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SagamoreHill of Indiana Licenses, LLC
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Re: *Applications for Consent to Assignment of Licenses*
WPTA, Fort Wayne, IN, Fac. ID No. 73905
KDLH, Duluth, MN, Fac. ID No. 4691
KBJR-TV, Superior, WI, Fac. ID No. 33658
KRIL, Chisholm, MN, Fac. ID No. 82698
WEEK-TV, Peoria, IL, Fac. ID No. 24801
WBNG-TV, Binghamton, NY, Fac. ID No. 23337
WISE-TV, Fort Wayne, IN, Fac. ID No. 13960
File Nos. BALCDT-20140221ABL, ABM, ABN, ABO,
ABQ, ABR, ABS

Dear Counsel:

By this letter we grant the above-captioned uncontested applications for the assignment of seven television licenses from subsidiaries of Granite Broadcasting Corporation ("Granite") and the Malara

Broadcast Group, Inc. (“Malara”) to Quincy Newspapers, Inc. (“Quincy”), SagamoreHill of Indiana Licenses, LLC, and SagamoreHill of Duluth Licenses, LLC, respectively (collectively “SagamoreHill”). In connection with the sale, we also grant continued authority to operate KRIL, Chisholm, Minnesota, as a satellite of KBJR-TV, Superior, Wisconsin, pursuant to Note 5 of Section 73.3555 of the Commission’s rules.¹ We also grant a nine-month temporary waiver of the local television ownership rule² to allow Quincy sufficient time to eliminate joint sales agreements (“JSAs”) in three markets.

Background. Quincy proposes to acquire stations in four Nielsen designated market areas (“DMAs”): Fort Wayne, Indiana (“Fort Wayne DMA”); Duluth, Minnesota - Superior, Wisconsin (“Duluth DMA”); Peoria-Bloomington, Illinois (“Peoria DMA”); and Binghamton, New York (“Binghamton DMA”).³ In the Fort Wayne and Duluth DMAs, a JSA exists between Granite and Malara, which agreements will be assumed by Quincy and SagamoreHill post-acquisition.⁴ There will be no Option or loan guarantee, but the parties do intend to enter into a new SSA after consummation that would include Quincy providing news programming not to exceed 15% of weekly programming hours. Granite will retain certain non-license assets of the stations acquired by SagamoreHill in these two markets. In Peoria, Granite has an existing JSA and SSA covering only back-office functions with in-market licensees Four Seasons Peoria, LLC, and Sinclair Broadcast Group, Inc. The stations owned by Four Seasons and Sinclair are not part of this transaction. Quincy and SagamoreHill state that all JSAs in the three markets will be terminated within nine months of consummation.⁵ Nevertheless, because these JSAs are now attributable to Quincy under the standard set forth in *the 2014 Quadrennial Review Order*,⁶

¹ 47 C.F.R. § 73.3555, Note 5.

² See 47 C.F.R. 73.3555(b).

³ Granite filed the identical description of the agreements and the proposed transaction as amended, as well as the temporary waiver request, with each of the five applications where Granite is a proposed assignee. *See, e.g.*, File No. BALCDT-20140221ABR, Att. 13, “Amended Description of Agreements, Description of Transaction, and Request for Temporary Waiver, July 2015” at 3 (“July 2015 Granite Amended Description and Waiver Request”). SagamoreHill Duluth and SagamoreHill Indiana also filed amended descriptions in July, 2015. *See* File No. BALCDT-20140221ABM, Att. 13, “Amended Description of Transaction” (“July 2015 SagamoreHill Duluth Amended Description”); File No. BALCDT-20140221ABS, Att. 13, “Amended Description of Transaction” (“July 2015 SagamoreHill Indiana Amended Description”).

⁴ In Fort Wayne, Granite has exercised a pre-existing option and at closing will direct Malara to assign to Quincy the licenses and other assets of WPTA, Fort Wayne, Indiana, as well as certain non-licensed assets associated with WISE-TV, Fort Wayne, Indiana, currently licensed to Malara. Granite will then pass through the WISE-TV licenses and operational assets to SagamoreHill. *See John H. Phipps, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 13053, 13056 (1996) (“[B]ecause the intermediary never actually exercises control of the licensee for an appreciable period of time, grant of a single long-form application contemplating this type of pass-through does not violate the mandate of Section 310(d).”). Quincy and SagamoreHill will amend the agreement to specify that services will be rendered by Quincy to WISE-TV rather than to WPTA. The structure of the transaction in Duluth is virtually the same, except that the JSA will not be amended to reflect a change in the station to be brokered.

⁵ Granite does not hold a JSA, SSA or other sharing arrangement with an in-market licensee in the Binghamton DMA.

⁶ On June 18, 2014, the *2014 Quadrennial Review Order* became effective, attributing joint sales agreements between broadcast television stations in the same market that cover more than 15 percent of the station’s weekly advertising time. *2014 Quadrennial Regulatory Review — Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 4371, 4527 (2014) (“*2014 Quadrennial Review Order*”). The Commission provided a two-year transition period starting from the effective date of the rule for parties to amend or

Quincy will be out of compliance with the local television ownership rule in these three markets and has, therefore, requested a temporary, nine-month waiver.

Quincy argues that a nine-month wind-down period will allow the brokered stations sufficient time to separate core operating functions, and to have SagamoreHill put in place their own management, operations, and sales teams. They state that all of the JSAs at issue pre-date Granite's 2007 bankruptcy. Quincy argues that the temporary period during which the JSAs will continue will pose no threat to the Commission's goals of competition, diversity, and localism, but will in fact foster these goals. The transaction, itself, does not involve the creation of new "virtual duopolies" but would, according to Quincy, essentially end existing "virtual duopolies" in the three markets at issue. Quincy maintains that the relationships that will continue after consummation will not include any financial relationships such as an option or loan guarantee, and are consistent with precedent and Bureau guidance.⁷ The nine-month period during which the JSAs will be permitted to continue will result in the existing JSAs terminating well in advance of the December 19, 2016 deadline set forth in the STELA Reauthorization Act of 2014. Therefore, according to Quincy, not approving the transactions would result in JSAs that would be out of compliance with the new standard for a significantly longer period of time.

Discussion. Section 310(d) of the Communications Act of 1934 ("the Act") provides that no station license shall be transferred or assigned until the Commission, upon application, determines that the public interest, convenience, and necessity will be served thereby. In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act,⁸ other applicable statutes, and the Commission's rules.⁹ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁰ The Commission then employs a balancing process, weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹¹ The applicants bear the burden of

terminate any JSAs that would result in a violation of the local television ownership rule. *Id.* at 4542. Subsequently, Congress enacted legislation extending the two-year compliance period by six months to December 19, 2016. *STELA Reauthorization Act of 2014*, Pub. L. No. 113-200, § 104, 128 Stat. 2059, 2063 (2014).

⁷ See *Processing of Broadcast Television Applications Proposing Sharing Arrangement and Contingent Interests*, Public Notice, 29 FCC Rcd 2647 (MB 2014).

⁸ 47 U.S.C. § 310(d). See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 (2005) ("SBC-AT&T Order"); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 (2005) ("Verizon-MCI Order"); *Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13976 (2005) ("Sprint-Nextel Order").

⁹ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43; *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, 19 FCC Rcd 2570, 2580-81(2004); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574 (2002) ("*EchoStar-DIRECTV HDO*").

¹⁰ See *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18443; *Sprint-Nextel Order*, 20 FCC Rcd at 13976.

¹¹ See *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18443; *Sprint-Nextel Order*, 20 FCC Rcd at 13976; *News Corp.-Hughes Order*, 19 FCC Rcd at 483; *Comcast-AT&T Order*, 17 FCC Rcd at 23255.

proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹² If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, Section 309(e) of the Act requires that the applications be designated for hearing.¹³ Based on the record before us, we find that grant of the above-captioned applications to be in the public interest, as required by Section 310(d) of the Act.

Temporary Waiver of Local Television Ownership Rule. Under the Commission's local television ownership rule,¹⁴ two television stations licensed in the same DMA that have Grade B overlap¹⁵ may be commonly owned if: (1) at least one of the stations is not ranked among the top four stations in the DMA; and (2) at least eight independently owned and operating, full power commercial and non-commercial educational television stations would remain in the DMA after the merger.¹⁶ As noted above, the *2014 Quadrennial Review Order* made certain JSAs, namely those that involve the sale of more than 15 percent of another in-market station's weekly advertising time, attributable.¹⁷ However, in the same order the Commission gave those with attributable JSAs two years from the effective date of the new rule (June 19, 2014) to either amend, terminate or otherwise come into compliance with Commission's local television ownership rule.¹⁸ Subsequently, Congress enacted legislation extending the two-year compliance period by six months to December 19, 2016.¹⁹

Courts and the Commission have long held that a general rule, deemed valid because its overall objectives are in the public interest, may not serve the public interest if extended to any applicant where doing so will "undermine the policy served by the rule."²⁰ We note that Commission precedent has generally held that, in order to facilitate large multi-station transactions, a temporary waiver of its ownership rules is appropriate so long as such waiver does not undermine the underlying goals of the Commission's ownership rules: competition, localism, and diversity.²¹ Direct application of that

¹² See *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18443; *Comcast-AT&T Order*, 17 FCC Rcd at 23255; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574.

¹³ 47 U.S.C. § 309(e); see also *News Corp.-Hughes Order*, 19 FCC Rcd at 483 n.49; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574.

¹⁴ 47 C.F.R. § 73.3555(b)(2).

¹⁵ Following the digital transition the Commission has treated a station's digital noise-limited contour as the "functional equivalent" of a station's analog Grade B contour for purposes of the local television ownership rule. *Riverside Media*, Letter, 26 FCC Rcd 16038, 16060, n. 2 (2011) (citations omitted). In the *2014 Quadrennial Review Order*, the Commission tentatively concluded the digital noise-limited contour should replace the analog Grade B contour in determining whether the local TV ownership rule is implicated. *2014 Quadrennial Review Order*, 29 FCC Rcd at 4385.

¹⁶ 47 C.F.R. § 73.3555(b)(2).

¹⁷ *2014 Quadrennial Review Order*, 29 FCC Rcd at 4538.

¹⁸ *Id.* at 4542; *Media Bureau Announces the Effective Date of the Television Joint Sales Agreement Attribution Rule*, Public Notice, 29 FCC Rcd 7346 (MB 2014) ("JSA Public Notice") (announcing the effective date of the Commission's new JSA attribution rule and establishing June 19, 2016 as the end of the two-year compliance period).

¹⁹ STELA Reauthorization Act of 2014, Pub. L. No. 113-200, § 104, 128 Stat. 2059, 2063 (2014).

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1151 (D.C.Cir.1969).

²¹ *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3754 (1995).

precedent is not determinative here given the size of the transaction and the number of waivers that are necessary, relative to the total number of stations being sold. However, based on the specific facts and nature of the transaction before us, we find that temporary waiver would not only not undermine any of these goals, but would actually be pro-competitive. Therefore, we believe strict application of the rule to deny a short period of temporary noncompliance in this case would not serve the purpose of the local television ownership rule.

In reaching this determination, we specifically rely upon the parties' commitment to voluntarily terminate the JSAs within nine months of consummation, well in advance of the statutory deadline that would have applied to the existing JSAs had this transaction not been entered into.²² As indicated above, Granite was under no obligation to amend, much less terminate, the JSAs Quincy is assuming as part of this transaction prior to December 19, 2016. As the Commission found in the *2014 Quadrennial Review Order*, television "JSAs provide incentives for joint operation that are similar to those created by common ownership."²³ The decision to provide transitional relief did not affect the ultimate determination regarding the attributable status of television JSAs in excess of 15 percent of weekly advertising time. Thus, assuring that a JSA comes into compliance with the standard described in the *2014 Quadrennial Review Order* as quickly as possible provides a positive public interest benefit.

Second, we agree with the Applicants that grant of the proposed transaction will increase the independence of ownership of the two Duluth and Fort Wayne stations currently owned by Malara. The Commission and its staff has recognized that a broadcaster that has entered into a sharing arrangement with another same-market station in which it also has a contingent financial interest, such as an option to purchase the station or as a guarantor of the other station's financing, may obtain a degree of operational and financial influence that deprives the licensee of the second station of its economic incentive to control programming.²⁴ In this case, Quincy will remove the contingent interests currently held by Malara. Moreover, Quincy will not have any new option or first refusal rights to acquire the stations of SagamoreHill Duluth or SagamoreHill Indiana; Quincy will not guarantee any debt for any SagamoreHill entity; and Quincy will not provide or otherwise arrange financing for those entities. Accordingly, as the Applications explain, SagamoreHill is significantly more independent than the Malara entities operating in these two markets, which are currently subject to options.

Continuing Satellite Exception to Local Television Ownership Rule. In *Television Satellite Stations*, the Commission adopted "a presumption that TV satellite operations are in the public interest if individual applicants can satisfy certain public interest criteria."²⁵ The presumptive satellite exemption to the duopoly rule is therefore met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.²⁶ If an applicant does not qualify for the presumption, the

²² See *Shareholders of Media General, Inc., and LIN Media, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 14798 (Vid. Div. 2014) (citing divestiture commitments as evidence that harm to competition resulting from temporary waiver of multiple ownership rules will be minimal).

²³ *2014 Quadrennial Review Order*, 29 FCC Rcd at 4534.

²⁴ See *Processing of Broadcast Television Applications Proposing Sharing Arrangement and Contingent Interests*, Public Notice, 29 FCC Rcd 2647 (MB 2014).

²⁵ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212, 4213 (1991) (subsequent history omitted) ("*Television Satellite Stations*").

²⁶ *Id.* at 4213-14.

Commission will evaluate the proposal on an *ad hoc* basis and grant the application if there are compelling circumstances that warrant approval.²⁷ No objections have been filed against the requested continued “satellite exemption.”

According to the KRII Satellite Waiver Continuation Request, KRII has operated continuously as a satellite of KBJR-TV since KRII went on the air in 2002.²⁸ The Commission first authorized the operation of KRII as a satellite of KBMR-TV in 2002, and the Commission authorized continued satellite status in 2007.²⁹

With regard to the first criterion, we recognize that, following the digital transition, full-power television stations have a digital Principal Community contour that serves a much larger area than their former analog City Grade contour, and that the first criterion of the presumptive standard is no longer relevant in the digital environment.³⁰ However, prior to the digital transition, the analog City Grade contours of KRII and KBJR-TV did not overlap.³¹

Regarding the second criterion, Quincy has demonstrated that KRII is located in an underserved area. The “transmission” test deems an area underserved where there are two or fewer full-service television stations licensed to a proposed satellite’s community of license.³² KRII is the only full service broadcast station of any kind licensed to the community of Chisholm, Minnesota.³³

With regard to the third criterion, the KRII Satellite Waiver Continuation Request does not present any evidence that the licensee has attempted to sell KRII separately as a full-service station. Instead, Quincy submits a declaration from Brian Byrnes, in which he concludes that it is his opinion that the satellite waiver should continue.³⁴ Mr. Byrnes states that several factors make the operation of KRII as a stand-alone full-service station impracticable: (1) the Duluth DMA is ranked 139th in size, down from 137 four years prior; (2) KRII’s coverage pattern does not reach the primary cities of Duluth, Minnesota, and Superior, Wisconsin (the “TwinPort Cities”), which represent the centers of commerce for the area; (3) KRII’s population served is less than 44% of the population served by the other five commercial, non-satellite stations;³⁵ (4) the advertising revenues in the Duluth DMA have dropped 17 percent from 2007

²⁷ *Id.* at 4214.

²⁸ FCC File No. 20140221ABO, Att. 18, “Request for Continued Satellite Authority for KRII” (“KRII Satellite Waiver Continuation Request”).

²⁹ *Channel 11, License, Inc.*, Letter Order, File No. BTCCT-20070214ABL (MB Vid. Div. 2007).

³⁰ *LIN License Co., LLC*, Letter Order, 27 FCC Rcd 12082, 12083 (MB Vid. Div. 2012)

³¹ KRII Satellite Waiver Continuation Request at 2 (citing *KRII 2007 Satellite Waiver* at 2).

³² *Television Satellite Stations*, 6 FCC Rcd at 4215.

³³ KRII Satellite Waiver Continuation Request at 2.

³⁴ KRII Satellite Waiver Continuation Request, Decl. of Brian Byrnes at 1.

³⁵ *Id.* at 3.

through 2013;³⁶ (5) and all of the networks capable of securing consistent ratings of any levels are currently affiliated with stations serving the Duluth DMA.³⁷

While the instant request does not satisfy all of the criteria of the Commission's presumptive satellite standard, we find that the Quincy has set forth information sufficient to warrant continued satellite status for KRII pursuant to our *ad hoc* analysis. Given KRII's long history as a satellite of KBJR-TV, the limited advertising revenue opportunities, and the fact that all of the major networks are broadcast in the DMA at issue, it is unlikely that an alternative operator would be willing and able to operate KRII as a stand-alone facility. We see no evidence in the record that continuing the satellite exemption will harm competition in the market. Indeed, we find that doing so will benefit the public interest by promoting access to broadcast services which may otherwise not be feasible. For the reasons discussed above, we find that the continued operation of KRII as a satellite of KBJR-TV would be in the public interest.

Pending Renewals. It is Commission policy in multi-station transactions to grant transfer of control applications while renewal applications are pending "as long as there are no basic qualification issues pending against the transferor or transferee that could not be resolved in the context of the transfer proceeding, and the transferee explicitly assents to standing in the stead of the transferor in the pending renewal proceeding."³⁸ We find that application of this policy is appropriate with respect to the transaction at hand, where the license renewal applications filed by WBNG-TV and KDLH remain pending. Quincy and SagamoreHill Duluth have each submitted statements explicitly agreeing to stand in the stead of the assignor in any renewal application that is pending at the time of the consummation of the assignment.³⁹ None of these applications have matters currently pending that present basic character qualification issues and prevent grant of the instant transfer of control applications. Therefore, we will apply the policy set out in *Shareholders of CBS* to the WBNG-TV and KDLH applications.

Conclusion. Having reviewed the application, pleadings, and other facts before us, we conclude that grant of the Applications as requested will comply with the Commission's rules and section 310(d) of the Act. We conclude that all the Applicants are fully qualified and that grant will serve the public interest, convenience, and necessity.

ACCORDINGLY, IT IS ORDERED, That the request for the continued operation of station KRII, Chisholm, Minnesota, as a satellite of KBJR, Duluth, Minnesota, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

IT IS FURTHER ORDERED, That request for a temporary waiver of the local television ownership rule, 47 C.F.R. §73.3555(b) for nine months from the date of consummation, IS GRANTED.

IT IS FURTHER ORDERED, That the above-referenced applications for consent to assign the licenses of WPTA, Fort Wayne, Indiana; KDLH, Duluth, Minnesota; KBJR-TV, Superior, Wisconsin; KRII, Chisholm, Minnesota; WEEK-TV, Peoria, Illinois; WBNG-TV, Binghamton, New York; WISE-

³⁶ *Id.* at 4-5.

³⁷ *Id.* at 5.

³⁸ *Shareholders of CBS Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 16072, 16072-16073, ¶ 3 (2001).

³⁹ See July 2015 Granite Amended Description and Waiver Request at 11-12; July 2015 SagamoreHill Duluth Amended Description at 3.

TV, Fort Wayne, Indiana; File Nos. BALCDT-20140221ABL, ABM, ABN, ABO, ABQ, ABR, ABS ARE GRANTED, conditioned upon termination of the joint sales agreements in the Ft. Wayne, Duluth and Peoria markets within nine months of consummation, as specifically certified to in the amended applications.

Sincerely,

A handwritten signature in black ink, appearing to read 'B a / K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau