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

In re Application of	)	
	)	
Fouce Amusement Enterprises	)	
(Transferor)	)	
	)	
and	)	File No. BTCCT-970825IA
	)	
LBI Holdings I, Inc.	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Station KRCA(TV), Riverside, California	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 24, 1997 **Released: December 24, 1997**

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned application to transfer control of Fouce Amusement Enterprises (Fouce), licensee of station KRCA(TV), Channel 62 (IND), Riverside, California, from the shareholders of Fouce to LBI Holdings I, Inc. (Liberman). Liberman is the licensee of KBUE(FM), Long Beach, California and KWIZ(AM)/KWIZ-FM, Santa Ana, California. Because the Grade A contour of KRCA encompasses the entire communities of Long Beach and Santa Ana, Liberman requests a permanent waiver of 47 C.F.R. Section 73.3555(c), the Commission's one-to-a-market rule, which generally proscribes the common ownership of television and radio stations in the same market. The waiver request is unopposed.[1]

Waiver Standard

2. The Commission has established various standards for waiver of its one-to-market rule, pursuant to 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.")*. The Commission presumptively favors waiver requests involving:

[1] The Mass Media Bureau has delegated authority to act on uncontested one-to-a-market requests that involve stations in the top 100 television markets and present no new or novel issues. *Louis C. DeArias*, 11 FCC Rcd 3662, 3667 (1996). The proposed transaction, which is unopposed, presents no new or novel issues, and the stations involved are located in the Los Angeles Designated Market Area (DMA), which is ranked second in the country.

(1) stations serving the top 25 markets where at least 30 separately owned, operated and controlled stations will remain following the proposed combination ("top 25 markets/30 voices" standard);[2] or (2) "failed" stations, which are stations that have not been operating for a substantial period of time (four months or more) or are involved in bankruptcy proceedings. Otherwise, waiver requests must be evaluated under the Commission's more rigorous case-by-case standard. See 47 C.F.R. Section 73.3555(c), Note 7. The case-by-case standard is also applied in one-to-a-market situations which involve the common ownership of a television station and more than one same-service radio station in the market. *See Memorandum Opinion and Order* in MM Docket No. 910140, 7 FCC Rcd 6387, 6394 n. 40 (1992).

3. Stations KRCA(TV), KBUE(FM), and KWIZ(AM)/KWIZ-FM will be commonly owned within the Los Angeles television market, the second largest television market in the United States. However, because the proposed transaction involves the common ownership of a television station and more than one same-service radio station, Liberman's waiver request will be evaluated under the case-by-case standard instead of the "top 25 markets/30 voices" standard. *See Memorandum Opinion and Order* in MM Docket No. 91-140, 7 FCC Rcd 6387, 6394, n. 40 (1992). Under the case-by-case standard, the Commission makes a public interest determination based upon 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; and (5) the nature of the relevant market in light of the level of competition and diversity after the joint operation is implemented. *Second Report and Orde*r, 4 FCC Rcd at 1753-54. Not all five of the factors are necessarily relevant in each case. *See Second Report and Order Recon.*, 4 FCC Rcd at 6491. Liberman has submitted a showing which addresses each of the above-noted factors.

Waiver Showing

4. ***Public Service Benefits of Joint Operation.*** Liberman asserts that the proposed common ownership will result in significant cost savings and efficiencies. Liberman estimates that $300,000 in savings annually will be realized by its plans to consolidate the stations' staffs in accounting, sales, security and management. Additional savings will be realized through the ability to produce commercials for the radio stations at the television studio of KRCA(TV). Liberman also intends for the staffs at KRCA(TV) and its radio stations to share their knowledge of hiring conditions, labor pools and recruitment sources in the Los Angeles area. The public interest benefits stemming from these cost savings and operating efficiencies will include programming benefits, such as a new weekly public affairs program and increased public service announcements. Further, Liberman pledges to "preserve and advance" the foreign language

[2] 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. (1996). A proposal to implement this extension of our waiver policy is pending. *See Television Broadcasting, Second Further Notice*, 11 FCC Rcd 21655, 21685 (1996).

programming on KRCA(TV), as Liberman professes a "long and successful" record of foreign language programming in the Los Angeles market. Liberman contends that such foreign language programming will preserve the diversity of television voices available to viewers in "one of the most ethnically diverse television markets in the country." Outside of programming benefits, Liberman will also use a portion of the cost-savings to hire a full-time community service liaison for KRCA(TV), in order to respond to the needs of the community.[3]

5. **Types of Facilities/Other Media Outlets.** UHF station KRCA(TV) operates on Channel 62 with a 3,720 kW effective radiated power (ERP) and an antenna height of 723 meters above average terrain. KWIZ(AM) is a 5 kW Class B station operating on 1480 kHz, while KWIZ-FM is a 3 kW Class A station operating on 96.7 MHz from an antenna 63 meters above average terrain. KBUE(FM) is a 1.35 kW Class A station operating on 105.5 MHz from antenna height of 124 meters above average terrain. In addition to the stations listed above, Liberman owns two other radio stations in the Los Angeles market, both of which are outside the Grade A contour of station KRCA, and therefore not a part of this transaction. Station KKHJ(AM) is a 5 kW Class B station operating at 930 kHz and KBUA(FM) is a 3 kW Class A station operating on 94.3 MHz. Liberman contends that there is "no likelihood" that the proposed common ownership would dominate the Los Angeles market because there are numerous established television-radio and radio duopoly combinations in the Los Angeles market. Specifically, Liberman points to the combinations held by Westinghouse Electric Corp. (five Class B FM stations, two Class B AM stations, one Class A AM station and one VHF television station) and The Walt Disney Company (two Class B AM stations, one Class B FM station and one VHF television station) as examples of multiple-station owners in the Los Angeles market. According to Liberman, these broadcasters combine radio stations more powerful than those here with VHF television stations. Station KRCA(TV) is a UHF station and, notes Liberman, the Commission has found combinations involving UHF stations may provide greater public interest benefits. Moreover, within the city of Los Angeles alone, a subset of the Los Angeles metro market, Liberman contends there are 11 AM radio stations and 17 FM radio stations with facilities comparable to the Liberman stations.

6. **Economic Status.** Liberman acknowledges that none of the stations involved in this waiver request is in financial distress. However, Liberman contends that, in the past, the Commission has granted waiver requests where no financial difficulties existed.

7. **Competition and Diversity in the Market.** Liberman states that the Los Angeles DMA is the second largest television market and one of the most "diverse and robustly competitive markets" in the United States. The Los Angeles market is served by 79 separately controlled broadcast voices, which consists of 35 AM and 51 FM radio stations, and 25 television stations. Additionally, there are 26 newspapers published in Los Angeles and residents of the market have access to MDS and MMDS systems and DBS services, as well as numerous independent cable

[3] Liberman points to its "Kindervision Kids Fair" child safety program as an example of a successful civic activity which will be enhanced by a combined television and radio public service effort.

systems constituting a cable penetration of 62 percent. With regard to economic concentration and competition in the Los Angeles market, Liberman cites the BIA 1996 market revenue estimates as showing the combined adverting revenues for Liberman's five radio stations to be 3.72 percent. Liberman also claims that KRCA(TV) accounts for a "minuscule" .32 percent of the television advertising revenues in the Los Angeles DMA.

Discussion

8. Preliminarily, we note that the Commission, in reexamining its broadcast television ownership policies, is considering eliminating or modifying the one-to-a-market rule. *See Review of the Commission's Regulations Governing Television Broadcast Ownership Second Further Notice of Proposed Rulemaking*, in MM Docket Nos. 91-221 and 87-8, 11 FCC Rcd 21655 (1996) (*Second Further Notice*). In the *Second Further Notice*, the Commission stated that waiver requests submitted pending resolution of the proceeding will be considered under the current criteria for evaluating such requests. Accordingly, in recent one-to-a-market waiver cases where the radio component to a proposed combination exceeds the number of commonly-owned stations permitted prior to the adoption of the *Telecommunications Act of 1996*, Pub. L. No. 101-104, 110 Stat. 56 (1996), the Commission has declined to grant permanent waivers of the one-to-a-market rule, and instead granted waivers conditioned on the outcome of related issues raised in the pending television ownership rulemaking proceeding. *See S.E. Licensee G.P.*, 11 FCC Rcd 16727 (1996). *See also Second Further Notice* at 21689. Likewise, we conclude that a permanent, unconditional waiver would not be appropriate in this case.[4] We will instead consider grant of a conditional one-to-a-market waiver.

9. In evaluating a request for a waiver of the one-to-a-market rule, the Commission's goal is "to permit the public to benefit from such efficiencies of operation as may be achieved through the use of common facilities and staff, consistent with the maintenance of diversity and vigorous competition within the market areas involved." *Second Report and Order Recon.*, 4 FCC Rcd at 6491. Based on the case-by-case showing submitted by Liberman, we believe that grant of a conditional waiver would be consistent with the public interest and would not have an adverse effect on diversity and competition in the Los Angeles market.

10. First, Liberman has shown that adding KRCA(TV) with its existing radio stations will result in significant cost savings and economic benefits. Liberman will realize an annual savings of $300,000 through its plans to consolidate the stations' staffs and through the ability to produce commercials for the radio stations at the television studio of KRCA(TV). These cost savings and

[4] Liberman contends that a permanent unconditional waiver would be appropriate here for the following reasons: (1) the combination meets the Commission's "top 25 markets/30 voices" presumptive standard; (2) the requested waiver involves only two of Liberman's three low-coverage FM stations and one of its two AM stations; (3) Liberman already owns the radio stations at issue and is not seeking Commission approval to purchase any radio stations in this application; and (4) a permanent waiver would not compromise current multiple ownership rules because a party may own up to eight radio stations in the Los Angeles market. We find these arguments to be unpersuasive and inconsistent with current Commission case law.

operating efficiencies will result in public interest benefits, such as a new weekly public affairs program, increased public service announcements, as well as advanced foreign language television programming to serve KRCA(TV)'s large foreign-language speaking community. Liberman will also have a full-time community service liaison for KRCA(TV) to serve the needs of the community.

11. Turning to the second prong of our case-by-case analysis, the facilities of the stations involved in the proposed transaction in no way dominate the Los Angeles market, nor do they, by virtue of their technical characteristics, pose a risk of doing so. As Liberman notes, the Commission has stated in the past that combinations involving UHF stations "may provide relatively greater public interest benefits and impose relatively fewer public interest costs." *See Second Report and Order*, 4 FCC Rcd at 1753. This combination includes a UHF station which competes with 25 other television stations in the market. Moreover, "as the level of competition and diversity in a market increases, [the Commission's] concerns grounded in the technical strength of the combining facilities decrease." *Louis C. De Arias*, 11 FCC Rcd 3662, 3666 (1996). Thus, as detailed infra at ¶13, given the substantial competing facilities in the Los Angeles market, the proposed combination does not cause the Commission concern with regard to market dominance inconsistent with the public interest.

12. As to the third factor, Liberman does currently own two radio stations in the Los Angeles market. However, those stations are outside the Grade A contour of television station KRCA(TV) and do not come within the one-to-a-market rule's radio-television contour overlap provisions. Regarding the fourth factor, none of the broadcast stations here is experiencing financial difficulties. However, the presence of all five factors is not required to warrant a waiver. *See Second Report and Order Recon.*, 4 FCC Rcd at 6491.

13. Our independent analysis of the data submitted by Liberman confirms that there will be at least 79 separately owned broadcast voices in the market. In addition, Los Angeles has numerous daily newspapers and a substantial cable penetration of 62%. Therefore, we conclude as we have previously, that in Los Angeles, competition and diversity are "robust." *Stockholders of CBS*, 11 FCC Rcd 3733, 3772 (1995). *See also Stockholders of Infinity Broadcasting Corp.*, 12 FCC Rcd 5012, 5034 (1996). With regard to economic concentration and competition in the Los Angeles market, our independent analysis of the reported advertising revenues of the stations, although different in number from the 3.72% reported by Liberman, also indicates that Liberman will control only a small share, 1.75%, of the market's radio advertising revenues.[5]

14. Accordingly, based on the showings and representations before us, we conclude that grant of a temporary, conditional waiver of the one-to-a-market rule will not result in an undue adverse

[5] Based on our independent research, BIA Publications, Inc. estimates that 1996 radio station revenues in the Los Angeles television metro market total $540 million and 1996 television station revenues in the Los Angeles DMA total $1.432 billion. Only stations KBUE(FM) ($4 million) and KKHJ(AM) ($5 million) reported advertising revenues ($9.5 million total). Revenues are not reported for KBUA(FM), KWIZ(AM)/FM and KRCA(TV).

effect on competition and diversity in the Los Angeles market. Further, we find that the applicants are fully qualified and that grant of the proposed transfer of control of Fouce from its shareholders to Liberman would serve the public interest.

15. Accordingly, IT IS ORDERED, That the request for permanent waiver of the Commission's one-to-a-market rule, Section 73.3555(c), to permit common ownership of stations KRCA(TV), Riverside, California; KBUE(FM), Long Beach, California; and KWIZ(AM)/KWIZ-FM, Santa Ana, California IS HEREBY DENIED.

16. IT IS FURTHER ORDERED, That a waiver of the Commission's one-to-a-market rule, Section 73.3555(c), to permit common ownership of stations KRCA(TV), Riverside, California; KBUE(FM), Long Beach, California; and KWIZ-AM/KWIZ-FM, Santa Ana, California IS GRANTED to the extent indicated herein, subject to the outcome of the Commission's pending broadcast ownership rulemaking (*Second Further Notice of Proposed 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(s) as would be necessary for Liberman to come into compliance with the rules as provided in the final order. 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.

17. IT IS FURTHER ORDERED, That, having found the applicants fully qualified and that grant of the application would serve the public interest, the application to transfer control of television station KRCA(TV), Riverside, California, from the shareholders of Fouce Amusement Enterprises to LBI Holdings I, Inc., IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau