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

In re Application of GREATER MUSKEGON BROADCASTERS, INC., TIM ACHTERHOFF, RANDY CROW, DAVID DEXTER, FIFTH REFORMED CHURCH, CLARA NEDEAU, ALEXIS ROGOSKI, ELISE HANSON, AND FRANCES SOVA (Transferors) and KQDS, INC. (Transferee) For Transfer of Control of The Great Duluth Broadcasting Company, Inc., Licensee of Stations KQDS(AM) and KQDS-FM, Duluth, MN	File No. BTC-960216EA File No. BTCH-960216EB

MEMORANDUM OPINION AND ORDER

Adopted: October 25, 1996 **Released: October 30, 1996**

By the Commission:

1. The Commission has before it the above-captioned applications for transfer of control of 91.25 percent of the stock of The Great Duluth Broadcasting Company, Inc., licensee of KQDS(AM) and KQDS-FM, Duluth, Minnesota, from Greater Muskegon Broadcasters, Inc., Tim Achterhoff, Randy Crow, David Dexter, Fifth Reformed Church, Clara Nedeau, Alexis Rogoski, Elise Hanson, and Frances Sova to KQDS, Inc. ("KQDSI"), and a related request for permanent waiver of § 73.3555(c), the Commission's one-to-a-market rule. Shockley Communications Corporation ("SCC"), licensee of stations KDAL(AM) and KDAL-FM, Duluth, Minnesota, filed a petition to deny the applications for transfer of control on March 29, 1996.[1] For the reasons stated below, we will deny the petition to deny and grant the request for permanent waiver and the applications for transfer of control.

[1] Other pleadings include KQDSI's Supplement to Request for Waiver filed on March 6, 1996; KQDSI's Opposition to the Petition to Deny filed on April 19, 1996; and SCC's Reply filed on April 26, 1996.

Background/Pleadings

2. KQDSI is wholly owned by Anthony J. Fant ("Fant"). Fant is also the 100% owner of Fant Broadcasting Company of Minnesota, Inc. ("FBC"), the permittee of new independent UHF television station KNLD(TV), Duluth, Minnesota. By the instant applications, Fant seeks to acquire stations KQDS(AM) and KQDS-FM, both licensed to Duluth. To obtain common ownership of a television station and an AM and FM radio station in the same market, KQDSI seeks a waiver of the Commission's one-to-a-market-rule, 47 C.F.R. § 73.3555(c).[2]

3. KQDSI bases its waiver request on the one-to-a-market standards adopted in the *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. Otherwise, the requests must be evaluated under a more rigorous case-by-case approach. 47 C.F.R. § 73.3555 n. 7.

4. Because Duluth/Superior is the 134th largest Designated Market Area (DMA) in the country and no claim of a "failed" station is made, KQDSI's waiver request must be evaluated under the case-by-case standard.[3] Under this standard, the Commission is required to make 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

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[2] 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. Because the 2 mV/m groundwave contour of station KQDS(AM) and the 1 mV/m contour of station KQDS-FM encompasses Duluth, KNLD(TV)'s city of license, KQDSI seeks a waiver of § 73.3555(c).

[3] In considering requests for waivers under the one-to-a-market rule, the term "market" has traditionally referred to the "relevant ADI [Arbitron Area of Dominant Influence] TV market for TV stations." *Second Report and Order*, 4 FCC Rcd at 1760 n. 101. *See Stockholders of CBS, Inc.*, 11 FCC Rcd 3773 (1995). However, since Arbitron no longer compiles television ADI data, the Commission has accepted Nielsen's Designated Market Area (DMA) data. *Newmountain Broadcasting II Corp.*, 11 FCC 2344, 2347 (1996). Duluth is in the 134th largest DMA, which also includes Superior, Wisconsin.

diversity after the joint operation is implemented. *Second Report and Order* at 1753.[4] In support of its waiver request, KQDSI submits a showing which addresses each of the five case-by-case factors.

5. Benefits of Joint Operation. KQDSI submits that joint operation of the stations, including operation of KQDS-FM and KNLD(TV) from a common tower which it proposes to construct, will result in significant cost savings, efficiencies of operation, and enhanced programming and service benefits. In this regard, KQDSI demonstrates that the proposed combination will result in annual cost savings of $475,000. Specifically, KQDSI anticipates annual savings of $250,000 in salaries and associated employee benefits; $100,000 in studio rent, utilities, operating expenses, taxes, and insurance from operating consolidated studios for both KQDS-FM and KNLD(TV); $35,000 in office equipment and furnishings; $25,000 in the cost of conducting tests and purchasing monitoring equipment for one transmission tower instead of two (technical savings); and the balance in savings from cross promotion on each of the stations.

6. As a result of these cost savings, KQDSI represents that it will enhance and expand the public service programming of KQDS(AM), KQDS-FM, and KNLD(TV). This is proposed to be achieved in several ways. KQDSI has pledged that the AM station, which presently duplicates the FM station's programming in its entirety, will be programmed with a separate format of local and national news, talk, sports, and financial programming. The new programming aired on the AM station will provide a basis for news and public affairs broadcasting on the UHF television station, *e.g.*, KNLD(TV) may take advantage of KQDS(AM)'s access to the Associated Press Wire Service and other news services. As a result of this new programming, KQDSI will be able to increase KNLD(TV)'s hours of operations from 15 hours per week to full-time and to seek a network affiliation.

7. Technical Facilities. KQDS(AM) is a one kilowatt, unlimited hours, standard broadcast station. KQDSI maintains that seven of the other ten AM stations in the market have facilities that are comparable or superior to those of KQDS(AM). KQDS-FM, a Class C station, is the number one FM station in its market have facilities that are comparable or superior to those of KQDS(AM). However, its coverage area is limited by the fact that it currently operates on a tower at a lower height than six of the other 22 FM stations serving the Duluth/Superior market. KQDS-FM will have an expanded coverage area reflective of its higher antenna location on the new tower to be shared with KNLD(TV). KNLD is a new UHF television station that operates only 3 hours (7 - 10 a.m.) per weekday morning. It has no network affiliation and competes in a market against four established commercial VHF television stations, each affiliated with a major national network,[5] and a noncommercial VHF station. It operates with 45 kw at 354 feet and is not carried on any cable system. Upon approval of the assignment application and related waiver

[4] Not all five factors under the case-by-case standard are necessarily relevant in each case. *Second Report and Order Recon.*, 4 FCC Rcd at 6491; *South Central Communications Corporation*, 5 FCC Rcd 6697, 6698 (1990).

[5] The following television stations are licensed to the Duluth/Superior market: (1) KBJR (NBC); KDLH (CBS); (3) WDIO (ABC); (4) WIRT (ABC) (a satellite facility for WDIO); and (5) WDSE (ETV).

request, KQDSI proposes to construct a new tower that will enable KNLD(TV) to operate full-time with facilities equivalent to that of the five VHF stations serving the Duluth area. There are no other UHF stations in the market.

8. Number of Media Outlets Owned by the Applicant in the Relevant Market. Other than its current ownership of KNLD(TV) and its proposed ownership of KQDS(AM)/FM, KQDSI has no other media interests in the market.[6]

9. Financial Difficulties. KQDSI acknowledges that neither KQDS(AM)/FM nor KNLD(TV) are "failed" stations. However, it contends that the television and radio stations are not strong financially. In this regard, it submits documentation showing that KNLD(TV) lost $52,754 for the fiscal year ending July 31, 1995, and that KQDS(AM)/FM generated a net income of only $53,928 for the same period.

10. Competition/Diversity/Media Outlets. KQDSI contends that the Duluth/Superior market is large and diverse and that the proposed combination will provide no significant change in the breadth of the market's broadcast media. KQDSI states that there are presently six television stations and 34 radio stations in the Duluth/Superior market, including 11 AM and 23 FM stations (ten of the FM stations are educational). Of the six television stations, five are separately-owned, though one is satellite-fed, and of the 34 radio stations, 21 are separately-owned. Thus, KQDSI contends that there are a total of 40 broadcast outlets, 26 of which are separately-owned voices. KQDSI also states that there are 53 LPTV stations in the DMA, seven daily newspapers, and a cable penetration rate of 53%.

11. Petition to Deny. SCC challenges KQDSI's waiver showing on each point. First, SCC charges that KQDSI has overstated the financial savings that would result from consolidation of the KQDS(AM)/FM and KNLD staffs, studios, and operations. SCC also alleges that the type of programming to be provided by KQDS(AM) already exists in the Duluth market. Consequently, it concludes that the public would not benefit by allowing KQDSI to acquire KQDS(AM) and add one more talk and sports programming station. SCC next charges that the technical facilities of KQDS(AM), KQDS-FM, and KNLD are not in need of upgrade. According to SCC, KQDS-FM is the number one FM station in the market, KQDS(AM) has facilities comparable to other stations in the market, and any deficiencies in the KNLD(TV) facilities are the result of Fant's own decision not to upgrade that station when he acquired it in 1994. SCC also charges that KQDSI's proposed AM/FM/TV combination will result in KQDSI obtaining dominant technical facilities in the Duluth/Superior market. SCC next takes issue with KQDSI's statements concerning the alleged financial distress of the stations. SCC claims that KQDSI's figures do not reflect the proportionate annual gross revenues that KQDS(AM)/FM should be generating from the Duluth radio market, which had annual gross revenues in 1995 of over $5

[6] In other markets throughout the country, KQDSI's president, Anthony J. Fant, is the licensee of five television stations and three television translator stations; permittee of three television stations, three television translator stations and one LPTV station; and an applicant for three television stations and an assignee of one additional television station.

million.[7] As to station KNLD(TV), SCC contends that a determination to grant a waiver due to a station's financial difficulties should not be based on a single year's figures. SCC repeats its contention that KNLD's financial circumstances are attributable to Fant's business decision not to infuse needed capital into an upgrade of that facility. Finally, SCC claims that grant of the transfer of control application and the one-to-a-market waiver request will result in an undue concentration of ownership and control of broadcast media in the Duluth/Superior market.[8] SCC contends that grant of the AM/FM/TV combination will leave Duluth with too few independent voices, and that the Duluth market will thereby be dominated by KQDSI, to the detriment of the public interest.

12. In addition to taking exception to KQDSI's waiver request showing, SCC requests that the transfer of control applications be denied, deferred, or designated for evidentiary hearing because of pending unresolved character issues surrounding Fant's purchase of unbuilt station KNLD(TV) in 1994. These allegations were made in an informal objection filed against the license to cover, and in a late-filed petition for reconsideration against the transfer of control of KNLD (styled as a "Request for Order to Show Cause why Construction Permit Should Not be Revoked"), which consist of charges by Blue Grass Television, Inc. (now Benedek Broadcasting Company, L.L.C.) that Fant misrepresented certain facts to the Commission, that Fant had paid an amount in excess of the expenses incurred by the seller of the unbuilt construction permit, and that Fant had prematurely assumed control of KNLD prior to Commission grant of the assignment application. SCC further argues that KQDSI was obliged to specifically apprise the Commission of the nature and gravity of these charges in its applications for transfer of control of The Great Duluth Broadcasting Co., Inc., and that it failed to do so.

[7] SCC argues that with a 13% market share, the radio combination of KQDS(AM) and KQDS-FM should have reflected annual gross revenues of $872,053, not the $604,314 reported in its waiver request. In its Opposition, KQDSI explains that the lower figures represented (1) the lower advertising rates that the radio stations actually charged during the fiscal year ending July 31, 1995, and (2) the poor performance record of the stations' sales staff and national sales representative during the same period.

[8] SCC argues that KQDSI's March 5, 1996, Supplement to Waiver Request should be disregarded as improperly filed. In its application, KQDSI referred to the Arbitron Radio Market for a listing of other radio media rather than the standard used by the Commission, the Television Metro Market. This resulted in an understatement of the number of commercial radio stations in the Duluth/Superior market (14 instead of the actual 25). SCC claims that the Supplement is an improper attempt by KQDSI to improve its position; that KQDSI delayed in filing its updated information; that SCC would be harmed by consideration of information contained in KQDSI's Supplement; that KQDSI's Supplement should be considered as an amendment to its transfer of control applications and therefore dismissed because it was not properly signed; and that KQDSI's Supplement was not served on SCC, as required by the Commission's rules.

Discussion

13. 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. Thus, in determining whether the public interest would be served by grant of a one-to-a-market waiver, the Commission evaluates and balances other specific factors against its long-standing interest in maximizing competition and promoting diversity. *Kargo Broadcasting, Inc.*, 5 FCC Rcd 3442, 3443 (1990). We find that KQDSI'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.

14. SCC offers no evidence sufficient to counter the cost saving projections of KQDSI or the accuracy of the figures presented by KQDSI's president, Anthony J. Fant. Instead, SCC merely submits the unsubstantiated opinion of its station's general manager, Ms. Debra Messser, that the savings will not be that significant. Although we need not take every written claim at face value, *see Alegria I, Inc.*, 4 FCC Rcd 587, 589 (1989), KQDSI has shown that there will be significant economies of scale resulting from the consolidation of three staffs, facilities, and associated administrative, operating, and technical expenses into a single operation. More importantly, KQDSI promises that these cost savings will result in significant benefits to the public, through improvements and advancements in the facilities of KQDS(AM) and KNLD(TV) and the introduction of local and national news, talk, sports, and financial programming on both stations. As a result of the waiver and grant of the transfer of control applications, the Duluth/Superior market will effectively gain a full-time television station and a full-time radio station. KQDS(AM) would convert from a simulcast operation to a independently programmed, full-time station. KNLD(TV) states that it will use much of KQDS(AM)'s new independent programming to change from a 15-hour per week morning station to a full-time, independently programmed station. The *Second Report and Order*, 4 FCC Rcd at 1753, specifically emphasizes that "in assessing the potential benefits of the combination, we will consider public service benefits such as the economies of scale, cost savings and programming and service benefits...." The Commission has granted one-to-a-market waivers where efficiencies would produce clear public service benefits including such things as improved news, public affairs, and children's programs. *See Tulsa 23*, 5 FCC Rcd 727, 728 (1990).

15. With regard to technical facilities, and based on the comparable size and number of other AM, FM, and television stations in the Duluth/Superior market, we determine that the resulting combination will not vest KQDSI with technically dominant facilities that would have a significant adverse effect on diversity or competition. Compared to the three stations proposed to be commonly-owned, there are four television stations with superior technical facilities, seven of ten AM stations with comparable or superior technical facilities, and nine of 23 FM stations with comparable technical facilities.

16. With regard to the financial showing, we agree with SCC that KQDSI has not shown that the radio stations are in financial difficulty. KQDSI has not provided the Commission with sufficient information to determine the basis for its television station's current financial condition. For instance, the primary liability associated with that station is an indebtedness of $1,211,447, described as "Due to related party." There are no notes of explanation and no extended history of documented financial difficulties. We are thus unable to conclude that KQDS(AM)/FM and KNLD(TV) are entitled to consideration as stations experiencing financial difficulties in the Duluth market. However, not all five of the case-by-case factors must be satisfied as a precondition to grant of a waiver, and KQDSI's failure to demonstrate that the stations to be acquired are themselves in financial distress does not bar grant of its waiver request. See generally Second Report and Order Recon., 4 FCC Rcd 6489; South Central Communications Corp., 5 FCC Rcd 6697 (1990). See also, Louis C. DeArias, Receiver, 11 FCC Rcd 3662 (1996).

17. Turning next to the potential impact of the waiver on diversity and competition, we look to the number of other radio stations located in the relevant television metro market and the number of other television stations licensed to the relevant DMA. Based on information supplied by KQDSI, and our own independent assessment of that information, we find that the market will be served by a number of media "voices" and that the proposed combination will not create any undue concentration of ownership or control of broadcast media in the Duluth/Superior market. This market is ranked as the 134th DMA,[9] and our analysis confirms that after the assignment is approved, the Duluth/Superior market will be served by at least 11 AM stations (7 of which will have comparable or superior facilities), 23 FM stations (9 of which will have comparable facilities), 5 VHF television stations (each of which will have superior facilities), and 1 UHF television station. Of those 40 broadcast outlets, 21 radio stations and 5 television stations will remain separately-owned and operated, for a total of 26 independent broadcast "voices" in the market. Further, KNLD(TV) is a UHF station and KQDS(AM) is a small AM which is presently duplicating its sister FM station 100% of the time. Combinations involving small or weak stations decrease potential for negative concentration. *See Second Report and Order, 4 FCC Rcd* at 1753. In addition, other "voices" in the market include 53 LPTV stations, 21 of which are independently-owned and operated. The cable penetration rate is 53% and there are 7 daily newspapers serving the Duluth/Superior market. Finally, with respect to the number of other media outlets the applicant already owns in the relevant market, KQDSI affirms that, aside from KNLD(TV), neither it nor any other entity controlled by Mr. Fant owns any other broadcast

[9] *See* Broadcasting and Cable Yearbook, 1995.

stations in the Duluth/Superior market. Given the number of other media voices in the market and the nature of the AM and television stations involved, we conclude that grant of the one-to-a-market waiver request will not have a detrimental effect on competition and diversity in the market.

18. To summarize, we conclude that grant of the one-to-a-market waiver request will result in significant cost savings that will inure to the public's benefit through improved service and programming, the introduction of a full-time, independently programmed AM station, and the introduction of a full-time, more competitive UHF television station. We also conclude that KQDSI will not have technically superior facilities compared to other AM, FM, and TV stations located in the market, and that grant of the one-to-a-market waiver would therefore not have a detrimental impact on the Duluth/Superior market. Finally, we determine that a sufficient number of other media voices will remain after grant of the one-to-a-market waiver so that diversity and vigorous competition within the market areas involved will continue to exist. Based on the totality of the circumstances, and our treatment of waiver requests from licensees serving similar size markets,[10] we conclude that grant of the one-to-a-market, permanent waiver request would be in the public interest.[11]

19. Other Issues. Having decided that grant of the one-to-a-market waiver request is in the public interest, we turn next to SCC's suggestion that these transfer of control applications should be designated for hearing, or that our action should be held in abeyance or conditionally granted pending resolution of issues raised in the separate proceeding involving Fant's prior acquisition of UHF television station KNLD(TV). As noted, allegations were presented in that proceeding that (1) Fant misrepresented certain facts to the Commission; (2) Fant had paid an amount in excess of the expenses incurred by the seller; and (3) Fant had prematurely assumed control of KNLD prior to Commission grant of the assignment application. By letter of October 2, 1996,

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[10] *See, e.g., Moosey Communications, Inc.*, 8 FCC Rcd 5247 (1993) (24 broadcast voices in the 141st ADI market); *United Radio Group, Inc.*, 7 FCC Rcd 2207 (1992) (17 broadcast voices in the 163rd ADI market); and *Perry Television, Inc.*, 5 FCC Rcd 667 (Rev. Bd. 1990) (15 broadcast voices in the 130th ADI market after grant of a one-to-a-market waiver).

[11] We reject SCC's claim that KQDSI's Supplement to Waiver Request, filed March 5, 1996, should be disregarded in this proceeding as improperly filed. First, KQDSI cannot be considered to have improperly sought to enhance its "position," because its application is not for a new broadcast station involving mutually exclusive applicants in a comparative proceeding. KQDSI simply submitted data correcting misinformation which was cited in the application. Second, contrary to SCC's claim, KQDSI did not delay in updating the record to reflect the more accurate number of other media voices in the Duluth/Superior market. Its original waiver request was filed on February 16, 1996, and its Supplement was filed on March 5, 1996. Third, SCC was not prejudiced by KQDSI's filing of a supplemental showing. SCC had a chance to rebut the showing made by KQDSI, and took full advantage of this opportunity in filing pertinent comments in its Reply to KQDSI's Opposition. Fourth, although SCC is correct that the supplemental showing technically should have been filed as an "amendment" to the application, the facts set forth in the Supplement were attested to by knowledgeable persons, and it was not improper for us to consider it. *See* 47 C.F.R. § 73.3578(b). Finally, there is nothing in our rules requiring an applicant to retroactively provide a copy of an application, amendment, or waiver request to a party who files a petition to deny after the time that such application, amendment, or waiver request had been received by the Commission.

the staff, acting pursuant to delegated authority, found that the objector had failed to raise a substantial and material question of fact regarding the qualifications of Fant and granted the application (File No. BLCT-940822KU) for a license to cover the construction permit for KNLD(TV). *Letter to KRBR, Inc.* (Ref. No. 1800E1), Chief, Television Branch (October 2, 1996).

20. SCC further states that KQDSI failed to report the pendancy of these matters in the applications now before us. It argues that this failure is indicative of KQDSI's general lack of basic qualifications to remain or be a Commission licensee.[12]

21. In determining whether a matter should be designated for hearing, we follow the two-step analysis set forth in *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). First, we must determine whether petitioner has made a *prima facie* showing that grant of the application would be inconsistent with the public interest. If we determine that the petitioner satisfies this threshold standard, we must then determine whether the petitioner presents a substantial and material question of fact warranting further inquiry.

22. After a careful review of the record, we find that the facts alleged by SCC do not establish a *prima facie* issue that KQDSI misrepresented facts, was lacking in candor in the prosecution of these transfer of control applications, or is otherwise unqualified to remain a Commission licensee. First, in responding to Question 10(d), Part II of the transfer of control applications (FCC Form 315), we find that KQDSI did not fail to report any "unresolved character issues against the applicant." No issues had been designated against KQDSI or Fant; rather, the objector in the KNLD(TV) license proceeding had only made allegations of possible misconduct. Until such allegations are determined to have merit and are designated for hearing, no "unresolved" issue is pending "against" the applicant. Nor do we find that KQDSI's response to question 14(b) demonstrates that KQDSI misrepresented facts or was lacking in candor. The question is very specific in that the applicant was required only to report matters pending before other governmental agencies. Moreover, because all of the information which KQDSI purportedly failed to reveal was on file in the KNLD(TV) proceeding, we conclude that it is highly unlikely that KQDSI would intentionally withhold such readily available information if it knew that this information was required to be submitted as part of its transfer of control applications. *Cf. Pinelands, Inc.*, 7 FCC Rcd 6058, 6065 n. 28 (1992). Even assuming that KQDSI failed to disclose the allegations raised in another proceeding, "the mere existence of an inaccuracy in an application, without any indication that the applicant meant to deceive the

[12] SCC submits that KQDSI's responses to Questions 10(d) and 14(b) of Part II of the FCC Form 315 application were inadequate, and, arguably, involved misrepresentation. Question 10(d), Part II of the Form 315 application queries whether "any party to this application . . . [has] had any interest in . . . an application in any Commission proceeding which left unresolved character issues against the applicant." Question 14(b) asks whether there are "now pending in any court or administrative body any proceeding involving any of the matters [referred to in (a) above] [fraudulent statements to another governmental unit]." The Fant Broadcasting Corporation responded in the negative to these questions, and in an exhibit mentioned simply that it had a "License application pending" with regard to Station KNLD.

Commission, does not elevate such a mistake to the level of an intentional falsehood or otherwise raise a question of fact that must be resolved in an evidentiary hearing." *Chief Washakie TV*, 46 RR 2d 1594, 1597 (1980).

23. In sum, SCC has "failed to make the requisite *prima facie* demonstration of deception and of a desire, motive or logical reason to mislead," *Garrett, Andrews and Letizia, Inc.*, 86 FCC 2d 1172, 1180, (Rev. Bd.), *modified on other grounds*, 88 FCC 2d 620 (1981), and the alleged reporting errors were not adequately shown to be substantial and potentially of decisional significance, *Radio Laredo, Inc.*, 87 FCC 2d 353, 361 (Rev. Bd. 1981), *aff'd per curiam sub nom. Amigos Broadcasting, Inc. v. FCC*, 696 F.2d 128 (D.C. Cir 1982)." *Cannon's Point Broadcasting Co.*, 93 FCC 2d 643, 654 (Rev. Bd. 1983).

Conclusion

24. SCC has failed to raise a substantial and material question of fact that KQDSI's waiver request or applications for transfer of control should be denied. Based on the overall record, we conclude that KQDSI's one-to-a-market waiver request should be granted. Consequently, having found that the parties to the transactions are otherwise qualified, we conclude that the grant of these applications would serve the public interest.

25. Accordingly, IT IS ORDERED, That the March 29, 1996 Petition to Deny filed by Shockley Communications Corporation IS DENIED; the request for permanent waiver of 47 C.F.R. § 73.3555(c) (BTCH-960216EB) IS GRANTED; and the applications for transfer of control of The Great Duluth Broadcasting Company, Inc., licensee of KQDS(AM) and KQDS-FM, Duluth, Minnesota, from Greater Muskegon Broadcasters, Inc., Tim Achterhoff, Randy Crow, David Dexter, Fifth Reformed Church, Clara Nedeau, Alexis Rogoski, Elise Hanson, and Frances Sova to KQDS, Inc. (BTC-960216EA) (BTCH-960216EB) ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary