

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

In re Application of

BURT H. OLIPHANT, File No. BTCH-930526GE  
PEGGY S. OLIPHANT,  
L. BRENT OLIPHANT AND  
JEFFREY S. OLIPHANT  
(Transferors)

and

GLENDIVE BROADCASTING  
CORPORATION (Transferee)

For Transfer of Control of the  
Licensee of Station KDZN(FM),  
Glendive, Montana

**MEMORANDUM OPINION AND ORDER**

Adopted: February 15, 1995; Released: March 7, 1995

By the Commission: Commissioner Barrett concurring  
and issuing a statement.

1. The Commission has before it the above-captioned application for transfer of control of one hundred percent of the stock of Magic Air Communications Company ("Magic Air"), licensee of KDZN(FM), Glendive, Montana, from Burt H. Oliphant, Peggy S. Oliphant, L. Brent Oliphant and Jeffrey S. Oliphant to Glendive Broadcasting Corporation ("GBC"), and a related request for waiver of 47 C.F.R. § 73.3555(c), the Commission's one-to-a-market rule.<sup>1</sup> GBC is the licensee of KXGN(AM) and VHF television station KXGN-TV, both licensed to Glendive, Montana.<sup>2</sup> The Grade A contour of KXGN-TV encompasses all of Glendive, KDZN(FM)'s community of license.<sup>3</sup> The application is unopposed. As set forth below, we will grant GBC's request for waiver of the one-to-a-market rule.

<sup>1</sup> 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.

<sup>2</sup> Presently pending before the Commission is an application filed by KYUS Broadcasting Corporation ("KBC") to acquire KYUS-TV (ABC), Channel 3, Miles City, Montana, and a proposal to operate KYUS-TV as a satellite of KXGN-TV (File No. BALCT-940314KF). GBC's sole shareholder also wholly owns KBC.

<sup>3</sup> In 1990, the Commission granted GBC a waiver of the

**WAIVER REQUEST**

2. GBC bases its one-to-a-market waiver request on the Commission's waiver standards adopted in *Second Report and Order* in MM Docket No. 87-7 ("*Second Report and Order*"), 4 FCC Rcd 1741 (1989), *recon. denied in part and granted in part*, ("*Second Report and Order Recon.*"), 4 FCC Rcd 6489 (1989). Under these criteria, the Commission presumptively favors waiver requests involving station combinations serving the top 25 markets where there are at least 30 separately owned, operated and controlled broadcast licensees or "voices" after the proposed combination ("top 25 market/30 voice standard"). The Commission also favors waiver requests involving "failed" broadcast stations, that is, stations that have not been operating for a substantial period of time (e.g., four months), or that are involved in bankruptcy proceedings. See 47 C.F.R. § 73.3555, n.7. Because GBC's waiver request does not meet the top 25 market/30 voice standard or the failed-station standard, GBC seeks review of its waiver request under the case-by-case standard also outlined in the *Second Report and Order*. Under this 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 involved; (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 Order* at 1753.<sup>4</sup> In support of its waiver request, GBC submits a detailed showing which addresses each of the five case-by-case factors.

3. GBC first contends that joint operation of the stations will create cost savings and efficiencies of operation. In support, GBC provides a chart listing KDZN(FM)'s current monthly expenses and those expenses that it expects to eliminate as a result of the joint operations. Regarding cost savings, GBC states that it will be able to relocate KDZN(FM)'s studio to the existing KXGN-TV/KXGN(AM) facility and that the three stations will share professional services, utilities, telephone service, advertising and promotional expenses. GBC also asserts that it expects to realize significant economic efficiencies in the sharing of personnel, particularly in the engineering, administrative and management staff. In addition, GBC maintains that it will achieve economic efficiencies by sharing its public affairs director, two full-time news reporters and its existing production staff with station KDZN(FM). In total, GBC predicts that the proposed combination will realize annual savings of \$52,500 for the FM. GBC states that those sav-

one-to-a-market rule when it acquired the "grandfathered" TV and AM combination finding that a waiver grant would not reduce diversity given the longstanding common ownership of those facilities. See *Glendive Broadcasting Corporation*, 5 FCC Rcd 2936, 2937 (1990). GBC acquired those stations from a licensee who had operated the stations jointly for more than thirty years. *Id.* at 2936. When the Commission adopted the one-to-a-market rule in 1970, it "grandfathered" combinations such as KXGN-TV and KXGN(AM). See *Multiple Ownership of Standard, FM and TV Broadcast Stations*, 22 FCC 2d 306 (1970), *reconsidered in part*, 28 FCC 2d 662 (1971).

<sup>4</sup> Not all five factors under the case-by-case standard will be relevant in every case. 4 FCC Rcd at 6491.

ings will allow GBC to hire an additional part-time employee to expand the public service programming of both KXGN(AM) and KDZN(FM).

4. GBC also contends that programming benefits will result from the stations' joint operation. Specifically, GBC reports that its full-time public service director will direct KDZN(FM)'s public service programming and that GBC will produce a new half-hour weekly public affairs program on KDZN(FM).<sup>5</sup> Furthermore, GBC indicates that the acquisition of the FM station will allow it to broadcast additional local high school and college sporting events that conflict with sports programming currently broadcast on KXGN(AM).

5. Second, regarding the technical facilities involved, GBC states that KXGN-TV (CBS/NBC) is a VHF facility operating on Channel 5 at 14.8 kW effective radiated power ("ERP") from an antenna height of 500 feet above average terrain ("HAAT"). KXGN(AM) is a Class C facility operating non-directionally on 1400 kHz at 1 kW daytime, 250 watts nighttime. KDZN(FM) is a Class C3 facility operating on 96.5 MHz at 25 kW ERP from an antenna height of 400 feet HAAT.

6. Third, with respect to the number of other media outlets the applicant already owns in the relevant market, GBC affirms that, aside from KXGN-TV and KXGN(AM), it owns no other broadcast stations in Glendive. As noted *supra*, GBC reports that on March 14, 1994, its sole shareholder filed an application to acquire KBC, the licensee of KYUS-TV, Miles City, Montana. In that application, GBC proposes to operate KYUS-TV as a satellite of KXGN-TV. Although the Grade B contours of KXGN-TV and KYUS-TV overlap, GBC indicates that KYUS-TV does not place a Grade B contour over Glendive.

7. Fourth, with regard to the economic status of the proposed combination of stations, GBC asserts that the subject stations serve a community that "has experienced severe economic hardship" for some time. GBC reports that Glendive's population has declined since the 1980 census from over 10,000 people to less than 4,500, causing many businesses to close, relocate or merge.<sup>6</sup> GBC contends that the economic conditions present in Glendive make the "likelihood of financial success improbable, if not impossible," for KDZN(FM) and that the station's billings have "declined steadily for over one year, and the trend appears likely to continue." In support, GBC offers Magic Air's tax returns for the years 1986-1993 and a revenue statement for the period through the third quarter of 1994. According to these documents, Magic Air's operations have provided the following annual net income since beginning operations in 1986:

Year	Net Income
1987	\$ 3,482
1988	\$ 2,602
1989	\$ 14,967
1990	\$ 1,305
1991	\$ 17,432
1992	\$ 17,564
1993	\$ 6,993

8. Through the third quarter of 1994, Magic Air reports that it has posted net operating income totaling \$132 and that it would have shown a net loss for the three quarters had Magic Air not terminated two full-time employees.<sup>7</sup> Magic Air also states that in the years 1992, 1993 and 1994, its majority shareholders "loaned back" to the corporation the previous year's net profits for operating capital and that, since returning KDZN(FM) to the air in 1986, Burt Oliphant has not drawn a salary from the station's operations. Magic Air argues that if Burt Oliphant had received a salary during that period, the company would have correspondingly shown a net operating loss. Magic Air further contends that if the Commission does not grant the instant transfer, KDZN(FM) will be "forced to go off the air by January 1, 1995 due to continued financial losses." It notes that despite two years of listing KDZN(FM) with media brokers, GBC is the only *bona fide* purchaser that Magic Air has been able to identify for KDZN(FM).<sup>8</sup> With respect to its current stations, GBC provides no specific information regarding the finances of KXGN-TV. GBC does report, however, that KXGN(AM) could not operate without the support received from KXGN-TV. GBC notes that KXGN(AM) has suffered losses over each of the past three years and that in the eleven months ending August 31, 1994, KXGN(AM) posted a net operating loss of more than \$50,000.

9. The fifth factor concerns the nature of the relevant market in light of the Commission's concerns about diversity and competition. Relevant indicia include the number of broadcast outlets, the number of separately owned and operated broadcast "voices" in the market, and the presence of cable and non-broadcast media. GBC states that Glendive is now included within the Minot-Bismarck-Dickinson, ND-Glendive, MT ADI [Arbitron Area of Dominant Influence] -- ranked 152nd in 1994 -- and that 15 TV stations, including KXGN-TV are included in that ADI. However, GBC suggests that "the relevant market realistically must be considered" the former Glendive ADI "since few of the television and radio stations licensed to Bismarck, ND, and Dickinson, serve Glendive."<sup>9</sup> Utilizing

<sup>5</sup> GBC states that its proposed new program, "Let's Talk About It," would air on Tuesday mornings at 9:30 a.m. on KDZN(FM). GBC indicates that the weekly program will focus on issues of importance to Glendive.

<sup>6</sup> Magic Air provides a list of sixty-eight Glendive-area businesses that have closed in the past several years due to the region's declining economy. In 1990, the Commission specifically noted that the Glendive area was "suffering through a depressed agricultural economy and a downturn in the business community caused by falling oil and gas prices." *Glendive Broadcasting Corporation, supra*, at 2937. GBC asserts that Glendive's poor economic conditions remain unchanged since that decision.

<sup>7</sup> Magic Air states that the station is presently staffed by Mr. Oliphant, Mrs. Oliphant and one part-time employee. Magic Air

also states that a portion of the advertising revenue collected during the third quarter of 1994 represents collection on existing accounts receivable and that new advertising sales continue to decline.

<sup>8</sup> Magic Air indicates that in 1986 it purchased the then-silent KDZN(FM) out of bankruptcy for \$100,000. During the two-year period in which the station was offered for sale by media brokers, Magic Air contends that it reduced the station's asking price by \$35,000, eventually accepting GBC's offer for \$140,000.

<sup>9</sup> GBC states that KXGN-TV was the only television station listed in the former Glendive ADI. In 1989, Arbitron eliminated the Glendive ADI -- which consisted of the counties of Dawson and Prairie, Montana -- and folded Glendive into the Minot-Bismarck-Dickinson, ND-Glendive, MT ADI. K

the former ADI market, GBC also states that there are 6 AM stations and 4 FM stations that "currently provide service to Glendive."<sup>10</sup> Additionally, GBC indicates that 1 FM translator, 3 cable systems with a penetration rate of 80%, 4 low-power television stations and a twice-weekly newspaper serve the two-county Glendive area. GBC asserts that even though the size of the market imposes limitations on the number of "voices" available, allowing it to acquire KDZN(FM) will not "create an excessive concentration of mass media control in the Glendive area."

#### DISCUSSION

10. 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. The Commission has recognized that "[i]n smaller markets, where competition is usually more limited, of particular importance would be demonstrated financial difficulties and the practical question of whether a waiver grant . . . would in fact increase or decrease the vigor of competition and diversity in the market." *Id.* at 6491-6492. We find that GBC's showing in support of a waiver of the one-to-a-market rule meets our case-by-case criteria, and that a waiver in this instance is consistent with the public interest.

11. *Potential Benefits.* GBC has shown that joint operation of the stations will result in significant cost savings as well as the potential for enhanced programming and service benefits. GBC estimates that the proposed combination will result in cost savings of \$52,000. Of particular importance is that GBC proposes to apply a portion of proposed savings to enhance the public service programming on KDZN(FM). See *Second Report and Order*, 4 FCC Rcd at 1753 (small market broadcasters may take advantage of savings to improve program service); see also *Tulsa 23*, 5 FCC Rcd 727, 728 (1990) (waiver granted where efficiencies allow for creation of specific news, public affairs, and children's programs). As noted, KDZN(FM) will, under the proposed combination, have the benefit of services from GBC's current full-time public affairs director. Furthermore, GBC has committed to hire at least one additional part-time employee to handle public service programming for the radio stations and to create a new weekly program specifically designed to respond to the needs of Glendive. In addition, GBC reports that the acquisition of KDZN(FM) will permit GBC to broadcast local high school and college sports programming that currently conflicts with the sports programming GBC now offers on KXGN(AM).

12. *Technical Facilities.* All three facilities involved here are relatively modest. Station KDZN(FM) is a Class C3 FM, the second least powerful FM facility permitted under our rules. Magic Air contends the coverage limitations of that signal prevent KDZN(FM) from competing for listeners in communities other than Glendive, while other higher-powered stations from those communities compete for listeners in Glendive. GBC's facilities, KXGN-TV and KXGN(AM), are also lesser-powered facilities. Where the maximum-powered Channel 5 facility is 100 kW from 610 meters HAAT, KXGN-TV operates at only 14.8 kW from 150 meters HAAT. Station KXGN(AM), licensed at 1 kW day, 250 watts night, similarly operates at less than the maximum Class C' facilities of 1 kW day, 1 kW night.<sup>11</sup>

13. *Media Outlets.* Other than KXGN-TV and KXGN(AM), GBC owns no other media interests in Glendive. We have noted that GBC's sole shareholder has an application pending to acquire KYUS-TV in Miles City, a community located approximately sixty miles from Glendive. KYUS-TV's predicted Grade B contour overlaps the predicted Grade B contour of KXGN-TV and GBC requests a waiver to operate KYUS-TV as a satellite of KXGN-TV. GBC states, however, that because of terrain conditions, the stations' Grade B contour overlap is "theoretical" and that within the predicted overlap area, the population consists only of a "few dozen homes." Furthermore, GBC reports that KYUS-TV does not place a Grade B contour over Glendive and that KYUS-TV is not included within the Minot-Bismarck-Dickinson, ND-Glendive, MT ADI, nor within the former Glendive ADI.<sup>12</sup> Given these facts, we find that KYUS-TV is not a Glendive media outlet.

14. *Financial Difficulties.* The subject waiver request clearly establishes that KDZN(FM) is in a precarious financial position. Since purchasing KDZN(FM) out of bankruptcy in 1986, Magic Air's showing indicates that its very modest annual net income has been achieved only by deferral of a principal's salary, the reinvestment of the shareholder's dividends back into the station's operating budget, and the continued reduction of staff. Magic Air's showing also supports its contention that a net loss would have been shown in each year if one of its principals had not accepted the salary deferral and that it cannot continue to sustain operations for much longer, even with only its present three-person staff. Further, GBC has demonstrated that KXGN(AM) has sustained losses of more than \$50,000 for the eleven months prior to August of 1994 and survives only due to the efficiencies achieved through combination with KXGN-TV. Finally, the waiver request demonstrates that economic conditions in the region continue to deteriorate. Both GBC and Magic Air have supplied detailed lists of local advertisers that have closed businesses due to the severe economic recession in that region.<sup>13</sup> In sum, the economic conditions of KDZN(FM) and the market par-

<sup>10</sup> All of the radio stations are licensed to communities in the counties of Dawson and Prairie. Magic Air reports that subsequent to the filing of the instant application, two of the radio stations located in this two-county area, KGCH(AM)/KGCH(FM), Sidney, MT, have gone off the air due to financial difficulties.

<sup>11</sup> The station that GBC's sole shareholder proposes to acquire, KYUS-TV, Miles City, Montana, is a similarly modest facility operating at 10.5 kW from 31 meters HAAT.

<sup>12</sup> KYUS-TV is included within the Billings-Hardin MT ADI. See *Television & Cable Factbook*, Stations Volume, 62 (1994

Edition).

<sup>13</sup> We have in the past considered predictions of future station viability based upon a station's share of a market's shrinking advertising revenue. See e.g., *Tulsa 23*, 5 FCC Rcd 727, 728 (1990) (market advertising revenues declined by \$10 million dollars between 1982 and 1986). Unlike stations in larger markets, small market stations do not report advertising revenues to independent accounting firms. Nevertheless, we find that the parties' showings here demonstrate that the number of likely advertisers continues to diminish.

allel other instances in which we have granted a waiver under the case-by-case standard. See *Holston Valley*, 5 FCC Rcd 507 (1990) (waiver granted for small market AM station with 10 month sales revenues totaling only \$2,100 and a ten-year history suggesting "it is virtually a failed station"); see also *Tulsa* 23, 5 FCC Rcd 727, 728 (1990).

15. *Competition/Diversity*. Analysis of the subject waiver request's impact upon competition and diversity requires us to focus on Glendive, a relatively small community located within the large Minot-Bismarck-Dickinson, ND-Glendive, MT ADI.<sup>14</sup> Typically, in the context of a one-to-a-market waiver, the Commission will determine the number of competing broadcast stations by considering the "relevant ADI TV market for TV stations" and the "relevant TV metro market for radio stations." *Second Report and Order*, 4 FCC Rcd at 1760, n.101. The Minot-Bismarck-Dickinson ND-Glendive, MT ADI consists of 15 TV stations operated by 5 separate owners. As GBC points out, however, where, as here, the ADI covers a large area and the subject stations compete only in the local community, we have centered our inquiry on the local community rather than the ADI. See *Duane J. Polich ("Polich")*, 4 FCC Rcd 5596, 5597 (1989) (Pullman, Washington). GBC's waiver request suggests that using the former Glendive ADI for counting television stations more "realistically" reflects the relevant market and, under the circumstances presented in this case, we agree. Because KXGN-TV is the only television station to place a Grade B contour over Glendive, this approach results in a market consisting of 1 television station.<sup>15</sup> Regarding the relevant market for radio stations, Arbitron does not define a TV metro market for Glendive, nor does it define a metro radio market for Glendive. We therefore find the relevant radio market to consist of the 10 radio stations that GBC has identified as serving and competing for advertising dollars in Glendive.<sup>16</sup> Compare *Polich* at 5597 (relevant radio market consists of stations competing for listeners in Pullman). Of those 10 radio stations, 7 separately owned and operated radio stations would serve Glendive after the proposed combination.

16. Thus using either the analysis outlined in the *Second Report and Order* or the alternative analysis proposed by GBC, it is clear that Glendive, like many small markets, is served by relatively few broadcast voices. Under the method for counting television stations set forth in the *Second Report and Order*, the total number of post-combination broadcast stations is 25 (15 TV stations and 10 radio stations), operated by 12 separate owners. Including only the television stations placing a Grade B contour over Glendive, as GBC suggests, the total number of post-combination broadcast stations is 11 (1 TV station and 10 radio stations), operated by 8 separate owners. Given the limited number of "voices" present, Glendive's acquisition of

KDZN(FM) will clearly have an impact on competition and diversity in Glendive. However, in view of the 7 other competing radio stations, 1 FM translator station, 4 low-power television stations, 1 newspaper and the high penetration of cable in the market (80%) GBC's acquisition of KDZN(FM) will not likely result in dominance by GBC of the Glendive market. Equally as important, grant of the assignment application may well be the only means of preventing the loss of KDZN(FM)'s "voice" altogether, a result that would hardly serve diversity.

#### CONCLUSION

17. We conclude that the subject request for waiver of our one-to-a-market rule meets our public interest case-by-case criteria. The waiver showing indicates that joint operation of the stations will yield significant cost savings critical to the continued operation of KDZN(FM) by co-locating the facilities and sharing expenses and personnel. The parties have further demonstrated that cost savings will allow for additional public service programming benefits for listeners in the Glendive area. All three technical facilities are modest for their respective classes. Magic Air has demonstrated that KDZN(FM) is in financial distress and that no one, other than GBC, has offered to buy the station in the two-year period that the station has been offered for sale. In the past, we have acknowledged the importance of a small market station's financial difficulties in granting similar waiver requests. See *Holston Valley*, 5 FCC Rcd 507, 508 (1989). Finally, considering the totality of the information presented, and in view of the availability of other radio service received in Glendive, the high rate of cable television penetration in the market, and the newspaper and other broadcast media available, we conclude that the preservation of the KDZN(FM) service and potential enhancement in programming services outweigh the reduction of diversity and competition that would result from grant of the subject waiver request.

18. Accordingly, IT IS ORDERED, That the request for waiver of 47 C.F.R. § 73.3555(c) by Glendive Broadcasting Corporation IS GRANTED. IT IS FURTHER ORDERED, That upon finding the applicants otherwise qualified, the application for transfer of control of Magic Air Communications Company, licensee of KDZN(FM), Glendive, Montana, from Burt H. Oliphant, Peggy S. Oliphant, L. Brent Oliphant and Jeffrey S. Oliphant to Glendive Broadcasting Corporation IS GRANTED.

<sup>14</sup> This ADI is comprised of 134,700 TV households, of which only 13,700 households are within KXGN-TV's service area. See *Television & Cable Factbook*, Stations Volume, No. 62 (1994 Edition).

<sup>15</sup> In our previous consideration of a one-to-a-market waiver request in Glendive (see note 3, *supra*), we noted that while three other VHF stations placed a predicted Grade B contour over portions of the two-county former Glendive ADI, only KXGN-TV placed a Grade B contour over Glendive. See *Glendive Broadcasting Corporation*, 5 FCC Rcd 2936, 2937 n.2 (1990).

<sup>16</sup> Of the 6 AM stations and 4 FM stations, 3 stations are

licensed to Glendive and the remaining 7 stations are licensed to Sydney, MT, Baker, MT and Miles City, MT. The Commission's records indicate that two of the radio stations in the relevant market, KGCX(AM)/KGCH(FM), have been off the air since August 3, 1993 pursuant to special temporary authority to remain silent. On November 10, 1994, the stations' licensee filed a request with the Commission to extend that authority for an additional six months to permit the completion of negotiations with an interested buyer. Because of KGCX(AM)/KGCH(FM)'s likely return to service, we will continue to include those stations in our analysis.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

CONCURRING STATEMENT  
OF  
COMMISSIONER ANDREW C. BARRETT

RE: In re Application of Burt H. Oliphant, Peggy S. Oliphant, L. Brent Oliphant and Jeffrey S. Oliphant and Glendive Broadcasting Corporation For Transfer of Control of the Licensee of Station KDZN(FM), Glendive, Montana (Memorandum Opinion and Order)

This Memorandum Opinion and Order grants a one-to-a-market waiver to Glendive Broadcasting Corporation ("GBC") for the acquisition of KDZN(FM), Glendive, Montana. While I have supported Commission authorization of one-to-a-market waivers in the past,<sup>1</sup> I must concur in this decision.

My reservations with regard to this decision, center on the overall impact of such waivers on diversity and competition.<sup>2</sup> As the facts presented in this matter do not satisfy our top 25 television market/30 broadcast voice or our failed station standards, this case must be evaluated under our case-by-case waiver standard. Under this standard, I am only haltingly persuaded that the facts in this case, taken in the aggregate, support the grant of a one-to-a-market waiver. Yet, I believe that this case, while by its nature is difficult, still raises concerns about the extent to which the Commission should limit the grant of one-to-a-market waivers, particularly where serious diversity and competitiveness issues are present.<sup>3</sup>

Upon evaluation, this matter raises several issues. Of the factors considered by the Commission in evaluating case-by-case waiver requests, the potential benefit for GBC as a result of the joint operation of KDZN(FM) with KXGN(AM) and KXGN-TV, the financial difficulties of KDZN(FM), and the potential for a resulting failed station are highlighted as justifications for

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<sup>1</sup>See, e.g., Midwest Communications, Inc., 7 FCC Rcd 159 (1991); Micronesia Broadcasting Corp., 6 FCC Rcd 984 (1991); WHDM-AM, Inc., 6 FCC Rcd 4329 (1991); and Kyles Broadcasting Ltd., 5 FCC Rcd 5846 (1990).

<sup>2</sup>See, Dissenting Statement of Commissioner Andrew C. Barrett (KEZV(FM), Spearfish, South Dakota; One-to-a-market Waiver) adopted March 16, 1992.

<sup>3</sup>Id.

this waiver grant.<sup>4</sup> Moreover, I recognize the severe economic ramifications for business that stems from a declining population.<sup>5</sup> While I am sympathetic to these problems and believe that economic efficiencies could result from the proposed consolidation,<sup>6</sup> I question the extent to which these factors should outweigh all other considerations including diversity and competition.

Moreover, I remain concerned that such consolidations could create an undue concentration of mass media control in relatively smaller markets. Although, Glendive's ADI was ranked 152nd in 1994, this is based on its inclusion within the Minot-Bismark-Dickinson, North Dakota-Glendive Montana ADI. In actuality, the number of voices serving Glendive is fewer than this ADI would indicate. Although fifteen TV stations are included in this ADI, only one, KXGN-TV, which is owned by Glendive Broadcasting Corporation, is licensed to serve the Glendive community.<sup>7</sup> Additionally, the relevant radio market consists of 10 stations, of which only 7 will be separately owned and operated after the waiver grant.<sup>8</sup> Given the limited number of voices present,<sup>9</sup> and the size of the relevant market, Glendive Broadcasting Corporation's acquisition of KDZN(FM) could have a significant impact on diversity and competition in the Glendive area.

Thus, in light of these concerns, I concur in this Commission decision.

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<sup>4</sup>See, Memorandum Opinion and Order at 9. The unsuccessful efforts to sell the station over a two-year period have not gone unnoticed.

<sup>5</sup>Id. at 3. According to GBC's pleadings, the 1980 Census indicated that Glendive's population which at one time exceeded 10,000 dropped to less than 4500.

<sup>6</sup>Id. at 3.

<sup>7</sup>Id. at 8.

<sup>8</sup>Id.

<sup>9</sup>While it is my understanding that channel frequencies are still available in this market, one must wonder whether we are allowing a few players to gain a foothold in the Glendive area that will deter future station investment in this market.