

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

In re Application of)	
Win-You, Ltd.)	
(Assignor))	
)	
and)	File Nos. BAL-980728GJ
)	and BAL-980728GK
New Life Evangelistic Center, Inc.)	
(Assignee))	
)	
For Assignment of Licenses of)	
Stations WINU(AM) and WBDI(AM))	
Highland, Illinois)	

MEMORANDUM OPINION AND ORDER

Adopted: November 5, 1998

Released: November 9, 1998

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 licenses of WINU(AM) and silent station WBDI(AM),¹ Highland, Illinois from Win-You, Ltd. ("Win-You") to New Life Evangelistic Center, Inc. ("NLEC"). NLEC is the licensee of independent UHF station KNLC(TV) (Channel 24), St. Louis, Missouri.² Since the 2 mV/m contour of station WINU(AM) entirely encompasses KNLC(TV)'s city of license, grant of the subject assignment application would create a new radio-television combination that requires a waiver of 47 C.F.R. § 73.3555(c), the Commission's one-to-a-market rule.³ NLEC requests a permanent waiver of the rule. WBDI(AM) is not implicated in the one-to-a-market waiver because its 2 mV/m contour does not entirely encompass KNLC(TV)'s community of license in St. Louis, Missouri, and KNLC(TV)'s Grade A contour does not reach WBDI(AM)'s community of license in Highland, Illinois.⁴ The application and the waiver request are unopposed.⁵

¹ WBDI(AM) is a licensed but silent station pursuant to special temporary authority ("STA") granted on June 23, 1998, and extended on August 17, 1998 through November 17, 1998.

² KNLC(TV) has a pending construction permit application for modifications of its technical facilities from 3,090 kW maximum visual effective radiated power ("ERP") to 2,950 kW maximum visual ERP and from 305 meters height above average terrain ("HAAT") to 396 meters HAAT and a pending request for a permanent waiver of the TV duopoly rule that would result if the application for modifications of KNLC(TV) is granted.

³ 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).

⁴ We note that if the proposed modifications of KNLC(TV) set forth at n. 2, *supra*, are approved and implemented, KNLC(TV)'s Grade A contour would not encompass Highland. Additionally, we note that WBDI(AM)'s application for a minor construction permit for a new transmitter location and new directional antenna

2. NLEC bases its waiver request on the one-to-a-market waiver standards adopted in the *Second Report and Order* in MM Docket No. 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.*"). In accordance with these standards, the Commission presumptively favors waiver requests involving station combinations serving the top 25 markets where at least 30 separately owned, operated, and controlled broadcast licensees or "voices" would remain after the proposed combination ("top 25 markets/30 voices standard").⁶ The Commission also favors waiver requests involving "failed stations," that is, stations that have not been operating for a substantial period of time (four months or more) or are involved in bankruptcy proceedings. Otherwise, the requests must be evaluated under a more rigorous case-by-case approach. See 47 C.F.R. § 73.3555, note 7. NLEC notes that St. Louis is the country's 21st largest DMA. It also states that there are 7 television stations, and 38 AM and 39 FM radio stations in the market, and that following consummation of the proposed transaction these 84 broadcast stations will represent 60 separately owned, operated, and controlled broadcast licenses in the St. Louis market.

3. Although the local radio ownership rules are implicated because the 5 mV/m signals of WINU(AM) and WBDI(AM) overlap, we may proceed under the presumptive waiver standard because only WINU(AM) is implicated in the one-to-a-market waiver.⁷ See *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6394 n. 40 (1992); see also *River City License Partnership*, 12 FCC Rcd 4993 (MMB 1997) (case-by-case analysis required in St. Louis DMA where 2 FMs being acquired both implicated in one-to-a-market waiver because 1 mV/m contours of both FMs entirely encompass TV's community of license and where local radio ownership limits implicated because principal community contours of 2 FMs overlap) Cf. *Liberty Temple Full Gospel Church, Inc.* (presumptive waiver granted where 2 AMs implicated in one-to-a-market waiver but not under local radio ownership limits). Moreover, we have previously reviewed and approved the common ownership of the two subject AM radio stations under the

pattern was granted on October 7, 1998, File No. BP-980827AA. These modifications will not result in WBDI(AM)'s 2 mV/m contour encompassing St. Louis, KNLC(TV)'s community of license.

⁵ The Commission has delegated to the Mass Media Bureau authority to act on uncontested one-to-a-market waiver requests involving stations in the top 100 television markets and that present no new or novel issues. *Louis C. DeArias, Receiver*, 11 FCC Rcd 3662, 3667 (1996); see also *Review of the Commission's Regulations Governing Television Broadcast Ownership, Second Further Notice of Proposed Rule Making*, MM Docket Nos. 91-221 and 87-8, 11 FCC Rcd 21655, 21689 n.130 (1996) ("*Second Further NPRM*"). The instant waiver request presents no new or novel issues, and the stations involved are located in the St. Louis Designated Market Area ("DMA"), the 21st largest DMA in the country.

⁶ Pursuant to the statutory directive "to extend its [one-to-a-market] waiver policy to any of the top 50 markets, consistent with the public interest, convenience and necessity," under the Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(d), 110 Stat. 56 (1996), the Commission is considering a proposal to implement extension of the waiver policy in the *Review of the Commission's Regulations Governing Television Broadcast Ownership, Second Further Notice of Proposed Rule Making*, MM Docket Nos. 91-221 and 87-8, 11 FCC Rcd 21655, 21685 (1996).

⁷ With respect to silent station WBDI(AM), NLEC has submitted a time table for returning the station to the air with a projected broadcast date of March 27, 1999. Notwithstanding the grant of the STA, for authority to remain silent, the broadcast license for WBDI(AM) will automatically expire as a matter of law if broadcast operations, pursuant to the minimum operating schedule requirements of Section 73.1740(a)(1), do not commence by June 23, 1999. See Pub. L. No. 104-104, 110 Stat. 56, § 403(1) (1996), *codified* at 47 U.S.C. § 312(g); 47 C.F.R. § 73.1740(a)(1).

local radio ownership limits.⁸ We find no other circumstances that would preclude NLEC's acquisition of these radio stations.

4. Our independent analysis confirms that more than 30 independent broadcast voices will continue to serve the 21st ranked St. Louis DMA after consummation of the proposed transaction.⁹ Thus, we find that waiver of the one-to-a-market rule under the "top 25 markets/30 voices standard" is warranted.

5. Having determined that the applicants are qualified in all respects, we find that grant of the assignment applications will serve the public interest, convenience, and necessity. Accordingly, IT IS ORDERED, that the request for permanent waiver of the Commission's one-to-a-market rule, 47 C.F.R. Section 73.3555(c), to permit common ownership of WINU(AM), Highland, Illinois and KNLC(TV), St. Louis, Missouri, IS GRANTED. IT IS FURTHER ORDERED, that having found the applicants fully qualified, the above-captioned application for assignment of licenses of WINU(AM) and WBDI(AM), Highland, Illinois from Win-You, Ltd. to New Life Evangelistic Center, Inc., (File Nos. BAL-980728GJ and BAL-980728GK) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

⁸ See Letter from Dennis Williams, Assistant Chief, Audio Services Division to James K. Edmundson, Counsel for Win-You, Ltd. (May 29, 1998).

⁹ 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). Our independent analysis of NLEC's showing finds that it incorrectly included radio stations that are licensed to communities outside of the television metro market. NLEC also limited its count to commercial TV and radio stations when full-power noncommercial TV and operational noncommercial radio stations may also be counted to determine the number of broadcast outlets and voices serving the market. See *Second Report and Order*, 4 FCC Rcd at 1751, 1759, nn 84, 85. See generally *Arnold L. Chase*, 5 FCC Rcd 1642, 1646 (1990).