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

In re Applications of

FAMILY GROUP V, LTD.,
Debtor-in-Possession

and File No. BALCT-900112KF

ROANOKE-LYNCHBURG TV
ACQUISITION CORPORATION

For Assignment of License for
Television Station WVFT(TV),
Channel 27, Roanoke, Virginia

and

LYNCHBURG-ROANOKE TELEVISION
PARTNERS LIMITED PARTNERSHIP,
Debtor-in-Possession

and File No. BALCT-900112KE

ROANOKE-LYNCHBURG TV ACQUISITION
CORPORATION

For Assignment of License for
Television Station WJPR-TV,
Channel 21, Lynchburg, Virginia

MEMORANDUM OPINION AND ORDER

Adopted: August 27, 1990; Released: September 10, 1990

By the Commission:

1. The Commission has before it for consideration: (1) an application for consent to the assignment of license for station WVFT(TV) (Independent, Channel 27) Roanoke, Virginia from Family Group V, Ltd., Debtor-in-Possession ("Family Group") to Roanoke-Lynchburg TV Acquisition Corporation ("RLTVAC"); and (2) an application for consent to the assignment of license for station WJPR-TV (Independent/Fox, Channel 21) Lynchburg, Virginia from Lynchburg-Roanoke Television Partners Limited Partnership, Debtor-in-Possession to RLTVAC.

2. The proposed acquisition of WVFT(TV) and WJPR-TV by RLTVAC would result in RLTVAC's common ownership of the two stations, the Grade B contours of which overlap. Such overlap is generally prohibited by Section 73.3555(a)(3) of the Commission's Rules.[1] RLTVAC has proposed, however, to operate WJPR-TV as primarily a satellite[2] of WVFT(TV) and requests that the assignment applications be granted pursuant to the "satellite exception" provision of Note 5 of Section 73.3555, the Commission's multiple ownership rule.

The Satellite Proposal

3. The engineering exhibits submitted by RLTVAC with the assignment applications, utilizing the standard prediction method set forth in Section 73.699 of the Commission's Rules,[3] indicate that the contour overlap between WVFT(TV) and WJPR-TV is 6,107.9 square miles, which includes a population of 661,094 persons. This overlap is equivalent to 69.7% of the area and 73.8% of the population within WVFT(TV)'s predicted Grade B contour and 67.4% of the area and 77.5% of the population within WJPR-TV's predicted Grade B contour. RLTVAC submits, however, that due to the atypical terrain in the Roanoke-Lynchburg area, the actual Grade B overlap is substantially less than is depicted utilizing the standard prediction method. In this regard, RLTVAC states that there is a mountain barrier between the stations' transmitter sites that prevents either station from transmitting an adequate signal to the other's community in the market. This is due to the fact that the Roanoke-Lynchburg market is divided physically from north to south by the Blue Ridge Mountains, with Roanoke located to the west and Lynchburg located to the east of the mountain range. Because of this atypical terrain, RLTVAC argues that it is appropriate to apply the terrain roughness correction set forth in subsections (h)-(l) of Section 73.684 of the Rules.[4] As a result of applying the terrain-roughness correction set forth in these subsections, RLTVAC's exhibits indicate that the predicted overlap area would be reduced to 2,215 square miles, including 293,060 persons. This represents 61.6% of the area and 68% of the population within WVFT(TV)'s predicted coverage area, and 36.8% of the area and 49.6% of the population of WJPR-TV's predicted coverage area.

4. Further, RLTVAC submits a supplemental showing concerning the effects of shadowing on the contour overlap, which is permitted by Section 73.684(f) of the Rules under certain circumstances.[5] It argues that the application of this section, in addition to the terrain-roughness correction, is warranted because there are additional terrain factors that create substantial barriers to line-of-sight reception. These include the facts that Roanoke is actually located in a bowl formed by the Blue Ridge Mountains on the east and the Allegheny Mountains on the west, while the city of Lynchburg is located about 50 miles east of Roanoke on the James River, in the Piedmont region of Virginia. Thus, pursuant to Section 73.684(f) of the Rules, RLTVAC exhibits indicate that duplicated service to unshadowed areas will be limited to 413 square miles, including 117,112 persons. This represents 11.8% of the area and 27.3% of the population of the Grade B coverage area of WVFT(TV) and 6.9% of the area and 19% of the population of the predicted Grade B coverage area of WJPR-TV.[6]

5. In addition, RLTVAC asserts that the degree of overlap existing between WVFT(TV) and WJPR-TV is well within the parameters of overlap approved by the Commission in other cases. Therefore, RLTVAC argues that authorization of the satellite operation proposed here would not constitute an inefficient use of the spectrum.

6. In further support of its satellite request, RLTVAC argues that the two principal communities in the Roanoke-Lynchburg market would be underserved if its request is not granted. RLTVAC notes that the Roanoke-Lynchburg market, ranked 70th, is served by a total of seven television stations, including the two stations whose survival is at issue here. In addition to the

applicants' stations, the following stations are licensed to the Roanoke-Lynchburg, Virginia market: WSET-TV (ABC), Lynchburg; WEFC(TV) (Independent), Roanoke; WDBJ(TV) (CBS), Roanoke; WSLS-TV (NBC), Roanoke; and WBRA-TV (Noncommercial Educational), Roanoke.

7. RLTVAC asserts that if the proposed satellite request is not approved, one or both of the applicants' stations would almost certainly go dark because both WVFT(TV), Roanoke and WJPR-TV, Lynchburg, are presently in bankruptcy proceedings and liquidation proceedings are likely in the event that the stations' reorganization is not granted. In such event, RLTVAC argues, one or the other community would be without an independent television station.[7] Further, RLTVAC argues that approval of this request would also advance the policy of the bankruptcy laws, embodied in the determinations of two bankruptcy courts, that WVFT(TV) and WJPR-TV should be sold to RLTVAC. That no other full-service commercial stations would survive in the Roanoke-Lynchburg market, RLTVAC argues, is also supported by the HB&P study noting, among other things, that the Roanoke-Lynchburg market is below national norms in a number of respects critical to the amount of television advertising dollars available to local stations. Thus, RLTVAC asserts that the authorization of a satellite operation in the Roanoke-Lynchburg market will not result in a loss of diversity. To the contrary, it argues that diversity of service would be maintained in the non-overlap areas by the addition of local programming in Lynchburg, by the prevention of either station's going dark, and by bringing Fox programming to about 213,000 persons now served by WVFT(TV), but not by WJPR-TV.

8. In addition to its arguments that duplicated service to the Roanoke-Lynchburg market will be minimal and that the market is underserved, RLTVAC also argues that there are other factors that make a grant of their request compelling. RLTVAC asserts that neither WVFT(TV) nor WJPR-TV can survive in the market without a grant of a satellite exception because neither station has ever been profitable and, as noted above, both stations are currently in Chapter 11 bankruptcy proceedings. RLTVAC's conclusions regarding the economic viability of WVFT(TV) and WJPR-TV are further supported by documentation, which includes the statement of U. Bertram Ellis, an operator of UHF independent television stations in markets comparable in size to the Roanoke-Lynchburg television market, setting forth his opinion that neither WVFT(TV) nor WJPR-TV will be able to attract sufficient revenue, as a stand-alone full-service independent station, to be financially viable. This opinion is based on several facts. First, because of signal coverage problem between the two communities, even a well-programmed stand-alone independent station in either Lynchburg or Roanoke, it is alleged, cannot achieve more than a 4.0 sign-on/sign-off share.[8] Ellis estimates that with a 4.0 sign-on/sign-off share, an independent station will only be able to garner 4-6% of the market revenues or $2,000,000 in 1990, given that estimated total revenues in Roanoke-Lynchburg market are $34,000,000. Ellis thus concludes that either station fully staffed and operating on a stand-alone basis, would have minimum operating costs of $2,500,000 to $3,000,000 and would, therefore, show operating losses before debt service in excess of $1,000,000.[9]

9. RLTVAC also submits the findings of the HB&P economic study. The economic study concludes that given the present and projected levels of television revenues in the Roanoke-Lynchburg market, the limitations of unusual terrain on the stations' effective coverage and the stations' projected revenues and expenses, neither WVFT(TV) nor WJPR-TV would be viable there. HB&P's findings in this regard are based on the estimated percentage of the households in each county that are able to receive a reasonably high quality signal from the two stations. These numbers were derived from the coverage maps produced by Advanced Systems Design and Arbitron for RLTVAC, which show terrain-roughness corrections and shadowing patterns, the location of significant population centers in relation to each station's coverage contours, and the distance from the tower site. HB&P found that WVFT(TV) was able to provide reasonably satisfactory coverage to only about 132,345 households or about 36% of the total households in the market and that WJPR-TV provides effective off-the-air service to about 132,170 households, with little cable carriage beyond the areas the two stations already serve. As a result of their coverage limitations, HB&P concludes that even if one of the stations left the air, the remaining station's audience share, in competition with the three network affilates, would probably not exceed 2.7% in the market as a whole. This percentage could be somewhat lower, if both of the stations remained on the air.[10] Such a minimal share would produce for each station revenues over the next several years in the $600,000 - $700,000 range. However, to remain competitive with the local network affilates, either station would have to expend from $1,500,000 to $1,700,000 in the next few years in sales and promotion, thus bringing annual operating losses close to $1 million.[11] However, HB&P found that if the satellite operation were approved, their combined operation would be financially viable, with a service area of 224,000 television households.[12]

10. More generally, the HB&P study supports Ellis' statement that national figures show that television markets of size similar to the Roanoke-Lynchburg market are not large enough to support even a single independent television station. According to HB&P, for eight markets between 135,000 and 151,000 households, there were only two markets in which there was a single viable independent station. For markets containing less that 135,000 households with three network affiliates, only one independent was on the air.

11. HB&P also determined that the future viability for independent full-service stations in the market was no better than at present. HB&P projected the extent of population growth in the Roanoke-Lynchburg area to be 0.3%, a third of the projected rate for the state of Virginia and the U.S. as a whole. This projection includes extremely low percentages of upscale or affluent households compared to the national norms and the percentage of downscale, rural families with children is nearly four times the national average. According to HB&P, the buying power of the typical household is well below the national average. Thus, because local television revenues are typically linked to a market's economy, HB&P maintains that the limited growth potential for this market is not encouraging for two stations, although it submits that at the present time there should be sufficient economic resources in the market to support a single independent station if it could provide service to the entire market.

Discussion

12. The goals of our multiple ownership rules are to promote economic competition and diversity of programming viewpoints. *See e.g., Multiple Ownership of Standard, FM and Television Stations*, 45 F.C.C. 1476, 1476-77, *reconsideration denied*, 45 F.C.C. 1728 (1964). The contour overlap or "duopoly" rule serves those goals by insuring that commonly owned stations do not serve significant areas in common. As noted at the outset, our Rules permit exceptions to the duopoly rule for stations that are classified as "satellites" or "primarily satellites," under Note 5 of Section 73.3555 of the Rules. What constitutes a sufficient showing for an exception to the duopoly rule for a satellite operation has been established by case law and involves a balance of various factors, including the degree of overlap between the stations, the capacity of the market to support a full-service station, the level of service available in the market, the financial difficulties of the stations involved, as well as other considerations. *See Further Notice of Proposed Rule Making* in MM Docket No. 87-8, FCC 90-279 (adopted August 1, 1990) paras. 2, 10.

13. We believe that RLTVAC has made a sufficient showing to justify our approval of a satellite operation in Lynchburg, Virginia. First, we have reviewed the engineering data submitted by RLTVAC, including coverage maps with and without shadowed areas depicted; terrain-roughness correction procedures including calculations; various area and population statistical data; topographical maps (7.5' USGS Quadrangle series); and profile graphs. Based on our engineering staff's independent analysis of this data, we have determined that RLTVAC's application of subsections 73.684(h)-(l), which take into account terrain roughness, and RLTVAC's methods and resulting estimations based on shadowing pursuant to Section 73.684(f), are appropriate here due to the highly unusual nature of the terrain in this case. We further find RLTVAC's methodology and calculations to be based on sound engineering practices and to be acceptably accurate. Thus, we are persuaded that the data submitted by RLTVAC demonstrates that duplicated service to unshadowed areas will be limited to 413 square miles including 117,112 persons. This represents 11.8% of the area and 27.3% of the population of WVFT(TV)'s predicted terrain-corrected coverage area, and 6.9% of the area and 19% of the population of the predicted terrain-corrected coverage area of WJPR-TV. We conclude that the percentage of overlap here, after considering terrain roughness and shadowing, is not substantial. *Compare Mary R. Kupris*, FCC 90-275, released August 13, 1990, *appeal pending sub nom. WLOS TV, Inc. v. FCC*, No. 90-1251 (D.C. Cir.). Second, other than WJPR-TV, the proposed satellite station, there are only three other full-service stations whose Grade B contours reach the proposed satellite community of Lynchburg, Virginia, all of which are network-affiliates.[13] *Id.* It is also significant that the requested satellite operation will bring Fox programming to approximately 213,000 persons not now able to receive it off the air.

14. Further, we note that both stations in the instant case have experienced chronic and severe financial difficulties. In fact, as noted above, both stations are in bankruptcy.[14] In this regard, we agree with RLTVAC that reorganization is generally preferable to liquidation, the latter of which seems likely if these assignments are not approved. *See Telemundo, Inc. v. F. C. C.*, 802 F.2d 513, 516 (D.C. Cir. 1986) *quoting LaRose v. F. C. C.*, 494 F.2d 1145 (D.C. Cir. 1974). It also appears from the record that neither station has ever been profitable, and that prior efforts to sell WVFT(TV) and WJPR-TV separately have been unsuccessful. In this regard, RLTVAC notes that since the filing for reorganization in bankruptcy, in November 1988, there has been one firm offer to buy WJPR-TV, which was rejected after the buyer's changed circumstances caused the agreement to be impossible to perform. Another offer was rejected because it did not satisfy the outstanding secured indebtedness. One application to assign station WVFT(TV) was filed with the Commission but not consummated after WVFT(TV)'s licensee filed for bankruptcy protection. Another prospective purchaser of WVFT(TV) appeared at that hearing, but did not have a financing commitment and therefore the bankruptcy court preferred the RLTVAC offer. Further, we note that the sellers employed five brokerage firms, in their efforts to produce buyers.

15. Moreover, in examining RLTVAC's economic showings in some detail, we are persuaded that, given the present and projected levels of television revenue in the Roanoke-Lynchburg market, the limitations of unusual terrain on the stations' effective coverage and the stations' projected revenues and expenses, it is unlikely that either WVFT(TV) or WJPR-TV can survive as stand-alone full-service stations. RLTVAC has submitted credible economic data to show that neither WVFT(TV) nor WJPR-TV can survive in the market without a grant of a satellite exception. Thus, we are persuaded that approval of such an operation under these circumstances would enhance rather than inhibit our policy of encouraging diversity, by insuring the preservation of voices in the market.

16. Based on the foregoing, and having concluded that the applicants are fully qualified, we find that a grant of the captioned assignment applications pursuant to the satellite exception in Note 5 of Section 73.3555 of the Commission's Rules would be in the public interest. Accordingly, IT IS ORDERED, That the application for assignment of license for station WVFT(TV), Roanoke, Virginia, from Family Group V, Ltd. to Roanoke-Lynchburg TV Acquisition Corporation (File No. BALCT-900112KF) IS GRANTED.

17. IT IS FURTHER ORDERED, That the application for assignment of license for station WJPR-TV, Lynchburg, Virginia, from Lynchburg-Roanoke Television Partners Limited Partnership to Roanoke-Lynchburg TV Acquisition Corporation (File No. BALCT-900112KE) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 73.3555(a)(3) of the Commission's Rules provides that "[n]o license for [a television] broadcast station shall be granted to any party

> . . if such party directly or indirectly owns, operates or controls one or more [television] broadcast stations . . . and the grant of such license will result in: [a]ny overlap of the Grade B contours of the existing and proposed TV stations, computed in accordance with [Section] 73.684." Note 5 to Section 73.3555 provides an exception to the contour overlap proscription for stations which are primarily 'satellite' operations, and "[s]uch cases [are] considered on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest."

[2] A 100-percent satellite station retransmits all of the programming of its parent, while a station categorized as "primarily a satellite" airs most of its parent's programming, but produces less than five percent of its programming locally. *See, e.g., Amaturo Group, Inc.*, 68 F.C.C.2d 899 (1978). RLTVAC originally proposed a 100-percent satellite operation. However, in its February 23, 1990 amendment, it indicated that in accordance with Commission policy, WJPR-TV would, independent of WVFT(TV), originate some programming focused on the needs of the Lynchburg community. Such programming, however, would constitute less than five percent of its operating time.

[3] The standard prediction method, set forth in Section 73.699 of the Rules, is the method used to determine a television station's contours based on typical terrain.

[4] While the standard prediction method, set forth in Section 73.699 of the Rules takes into account some roughness, it does not account for unusual variations caused by mountain ranges or other natural barriers. Thus, an applicant may use the formulas described in subsections (h)-(l) of Section 73.684, otherwise known as the "terrain-roughness correction," in determining actual coverage contours if the applicant demonstrates that the roughness factor for a particular propagation path departs appreciably from the value set forth in the standard prediction method of Section 73.699. Section 73.684 may not be utilized, however, unless all field strength values of interest are predicted to occur 9.7 kilometers (6 miles) or less from the transmitter. 47 C.F.R. Section 73.684(h)-(l)(1990).

[5] An applicant may also submit a supplemental showing if the terrain in one or more directions from the antenna site departs widely from the average elevation of the 3.2 to 16.1 kilometers (2 to 10 miles) sector. If this is the case, a showing may be made utilizing any number of engineering methods, based upon good engineering practices, provided that the showing describes the procedure employed, includes sample calculations and maps showing both predicted coverage and coverage as predicted by the supplemental method, as well as any additional information regarding terrain and coverage requested by the Commission. Then, based on all of the information submitted, the Commission will determine, on a case-by-case basis, first whether such supplemental showing is appropriate on the facts of the case and second, whether the method used produces a reasonably accurate prediction of the contours in question. 47 C.F.R. Section 73.684(f)(1990).

[6] The population percentages in the unshadowed areas of the terrain-corrected contour overlap areas were derived from the study conducted on behalf of RLTVAC by the consulting firm of Harrison, Bond & Pecaro, Inc. ("HB&P"). RLTVAC admits that the fact that a given location does not have line-of-sight reception due to shadowing does not necessarily mean that there is no reception. However, in calculating the number of homes able to receive the signals of each station, HB&P nonetheless assumed that in areas that are heavily shadowed, 50% of the homes can receive the affected station. Where shadowing was moderate, HB&P assumed that 75% of the homes can receive the station and in areas with little or no shadowing, HB&P assumed 100% of the homes can receive the station. Thus, according to RLTVAC, its figures are strongly biased in favor of reception. All other percentages discussed above were derived and set forth in the engineering statements of James R. Audet, submitted on behalf of RLTVAC.

[7] RLTVAC arrives at this conclusion based on its allegations that WVFT(TV), Roanoke, does not adequately reach Lynchburg and WJPR-TV, Lynchburg, does not adequately reach Roanoke due to terrain obstruction. Moreover, it alleges that the Grade B contours of WEFC(TV) and WBRA-TV, Roanoke, do not reach the community of Lynchburg due to terrain and power limitations. RLTVAC asserts that WEFC(TV), Roanoke, should not be considered a substitute source of independent programming because of its specialized religious format and its minimal net weekly circulation. The HP&B study, submitted on behalf of RLTVAC, also states that only one out-of-market independent station is carried by cable systems to the coverage areas of WVFT(TV) and WJPR-TV, serving only 14,951 subscribers. The study also concludes that that cable carriage does not appreciably enhance the service coverage of independent stations in the Roanoke-Lynchburg market because of the difficulty experienced by UHF operators in obtaining cable carriage.

[8] Mr. Ellis is the President of Act III Broadcasting, Inc., which operates seven independent stations in ADI's 30-106, with a 7.5 average sign-on/sign-off share. He states that if any of these were viewed in only half its market, that would translate into a 3.75/4.0 share for the whole ADI.

[9] Ellis asserts that sales of $3,000,000, which represents almost 9.0% of the revenues in the Roanoke-Lynchburg market and would require a 6.0 sign-on/sign-off share to break-even, cannot be achieved by a stand-alone independent that covers only one of the two major communities in the market.

[10] Both of these stations went on the air in 1986. From mid-1987 to November 1989, the stations were not able to gain sufficient ratings to be listed consistently in the rating books. WJPR-TV has an audience share of 2% and WVFT(TV) also has a 2% audience share. WEFC(TV) is not listed in the Arbitron rating books. In addition, a non-commercial UHF station also went on the air in 1986.

[11] HB&P cites the following figures compiled by the National Association of Broadcasters ("NAB") to support this finding. For 1988, NAB lists non-network gross revenues in the Roanoke-Lynchburg market as $28,913,593, with an average annual growth rate of 7.7%. Assuming even 8%, the market gross non-network revenues should reach $34,018,000 by 1990 and should grow to $45,638,000 by 1994. Further assuming a typical independent's share of the market, at 7.5% audience share, the station's net revenues are projected to be about $629,000 in 1990 and would not exceed $1 million by 1994. By comparison with conventional independent station expenses in the Roanoke-Lynchburg market, expenses would exceed revenues, with total expenses at about $1,480,000 for the first year and $1,943,000 by the fifth year. Technical expenses would be about $100,000 to $150,000 per year; $800,000 to $1,000,000 per year in programming costs; sales costs would be about $100,000 to $150,000 per year; and management and equipment costs would be about $500,000 to $650,000 per year.

[12] To arrive at these conclusions, HB&P relied on several conventional television data sources, such as the *Broadcasting/ Cablecasting Yearbook*, 1989; the CACI, Inc. demographic database; and Arbitron's *1988 - 1989 ADI Market Guide*.

[13] The proposed parent community of Roanoke receives a Grade B or better signal from the three network-affiliated stations, as well as three other stations: WVFT(TV), which is the proposed parent station, WEFC(TV), which is a religious station, and WBRA-TV, which is a noncommercial educational station. It also appears that the only out-of-market independent station carried on any of the cable systems operating within the combined coverage areas of WVFT(TV) and WJPR-TV, is WGGT(TV), Greensboro, North Carolina, serving only 14,951 subscribers. The HB&P study also suggests that cable carriage does not appreciably enhance the service coverage of independent stations in the Roanoke-Lynchburg market.

[14] RLTVAC has submitted the Bankruptcy Court's two decisions approving the sales of WVFT(TV) and WJPR-TV to RLTVAC, respectively.