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

In re Application of	)	
	)	
Sunnyside Communications, Inc.	)	
(Assignor)	)	
	)	
and	)	File No. BAL-970110GS
	)	
Pulitzer Broadcasting Company	)	
(Assignee)	)	
	)	
For assignment of license of	)	
WAVG(AM), Louisville, Kentucky	)	

MEMORANDUM OPINION AND ORDER

Adopted: April 17, 1997 **Released:** April 21, 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 for assignment of license of WAVG(AM), Louisville, Kentucky, from Sunnyside Communications, Inc. to Pulitzer Broadcasting Company ("Pulitzer") and a related request for permanent waiver of the Commission's one-to-a-market rule, which restricts common radio and television station ownership in the same market.[1]

2. Pulitzer is the licensee of UHF television station WLKY (Channel 32), Louisville, Kentucky, a CBS affiliate. Grant of the instant assignment application would create a new radio-television combination because the Grade A contour of WLKY(TV) encompasses the entire community of license of WAVG(AM). Accordingly, Pulitzer requests a permanent waiver of the Commission's one-to-a-market rule to permit common ownership of WAVG(AM) and WLKY(TV). The application is unopposed. For the reasons set forth below, we grant the permanent waiver request and the assignment application.[2]

[1] Section 73.3555(c) of the Commission's rules prohibits the common ownership of radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station. *See* 47 C.F.R. § 73.3555(c).

[2] The Mass Media Bureau has delegated authority to act on uncontested one-to-a-market waiver requests that involve stations in the top 100 television markets and that present no new or novel issues. *Louis C. DeArias, Receiver*, 11 FCC Rcd 3663, 3667 (1996); *see also Review of the Commission's Regulations Governing Television*

Permanent One-to-a-Market Waiver Request

3. Section 73.3555(c) of the Commission's rules, the one-to-a market rule, generally proscribes common ownership of a television and radio station in the same market. In the *Second Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1741 ("*Second Report and Order*"), recon. granted in part, 4 FCC Rcd 6489 (1989)("*Second Report and Order Recon.*"), the Commission established three standards for waiver of the rule. First, under the "top 25 markets/30 voices" standard, the Commission presumes that waiver of the rule will serve the public interest in cases involving television and radio station combinations in the top 25 markets where at least 30 separately owned, operated and controlled broadcast licensees, or "voices," would remain after the proposed combination. *Second Report and Order*, 4 FCC Rcd at 1751-52. Second, under the "failed station" standard, the Commission presumes that the public interest also will be served in cases involving acquisition of "failed" broadcast stations. That is, stations that have not been operating for a substantial period of time or that are in bankruptcy. *Second Report and Order*, 4 FCC Rcd at 1752-53. Third, under the more rigorous "case-by-case" standard, the Commission evaluates the waiver request by weighing five factors: (1) the public service benefits that will arise from the joint operation of the facilities such as 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 joint operation is implemented. *Second Report and Order*, 4 FCC Rcd at 1753. In enunciating the five factors to be considered under the case-by-case standard, the Commission noted that not all five factors must be satisfied in each case, but rather the overall consideration of these factors must weigh in favor of granting the waiver request. *Second Report and Order Recon.*, 4 FCC Rcd at 6491.

4. The instant waiver request must be evaluated under the case-by-case standard because the stations in the proposed transaction do not serve a "top 25" market nor do the parties allege that any of the stations involved are "failed stations."[3] In support of its request, Pulitzer submits a showing that addresses the five case-by-case factors.

5. Benefits of Joint Operation. Pulitzer estimates that common ownership of WLKY(TV) and

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Broadcast Ownership in MM Docket Nos. 91-221 and 87-8, FCC 96-438, slip op. at 35 and n.130 (November 7, 1996) ("*Second Further Notice of Proposed Rulemaking*"). The instant assignment application is unopposed, no new or novel issues are presented and the stations at issue are located in the 50th designated market area ("DMA"). Thus, action pursuant to delegated authority is appropriate.

[3] Pulitzer states that because the proposed combination is located in the 50th DMA, it "falls within the upper range of markets within which Congress has determined waivers to be presumptively favored." While 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, Section 202(d), 110 Stat. 56 (1996)), a proposal to implement this extension of our waiver policy remains pending. *Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8, FCC 96-438 (rel. November 7, 1996) para. 66. Thus, the application of the Commission's presumptive waiver policy is inappropriate here.

WAVG(AM) and the consolidation of the station's studios will result in annual cost savings of $600,000. Specifically, Pulitzer anticipates annual savings of: (1) $300,000 in salaries and associated employee benefits; (2) $200,000 in studio rent, utilities, operating expenses, taxes and insurance; and (3) $100,000 in savings from cross promotion on each station, joint public service campaigns and other community events, and joint recruiting. As a result of these savings, Pulitzer states that it will be able to enhance and expand the public service programming of WAVG(AM). Pulitzer reports that it intends to change WAVG(AM)'s current format of "adult standards," which consists primarily of music, to a format consisting of news, news/talk and information, with an emphasis on locally originated news and information. In this regard, Pulitzer reports that WAVG(AM) will realize efficiencies from the proposed combination by simulcasting four and one half hours of news programming from WLKY(TV) on a daily basis. In addition, Pulitzer states that WAVG(AM) will have access to all of the news coverage resources of WLKY(TV), including the ability to originate news and sports talk programs featuring WLKY(TV)'s on-air personalities. Pulitzer also claims that the proposed combination will enable it to more easily procure programming of interest to listeners and viewers in the Louisville community.

6. Types of Facilities/Other Media Outlet. Pulitzer reports that WLKY(TV) is a UHF station affiliated with the CBS television network. Pulitzer states that WLKY(TV) competes with two VHF stations (an ABC affiliate and an NBC affiliate) and six other UHF television stations. Pulitzer further states that 7 of these competing television stations have facilities comparable or superior to those of WLKY(TV). With regard to WAVG(AM), Pulitzer states that the station is a 5,000 watt, full-time station, which competes with 11 other AM stations in the market. Pulitzer reports that one of those AM stations, WHAS, is a 50,000 watt clear channel facility. In addition, Pulitzer indicates that three other stations in the market have comparable daytime facilities. Pulitzer claims that although WAVG(AM) operates with power greater than these three stations at night, WAVG(AM)'s nighttime signal radiates with a directional pattern that reduces its east and west coverage. Pulitzer also reports that it holds no other media interests in the Louisville market.

7. Economic Status. Pulitzer indicates that although WAVG(AM) is not a "failed" station, the station's annual revenues have decreased by approximately $600,000 in recent years. Pulitzer further reports that WAVG(AM) garners only 1.5% of the radio advertising revenue and that it believes the station's financial difficulties will be exacerbated by recent acquisitions by two group owners in the Louisville market, which together purportedly will garner 75% of the advertising dollars and two-thirds of the audience share.

8. Competition and Diversity in the Market. Pulitzer asserts that its acquisition of WAVG(AM) will not affect diversity and competition in the Louisville market. According to Pulitzer, there are 20 FM stations and 12 AM stations licensed to communities in the Louisville television metro market, and 2 VHF stations and 7 UHF stations licensed to communities in the Louisville DMA. Pulitzer reports that after the proposed acquisition, these 32 radio stations and 9 television stations will be licensed to 26 separate owners. Pulitzer also indicates that a wide variety of other media are available. Specifically, Pulitzer reports that the market is served by 44 cable

systems, reaching 65% of the households in the market. Pulitzer also indicates that the market is served by three low power television stations, four daily newspapers and five weekly newspapers. In addition, Pulitzer reports that WAVG(AM) garners only 1.5% of the advertising revenue in the Louisville metro market. Pulitzer further reports that the combined market share of WAVG(AM) and WLKY(TV) is less than 15% of the radio and television market revenues in the Louisville market.

Discussion

9. At the outset, we note that the pending television ownership proceeding, in which the Commission is considering eliminating or modifying the one-to-a-market rule, does not preclude consideration of Pulitzer's request for a permanent one-to-a-market waiver. In the *Second Further Notice of Proposed Rulemaking* in the television ownership proceeding, we stated that waiver requests submitted pending resolution of the proceeding will be considered under the current criteria for evaluating such requests. *Second Further Notice of Proposed Rulemaking*, slip op. at 35 and n.130. Thus, the *Second Further Notice of Proposed Rulemaking* contemplates approval of permanent, unconditional waivers to allow radio-television combinations that do not propose common ownership of stations exceeding a combination of one television station, two AM stations and two FM stations, as long as the requested waivers are clearly consistent with Commission precedent. *Id.* Pulitzer's proposed combination of one television station and one AM station would not exceed such combination.

10. Under the first factor, the potential public service benefits, the Commission previously 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). Pulitzer has demonstrated programming benefits and economic benefits that would result from joint operation of WAVG(AM) and WLKY(TV). Pulitzer estimates total savings of $600,000 annually, including savings derived from cross-promotion, which is an advantage recognized as "one of the most significant benefits of joint ownership of radio and television stations in the same market." *Second Report and Order*, 4 FCC Rcd at 1747 (footnote omitted). Pulitzer also has demonstrated that these savings will enable it to enhance and expand the public service programming of WAVG(AM). In this regard, Pulitzer states that WAVG(AM) will simulcast four and one half hours of news programming from WLKY(TV) on a daily basis. In addition, Pulitzer states that WAVG(AM) will have access to all of the news coverage resources of WLKY(TV), including the ability to originate news and sports talk programs featuring WLKY(TV)'s on-air personalities. Pulitzer also indicates that the proposed combination will enable it to more easily procure programming of interest to listeners and viewers in the Louisville community.

11. Regarding the second factor in our analysis, the types of facilities involved in the waiver request, the Commission aims to predict and avoid any significant adverse effects on diversity or competition from too powerful a combination. *See Great American Television and Radio Co.*, Inc., 4 FCC Rcd 6347, 6349 (1989). WLKY(TV) is a UHF station (a CBS affiliate) operating in a market with two VHF stations (an ABC affiliate and an NBC affiliate) and six other UHF stations. Our independent analysis of Pulitzer's showing indicates that the market includes at least two other television stations operating with facilities that are more powerful than WLKY(TV)'s facilities. WAVG(AM) is a 5000 watt, full-time Class B station. Our independent analysis of Pulitzer's showing indicates that there are radio stations in the market with comparable or superior facilities. Specifically, the market includes one more powerful 50,000 watt Class A clear channel facility and two other Class B AM stations that operate with daytime facilities comparable to that of WAVG(AM). Therefore, we find that the proposed combination does not present issues of market dominance inconsistent with the public interest. Moreover, aside from WLKY(TV), Pulitzer holds no other broadcast interests in the Louisville market.

12. Although Pulitzer states that WAVG(AM) is not in financial distress, we previously have indicated that not all five factors need be present to justify grant of a waiver. *Second Report and Order, Recon.*, 4 FCC Rcd at 6491. We also have granted a number of one-to-a-market waivers where there was no finding that any of the stations were in financial distress. *See, e.g., Louis C. DeArias*, 11 FCC Rcd 3662 (1996); *Alta Gulf FM, Inc.*, 10 FCC Rcd 7750, 7751 (1995); *Henry Broadcasting Co.*, 11 FCC Rcd 1175 (1995); *Atlantic Morris Broadcasting, Inc.*, 10 FCC Rcd 1175 (1995); *Secret Communications Ltd.*, 10 FCC Rcd 6874 (1995).

13. Finally, Pulitzer has shown that the proposed combination will not create any undue concentration of ownership or control of the broadcast media in the Louisville market.[4] There are 19 FM stations and 12 AM stations licensed to communities in the Louisville television metro market and 9 television stations licensed to communities in the Louisville DMA.[5] These 31 radio stations and 9 television stations are licensed to 27 separate owners.[6] Because the current

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[4] As to the market definition within which to count the number of broadcast stations in the context of a one-to-a-market waiver, the Commission considers "the relevant TV metro market for radio stations and the relevant ADI [Arbitron Area of Dominant Influence] TV market for TV stations." *Second Report and Order*, 4 FCC Rcd at 1760 n.101. However, since Arbitron no longer compiles ADI data, we now accept showings using the Nielsen DMA in determining the number of broadcast "voices" in the relevant market. *See Media/Communications Partners L.P.*, 10 FCC Rcd 8116 n.3 (1995); *see also Further Notice of Proposed Rulemaking*, MM Dockets Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3539 n.59 (1995).

[5] Pulitzer indicates in its showing that there are 20 FM stations licensed to the Louisville television metro market. However, we independently have determined that one of those stations, WSFR(FM), has not commenced broadcast operations. Thus, WSFR(FM) is not counted for purposes of our analysis under the competition and diversity factor. *See Second Report and Order*, 4 FCC Rcd at 1751 n. 86.

[6] Although Pulitzer reports that there are 26 separate owners, it appears that Pulitzer did not count the owner of UHF television station WFTE (UPN affiliate), Salem, Indiana, which is part of the Louisville DMA.

licensee of WAVG(AM) will continue to own another AM station in the market, 27 separate owners would remain following consummation of the proposed transaction. In addition, a wide variety of other media are available, including 44 cable systems reaching 65% of total households, four daily newspapers, five weekly newspapers and three low power television stations. The level of competition and diversity that would be present in the Louisville market is consistent with the level we have approved in previous waiver requests. *See, e.g., Louis C. DeArias*, 11 FCC Rcd at 3666 (31 separate voices, 2 daily newspapers, 57.9% cable penetration); *Moosey Communications, Inc.*, 8 FCC Rcd 5247, 5249 (1993) (24 separate voices, 1 daily newspaper, 73% cable penetration); *Liggett Broadcast, Inc.*, 7 FCC Rcd 7124, 7125-26 (1992) (28 separate voices, 7 daily newspapers, 51% cable penetration); *South Central Communications Corp.*, 5 FCC Rcd 6697, 6698-99 (1990) (26 separate voices, 2 daily newspapers, 61.9% cable penetration).

14. With respect to economic concentration and competition, our independent query indicates that WAVG(AM) garners 2% of the advertising revenue in the Louisville market and WLKY(TV) garners 18.6% of the advertising revenue in the Louisville market. Together, WLKY(TV) and WAVG(AM) receive a combined television and radio station advertising share of 13.7%.[7]

15. We conclude that, on balance, granting a permanent waiver will not unduly affect competition or diversity in the Louisville market. The combination does not involve powerful stations nor do the stations garner a significant percentage of the advertising revenue in the Louisville market. Moreover, Pulitzer has demonstrated that economic efficiencies and public interest benefits will be gained and such benefits support the grant of a permanent waiver.

16. Accordingly, IT IS ORDERED, that the request for waiver of the Commission's one-to-a-market rule, 47 C.F.R. Section 73.3555(c), to permit common ownership of WAVG(AM) and WLKY(TV), Louisville, Kentucky, IS HEREBY GRANTED;

17. IT IS FURTHER ORDERED, that the above-captioned application to assign the license of WAVG(AM), Louisville, Kentucky, from Sunnyside Communications, Inc. to Pulitzer Broadcasting Company, IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

[7] Advertising revenue data is obtained from BIA Publications, Inc.'s Radio Master Access and Television Master Access.