (*Television Ownership Second Further Notice*). Post-Newsweek contends that grant of the requested duopoly waiver would be consistent with Commission precedent and would serve the public interest.

2. **Duopoly Waiver Request.** In support of its waiver request, Post-Newsweek has submitted an engineering exhibit which shows that there is no Grade A contour overlap between WCPX(TV) and WJXT(TV). The Grade B overlap between the two stations will encompass an area of 579 square kilometers and 38,974 individuals. This overlap constitutes 1.5% of the population and 5.2% of the area within the WCPX-TV Grade B signal contour, and 3.4% of the

population and 7.1% of the area within the WJXT(TV) Grade B signal contour. Although not *de minimis*, Post-Newsweek contends that a relatively small overlap exists between the stations.

3. Post-Newsweek states that the stations serve separate and distinct markets, located 190 kilometers apart in separate Designated Market Areas (DMAs). Station WCPX-TV is located in the Orlando-Daytona Beach-Melbourne DMA, ranked 22nd, while WJXT(TV) is located in the Jacksonville DMA, which is ranked 54th. According to Post-Newsweek, the stations will continue to maintain separate management, programming and sales operations. Furthermore, with regard to diversity in the overlap area, Post-Newsweek states that at least seven television stations provide Grade B or better service to the overlap area. There are also several other media outlets serving the overlap area, including radio stations, local newspapers and cable systems.

4. Post-Newsweek asserts that should the proposed assignment of license application be approved, the public will benefit from its "strong tradition of devoting its management, technical and financial resources to enhance service to the local community, including news and informational programming." Moreover, Post-Newsweek contends that such approval will facilitate Meredith's consummation of its multi-station acquisition from First Media.¹

5. Finally, Post-Newsweek cites *WHOA-TV, Inc.*, FCC 96-458 (released December 10, 1996), and contends that the proposed common ownership fully complies with the Commission's two-pronged interim duopoly policy because, as stated above, the stations are in separate DMAs and their Grade A contours do not overlap. Thus, argues Post-Newsweek, a conditional waiver is warranted in this case.

6. **Discussion.** In adopting the duopoly rule's fixed standard of prohibiting overlap of Grade B service contours, the Commission also 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 2d 1476, 1479 n.12, *recon. granted in part*, 3 RR 2d 1554 (1964). To that end, the Commission has developed a set of factors to be considered when evaluating an applicant's request for waiver of the duopoly rule, including the extent of the overlap, the number of media voices available in the overlap area, the distinctness of the respective markets, the independence of the stations' operations, and the concentration of economic power resulting from the combination. See *Iowa State University Broadcasting Corporation*, 9 FCC Rcd 481, 487-88 (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). After weighing the factors, the Commission considers any public interest benefits proposed by the applicant to determine whether, in light of the overlap, the benefits outweigh any detriment which may occur from grant of the waiver. See, e.g., *Iowa State University*, 9 FCC Rcd at 487-88. As with any waiver, it will only be granted

¹ The Commission recently granted the application for assignment of license of WCPX-TV from First Media to Meredith (BALCT-970206YT), conditioned upon simultaneous consummation with the instant application to assign the license of WCPX-TV to Post-Newsweek.

if the Commission concludes that the waiver is in the public interest.

7. Currently, the Commission is reexamining its broadcast television ownership policies, including the duopoly rule. In January 1995, the Commission proposed a new analytical framework within which to evaluate its 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 in the Telecomm Act and to update the record, the Commission 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.

8. 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 temporary 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 there 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.

9. Based on the Commission's interim ownership policy outlined in the *Television Ownership Second Further Notice*, we believe that a grant of conditional waiver of the duopoly rule, subject to the outcome of the pending ownership rulemaking, is justified. The temporary common ownership of WCPX-TV and WJXT(TV) would be consistent with the interim policy set forth in the *Television Ownership Second Further Notice*, as the two stations are in separate DMAs and the stations' Grade A contours do not overlap. Moreover, our examination of the record presented here reveals nothing suggesting that we should not follow the established interim policy in this case. Accordingly, we conclude that grant of a temporary waiver, conditioned on the resolution of the pending broadcast television ownership rulemaking, will serve the public interest, convenience and necessity. Any request to extend this conditional waiver should be filed at least 45 days prior to the end of the six-month period and would be closely scrutinized. Additionally, having found Post-Newsweek to be qualified in all respects, we conclude that grant of the application for assignment of license would also serve the public interest.

10. Accordingly, IT IS ORDERED, That the request for conditional waiver of the television duopoly rule, Section 73.3555(b) of the Commission's rules, to permit the common ownership by Post-Newsweek of television stations WCPX-TV, Orlando, Florida and WJXT(TV), Jacksonville, Florida IS GRANTED, subject to the outcome of the Commission's pending broadcast ownership rulemaking in 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 Post-Newsweek to come into compliance with the rules as provided in the final order.

11. IT IS FURTHER ORDERED, That the applications for assignment of the licenses of WCPX-TV, Orlando, Florida and W29AB, Ocala, Florida from Meredith Corporation to Post-Newsweek Stations, Connecticut, Inc. ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau