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

In re: Application of	)	
	)	
Westar Broadcasting Group, Ltd. (Assignor)	)	File No. BALH-960604GJ
	)	
and	)	
	)	
Miller Broadcasting Company, Inc. (Assignee)	)	
	)	
For Assignment of License of Station KXGO(FM), Arcata, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 29, 1996 **Released:** September 12, 1996

By the Commission:

1. The Commission has before it the above-captioned application for assignment of license of KXGO(FM), Arcata, California, from Westar Broadcasting Group, Ltd. ("Westar") to Miller Broadcasting Company, Inc. ("Miller"). There is a related request for waiver of 47 C.F.R. § 73.3555(c), the Commission's one-to-a-market rule, which restricts common radio and television station ownership in the same market.[1] The application is unopposed. For the reasons stated below, we will grant the 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] This case is being considered at the Commission level because it involves stations in the 188th ranked television market. The authority over one-to-a market cases that we delegated to the staff extends only to the top 100 television markets. See Application of Louis C. DeArias, Receiver, 11 FCC Rcd 3662 (1996).

2. Miller is currently the licensee of KVIQ-TV, Channel 6 (CBS affiliate), Eureka, California. Grant of Miller's application to acquire station KXGO(FM) would create a new radio-television combination and would require a waiver of the one-to-a-market rule because the Grade A contour of KVIQ-TV encompasses Arcata, KXGO(FM)'s city of license. See 47 C.F.R. § 73.3555(c).

Request for Waiver of the One-to-a-Market Rule

3. Miller bases its waiver request on the one-to-a-market standards enunciated in the Second Report and Order in MM Docket 87-7, 4 FCC Rcd 1741 (1989) ("Second Report and Order"), recon. denied in part and granted in part 4 FCC Rcd 6489 (1989) ("Second Report and Order Recon."). Under these standards, the Commission presumptively favors requests involving (1) stations serving the top 25 markets where at least 30 separately owned, operated, and controlled stations will remain following the proposed combination; or (2) "failed" stations (stations that have not been operational for a substantial period of time or are involved in bankruptcy proceedings). Otherwise, as in the present case, the requests must be evaluated under a more rigorous case-by-case approach. 47 C.F.R. § 73.3555(c) note 7.

4. We shall review Miller's waiver request under the case-by-case standard because Eureka is the 188th largest Designated Market Area (DMA) in the country and there is no claim that KVIQ-TV or WXGO(FM) is a "failed station," as defined by the Commission. Under the case-by-case standard, the Commission makes a public interest determination based upon the following five criteria: (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. See Second Report and Order, 4 FCC Rcd at 1753. In support of its request, Miller submits a showing which addresses each of the five case-by-case factors.[3]

5. Benefits of Joint Operation. Miller maintains that the proposed combination of KXGO(FM) with KVIQ-TV would result in cost savings to Miller which it would use to provide service benefits to the public. Miller expects to save over $71,000 per year by consolidating the stations' staffs and studios.[4] Miller plans to use a portion of those savings to hire a part-time Community Service Director, which it believes will enhance ascertainment of community problems and production of public service announcements at both KXGO(FM) and KVIQ-TV.

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[3] However, we note that not all five of the factors mentioned are necessarily relevant in each case. Second Report and Order Recon., 4 FCC Rcd at 6491, para. 18; South Central Communications Corporation, 5 FCC Rcd 6697, 6698 (1990).

[4] The $71,000 figure is based on projected savings of $52,000 in salaries of office staff, $3,858 in the salary of a part-time engineer, $1,500 in payroll and other taxes, and $15,000 to $20,000 in rent.

Miller also states that, with access to the news staff of the television station, KXGO(FM) will be able to improve its news programming, which is currently limited to coverage of major events and disasters. Miller expects to expand KXGO's news coverage to include at least seven news briefs each day covering governmental, business, agricultural, social, environmental, and economic issues. Miller states that, in addition to covering news from the central cities of Eureka and Arcata, it would expand KXGO(FM)'s news to include issues affecting outlying rural areas. Miller also expects to enhance KXGO(FM)'s coverage of earthquakes and other emergencies, which according to Miller, cause failures of communications, power, water, roads, and transportation in the station's service area. Finally, Miller plans to use a portion of its cost savings to offer paid student internships at KXGO(FM).

6. Other Media Outlets/Types of Facilities. Miller is the licensee of station KVIQ-TV, Eureka, California and of "fill-in" translators which carry KVIQ-TV's signals to areas blocked by terrain. Other than these facilities, it has no other media interests in the market. KXGO(FM) is a Class C FM station operating on 93.1 MHz with 50 kw effective radiated power (ERP) from an antenna height of 1,641 feet above average terrain (HAAT). KVIQ-TV, a CBS affiliated VHF television station, operates on Channel 6 with 100 kw ERP from an antenna at 1,740 feet HAAT. Miller asserts that both KXGO(FM) and KVIQ-TV have competitors with comparable technical facilities, and therefore would not dominate the market from a technical standpoint. For example it states that there are other commercial FM stations in the market, most of which are Class C stations with facilities comparable to KXGO(FM). With respect to television stations, it argues that its three commercial competitors all are network affiliates (NBC, ABC, and Fox) and have fill-in translators. Further, Miller argues that neither KXGO(FM) or KVIQ-TV dominate the market in terms of audience share. Based on Spring 1995 figures which it maintains are the most recent available, Miller states that KXGO(FM) enjoys an overall market share of 14.4%, but that a competing station has a similar share of 12.2%. Miller states that, according to 1995 Arbitron figures, KVIQ-TV had a 6.0 rating share during prime time and a 4.0 rating with a 14.0 share from sign on to sign off. In contrast, a competitor had a 10.0 rating during prime time with a 20.0 share from sign on to sign off.

7. Economic Status. Although Miller concedes that neither KXGO(FM) nor KVIQ-TV is a "failed station" as defined by the Commission, it maintains that both are small market stations in financial trouble. Miller provides an affidavit from KXGO(FM)'s current licensee, Westar, which bought the station five years ago from a court-appointed receiver. Westar states that, although it was able to achieve good audience ratings for KXGO(FM), it could not generate enough advertising revenue to cover its expenses. Westar attributes this difficulty to the low rates which competing radio stations charge for advertising spots. Thus, Westar states that KXGO(FM) lost money in each of the past five years, with total losses of approximately $300,000.[5] Westar maintains that these losses would have been considerably larger had the

[5] The losses are: 1991 - $47,342; 1992 - $120,255; 1993 - $23,820; 1994 - $68,440; and 1995 (estimated) - $32,525. The 1995 figure is estimated because the station had not yet filed its 1995 tax return when its assignment application was filed.

station's general manager, who is also Westar's controlling shareholder, not regularly foregone his salary and/or worked at a substantially reduced salary. The shareholder states that, in addition to foregoing his salary, he regularly contributed additional cash to meet the station's operating expenses. Miller maintains that, but for these cash infusions, the station would have been in bankruptcy or off the air. Westar and its media broker also state that they have been trying to sell the station since 1995, that they received few offers, and tha e other offers reflected below-market prices that would have precluded the stockholders from recouping their investment.

8. Miller argues that KVIQ-TV also has experienced financial difficulties. During the past six years the station's revenues have declined. Although it earned a profit in some years, KVIQ-TV lost more than $100,000 in 1995 and expects to lose another $100,000 in 1996. KVIQ-TV also claims to be at a financial disadvantage in its market because two of its competitors operate as satellites of stations in other markets, with their programming costs largely covered by their primary stations. Miller states that the remaining station is able to obtain more advertising than KVIQ-TV, especially on a national basis, because that station is an affiliate of NBC, which performed better in national ratings.

9. Competition and Diversity in the Market. The fifth factor is the nature of the relevant market in light of the Commission's concerns about diversity and competition. Miller asserts that the Eureka Designated Market Area (DMA), which is ranked 188th in the country by Nielsen, contains 4 commercial television stations, 1 non-commercial television station, 17 commercial radio stations and 5 non-commercial radio stations, for a total of 27 stations, comprising 22 separately owned and operated broadcast "voices."[6] Miller also states that the Eureka market is served by 4 separately owned cable television systems with penetration of 77.6%, which carry 19 television stations and 46 cable channels. It states that there is also an FM translator that brings the signals of two distant stations to the area, that there are many fill-in TV translators, and that there are outstanding construction permits for three more radio stations and a translator. Miller also notes that the area is served by two daily newspapers, two weekly newspapers, and one monthly newspaper published in the area, as well as several San Francisco newspapers.

Discussion

10. In analyzing a case-by-case request for a waiver of the one-to-a-market rule, the Commission's "goal in all situations 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 6491-92.

[6] In our independent analysis we will exclude several of these stations for the reasons discussed in paragraph 14, infra.

We conclude that Miller'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. Miller 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. Miller estimates annual savings of over $71,000 and proposes to apply a portion of that savings to enhance the public service programming of KXGO(FM). As noted, Miller will afford KXGO(FM) access to KVIQ-TV's news gathering resources, and will hire a part time community service director to produce additional public service announcements. Miller will also initiate daily news programming on KXGO(FM) and will enhance existing coverage of natural disasters in a rural earthquake-prone listening area. See Alta Gulf FM, Inc., 10 FCC Rcd 7750, 7751(1995) (news and weather improvements important factors when proposed combination serves a hurricane-prone area).

12. With respect to the types of facilities involved, the Commission's "concern with the types of facilities merging under the authority of a one-to-a-market waiver reflects our interest in assessing the potential impact of a proposed combination of stations in a given market in order that we might predict and avoid any significant adverse effect on diversity or competition from too powerful a combination." Great American Television and Radio Co., Inc., 4 FCC Rcd 6347, 6349-50 (1989). In this instance, we find that while the technical facilities of the stations involved are significant, there are comparable facilities in the market and the proposed combination does not present issues of market dominance inconsistent with the public interest.[7] See United Radio Group, Inc., 7 FCC Rcd 2207, 2209, n.5 (1992) (approving combination of VHF TV station, Class III AM station, and Class C FM station in 165th ranked market with comparable facilities). The existence of two satellite television stations in the market suggests that the market cannot support four primary commercial television stations. Further, the satellite stations which compete with KVIQ-TV benefit economically from their relationships with their primary stations in other markets.

13. We also note KXGO(FM)'s longstanding financial difficulties. KXGO(FM) is a small market station that was in receivership when purchased in 1991 and which continues to suffer substantial annual losses despite improved ratings. See Holston Valley Broadcasting Corp., 5 FCC Rcd 507, 508 (1990) (waiver granted for station purchased from receiver in bankruptcy that continued to sustain losses in small market). The applicants argue, and it appears likely, that the station would have failed previously, had the licensee's principal not worked without salary and provided cash infusions to meet the station's obligations. See Glendive Broadcasting Corp., 10 FCC Rcd 2708, 2710 (1995) (deferral of principal's salary evidence of precarious financial position supporting waiver). It further appears that although KXGO(FM) has significant ratings,

[7] The staff has confirmed Miller's claim that there are comparable facilities. There are two other operating Class C stations in the Eureka television metro market. Those Class C FM stations have technical facilities which are similar to or exceed the technical facilities of KXGO(FM). We have also determined that one VHF station in the market has facilities that are comparable to KVIQ-TV. Further, our analysis indicates that there are several existing AM/FM radio combinations in the market.

the market does not have strong advertising revenues.

14. We further find that the market will continue to be served by other media "voices" and that the proposed combination will not create any undue concentration of ownership or control of broadcast media in the Eureka market.[8] In determining the number of "voices," we have adjusted the number Miller originally claimed because the Commission's definition of market does not include stations licensed to communities outside the relevant television metro market, such as those in Del Norte County, nor stations that are silent. See Second Report and Order, 4 FCC Rcd at 1751, n. 86 and 101. Our independent analysis indicates that the Eureka television DMA (ranked 188th in the country) is served by three VHF stations and two UHF stations. The Eureka television metro market has five AM stations and ten FM stations. Thus there are a total of total of 20 broadcast stations in the relevant market areas. After the proposed sale there would be 15 separately owned and operated broadcast "voices" in the market. This is similar to the number of remaining "voices" in other markets where we have approved one-to-a-market waivers under similar circumstances. E.g., Glendive Broadcasting Corp., 10 FCC Rcd at 2711 (8 "voices" in 152nd ranked market); Perry Television, Inc., 5 FCC Rcd 1667, 1671 (1990) (14 media "voices" in 130th ranked market). In addition, the market includes one FM translator that provides distant programming, two daily newspapers, two weekly newspapers, a monthly newspaper, and four separate cable systems with cable penetration of 77.6 percent. In light of the above, we are persuaded that the public benefits of common ownership of KXGO(FM) and KVIQ-TV outweigh any negative effect on competition and diversity in the Eureka market that the combination will engender and that a waiver of the one-to-a-market rule is therefore warranted.

15. Accordingly, IT IS ORDERED, that the request for a waiver of the Commission's one-to-a-market rule, 47 C.F.R. § 73.3555(c), IS HEREBY GRANTED; and having found the applicant fully qualified, the application for assignment of license (BALH-960604GJ) of KXGO(FM), Arcata, California from Westar Broadcasting Group, Ltd. to Miller Broadcasting Company, Inc. IS HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[8] The Commission's market definition governing the number of stations to count in the context of a one-to-a-market waiver, specifies "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, as Arbitron no longer compiles television ADI data, we will accept instead Miller's showings using the Nielsen DMA in determining the number of broadcast "voices" in the Eureka market. See Media/Communications Partners, L.P., 10 FCC Rcd 8116, n.3 (1995). See also Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524, 3539 n.59 (1995).