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

In re Application of	)	
	)	
ILLINOIS VALLEY	)	
BROADCASTERS, INC.	)	
(ASSIGNOR)	)	
	)	
and	)	File No. BALH - 960510GF
	)	
WEEK LICENSE, INC.	)	
(ASSIGNEE)	)	
	)	
For assignment of license of	)	
WIVR(FM), Eureka, Illinois	)	

MEMORANDUM OPINION AND ORDER

Adopted: September 18, 1996 **Released: September 27, 1996**

By the Commission:

1. The Commission has under consideration: (1) the above-captioned unopposed application for assignment of license of WIVR(FM), Eureka, Illinois from Illinois Valley Broadcasters, Inc. to WEEK License, Inc. ("WEEK"), and (2) a related request for waiver of 47 C.F.R. Section 73.3555(c), the Commission's one-to-a-market rule.[1] For the reasons set forth below, we grant both the waiver request and the assignment application.[2]

2. WEEK is a wholly owned subsidiary of Granite Broadcasting Corp., which is the current licensee of Station WEEK-TV (NBC affiliate), Channel 25, Peoria, Illinois. WEEK seeks approval to acquire WIVR(FM) in the above-captioned application. Because the Grade A contour of WEEK-TV encompasses Eureka, Illinois, the community of license of WIVR(FM), WEEK requests a waiver of the one-to-a-market rule to allow common ownership of WEEK-TV and WIVR(FM).

[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.

[2] As noted below, our grant is conditioned upon nonconsummation of the underlying transaction until the Commission has acted upon the pending renewal application for WIVR(FM).

3. WEEK bases its request on the waiver standards adopted in the Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd 1741 ("Second Report and Order"), recon. granted in part, denied in part, 4 FCC Rcd 6489 (1989) ("Second Report and Order Recon."). Under these criteria, the Commission presumptively favors waiver requests involving station combinations serving the top 25 markets where there remain at least 30 separately owned, operated and controlled broadcast licenses or "voices" after the proposed combination is consummated ("top 25 market/30 voice standard").[3] The Commission also favors 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. Section 73.3555 note 7. Waiver requests not eligible for consideration under either the "top 25 market/30 voice" standard or the "failed station" standard are evaluated under the more rigorous case-by-case standard, as set forth in the Second Report and Order.

4. Both WEEK-TV and WIVR(FM) are part of the Peoria-Bloomington DMA, which is the 109th largest market in the country. Furthermore, according to WEEK, neither station associated with this waiver request is a "failed" station. WEEK's request must therefore be evaluated under the case-by-case standard, whereby the Commission makes a public interest determination based upon the following criteria: (1) the potential public service benefits of joint operation of the facilities, such as the 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 the joint operation is implemented. Second Report and Order, 4 FCC Rcd at 1753. We also note that not all five of the factors mentioned are necessarily relevant in each case. See Second Report and Order Recon., 4 FCC Rcd at 6491. In support of its request, WEEK submits a showing which addresses each of the five case-by-case factors.

5. Benefits of Joint Operation. WEEK anticipates that joint operation of WEEK-TV and WIVR(FM) will result in estimated annual savings of $246,090. Specifically, WEEK estimates annual cost savings of $156,850 in combined news and weather staffs and services, $60,000 through joint promotional activities and reduced advertising expenses, $11,400 in studio rent and utilities, $16,600 through sharing of consulting and legal services, and $1,240 through sharing of computer software. WEEK commits to use the cost savings attributable to the joint operation of the stations to improve WIVR(FM)'s facilities and to enhance the public service programming of WIVR(FM). WEEK also states that the proposed consolidation will allow WIVR(FM) to draw upon WEEK-TV's extensive newsgathering resources, which will further enhance WIVR(FM)'s news and public affairs programming. Additionally, WEEK asserts that, because Granite is a minority-owned and controlled company, the proposed combination will promote diversity in programming sources and viewpoints by increasing minority ownership of broadcast outlets.

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[3] The Commission has been authorized 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, § 202(d), 110 Stat. 56 (1996).

6. Other Media Outlets/Types of Facilities. Granite is the licensee of WEEK-TV, Peoria, Illinois, and has no other media interests in the Peoria-Bloomington DMA. WEEK-TV is a UHF station authorized to operate on Channel 25 with 2.41 kW effective radiated power ("ERP") at 680 feet antenna height above average terrain ("HAAT"). WEEK-TV, an NBC affiliate, is the number-one ranked station in the market, with an audience share of 24.[4] WIVR(FM), Eureka, Illinois which Granite proposes to acquire, is a Class A station operating on 98.5 MHz with 3 kW ERP at 328 feet HAAT. WEEK states that WEEK-TV competes with four other UHF stations in the Peoria-Bloomington DMA, and that WIVR(FM) competes with 19 other FM stations in the market whose facilities are technically equivalent or superior. WIVR(FM) has an audience share of 2.9.[5]

7. Economic Status. WEEK states that none of the broadcast stations at issue is in financial distress.

8. Competition and Diversity in the Market. WEEK asserts that the proposed common ownership of WEEK-TV and WIVR(FM) will have no demonstrable adverse effect on competition or diversity in the local market, which contains an abundance of separately competing voices. Stations WEEK-TV and WIVR(FM) are located in the Peoria-Bloomington DMA and in the Peoria-Bloomington-Normal television metro market. WEEK states that there are 5 UHF stations and no VHF stations licensed to the Peoria-Bloomington DMA, and that there are 6 commercial AM stations and 19 commercial FM stations licensed to the Peoria-Bloomington-Normal television metro market. After the proposed combination, these 30 broadcast facilities will be licensed to 22 separate owners. WEEK adds that the Peoria-Bloomington DMA is served by 21 different cable system operators, with an aggregate cable penetration rate of 70.1 percent. WEEK states that the Peoria-Bloomington-Normal television metro market is served by at least 3 daily local newspapers, 2 weekly local newspapers, and numerous other regional and national newspapers.

9. Discussion. 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 does not require that all five of the case-by-case criteria be satisfied as a precondition of a waiver, but rather that the overall consideration of these factors weighs in favor of the public interest. Id. at 6493; Second Report and Order, 4 FCC Rcd at 1753. We conclude that, on balance, WEEK'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 would not adversely affect competition and diversity in the Peoria-Bloomington market. See Second Report and Order, 4 FCC Rcd at 1753.

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4 Audience share based on May 1996 Nielsen data.

5 Audience share based on Spring 1996 Arbitron data.

10. Significant cost savings and economies of scale that lead to enhanced programming and service benefits 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). WEEK has demonstrated substantial cost savings and economic benefits to be derived from common ownership of WEEK-TV and WIVR(FM). WEEK anticipates that joint operation of WEEK-TV and WIVR(FM) will result in estimated annual savings of $246,090. Specifically, WEEK estimates annual cost savings of $156,850 in combined news and weather staffs and services, $60,000 through joint promotional activities and reduced advertising expenses, $11,400 in studio rent and utilities, $16,600 through sharing of consulting and legal services, and $1,240 through sharing of computer software. WEEK states that these cost savings will be used to improve WIVR(FM)'s facilities and to enhance the public service programming of WIVR(FM), and that the proposed consolidation will allow WIVR(FM) to draw upon WEEK-TV's extensive newsgathering resources, which will further enhance WIVR(FM)'s news and public affairs programming.

11. The combination for which the instant waiver is requested involves only two stations, a UHF station and a Class A FM station. WEEK-TV competes with four other UHF stations in the Peoria-Bloomington DMA, and WIVR(FM) competes with 19 other FM stations in the market whose facilities are technically equivalent or superior. According to WEEK, WEEK-TV is the number-one ranked station in the market with an audience share of 24. However, WIVR is only a Class A FM station. Furthermore, WIVR has an audience share of 2.9, making it one of the lowest-ranking radio stations in the market. Although the audience share of the television station is significant, the radio station is not a strong competitor in the market. Based on these facts, we find, from a technical standpoint, and considering the market positions of these stations relative to their competitors, that the proposed combination does not present issues of market dominance inconsistent with the public interest.

12. Although there is no indication that either of the broadcast stations at issue is in financial distress, we have previously indicated that in evaluating a request under the case-by-case factors, "[n]ot all of the factors mentioned will be relevant in every case." See Second Report and Order Recon., 4 FCC Rcd at 6491. We have also 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 at 3666; James M. Ward, 10 FCC Rcd 8741, 8744 (1995); Atla Gulf FM, Inc., 10 FCC Rcd 7750, 7751 n.5 (1995); Secret Communications, L.P., 10 FCC Rcd 6874, 6877-78 & n.6 (1995).

13. Finally, WEEK has shown that the proposed combination will not create any undue concentration of ownership or control of the broadcast media in the Peoria-Bloomington market.[6] WEEK states that there are 5 UHF stations and no VHF stations licensed to the Peoria-Bloomington DMA (the 109th largest), and there are 6 commercial AM stations and 19 commercial FM stations licensed to the Peoria-Bloomington-Normal television metro market. After the proposed combination, these 30 broadcast facilities will be licensed to 22 separate owners. In addition, the Peoria-Bloomington DMA is served by 21 different cable system operators, with an aggregate cable penetration rate of 70.1 percent, and the Peoria-Bloomington-Normal television metro market is served by at least 3 daily local newspapers, 2 weekly local newspapers, and numerous other regional and national newspapers. Under these circumstances, grant of this waiver request is consistent with one-to-a-market waivers that we have previously approved outside the top 100 markets. See, e.g., James M. Ward, 10 FCC Rcd at 8743 (21 broadcast stations licensed to 18 separate owners in 194th ADI); Moosey Communications, Inc., 8 FCC Rcd at 5249 (34 broadcast stations licensed to 24 separate owners in 141st ADI); United Radio Group, Inc., 7 FCC Rcd 2207, 2209 (1992) (26 broadcast stations licensed to 17 separate owners in 165th ADI); Perry Television, Inc., 5 FCC Rcd 1667, 1671 (Rev. Bd. 1990) (21 broadcast stations licensed to 15 separate owners in 130th ADI). See also Second Report and Order, 4 FCC Rcd at 1752 (stating that "even below the top 25 markets or in a market with far fewer than 30 voices or owners, diversity and competition exist to such an extent that it is appropriate to take into account the efficiency and other benefits of allowing joint station operations[ ]").

14. We conclude that waiver of the one-to-a-market rule in this case is fully warranted. Having found the applicants otherwise fully qualified, we also conclude that grant of the assignment application is warranted. Because the renewal application for WIVR(FM) has been filed and is now pending,[7] however, we will condition our consent to the requested assignment on non-consummation of the proposed transaction until the Commission has disposed of the pending renewal. The parties have expressly requested and indicated their consent to this condition.[8]

15. Accordingly, IT IS ORDERED, That the request for a waiver of the one-to-a-market rule, 47 C.F.R. Section 73.3555(c), IS HEREBY GRANTED.

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[6] 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 television ADI data, we will accept instead WEEK's showing using the Nielsen DMA in determining the number of broadcast "voices" in the Peoria-Bloomington market. See Media/Communications Partners L.P., 10 FCC Rcd 8116, 8116 n.3 (1995); see also Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 & 87-8, 10 FCC Rcd 3524, 3539 n.59 (1995).

[7] File No. BRH-960725WC.

[8] This conditional grant approach, where expressly requested by the applicant, is consistent with the existing practice of the staff in cases acted on by delegated authority.

16. IT IS FURTHER ORDERED, That the above-captioned application to assign the license of WIVR(FM), Eureka, Illinois from Illinois Valley Broadcasters, Inc. to WEEK License, Inc. (File No. BALH-960510GF), IS HEREBY GRANTED, Provided that the parties may not consummate the sale transaction effecting this assignment of license of WIVR(FM) until such time as the Commission has acted upon the pending renewal application for WIVR(FM).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary