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Re: KXXV(TV), Waco, TX, ID No. 9781
File No. BALCDT-20150807ABA
KEYU(TV), Borger, TX, ID No. 83715
File No. BALCDT-20150807ABD
KWES-TV, Odessa, TX, ID No. 42007
File No. BALCDT-20150807ABI
KWAB-TV, Big Spring, TX, ID No. 42008
File No. BALCDT-20150807ABJ
KSWO-TV, Lawton, OK, ID No. 35645
File No. BALCDT-20150807ABM
KFDA-TV, Amarillo, TX, ID No. 51466
File No. BALCDT-20150807ABP
KEYU-FM, Amarillo, TX, ID No. 39892
File No. BALH-20150807ABE

KTXC(FM), Lamesa, TX, ID No. 71650
File No. BALH-20150807ABG
KAUZ-TV, Wichita Falls, TX, ID No. 6864
File No. BALCDT-20150807ABO.

Dear Counsel:

This letter is in reference to the unopposed, above-captioned applications (Applications) to (1) assign the licenses of digital television stations KXXV(TV), Waco, Texas; KEYU(TV), Borger, Texas; KWES-TV, Odessa, Texas; KWAB-TV, Big Spring, Texas; KSWO-TV, Lawton, Oklahoma; and KFDA-TV, Amarillo, Texas; and FM radio stations KEYU-FM, Amarillo, Texas; and KTXC(FM), Lamesa, Texas; from subsidiaries of Drewry Communications Group (Drewry) to subsidiaries of Raycom Media, Inc. (Raycom); and (2) assign the license of digital television station KAUZ-TV, Wichita Falls, Texas, from Hoak Media of Wichita Falls License, LLC (Hoak), to a subsidiary of American Spirit Media, LLC (American Spirit).[1] Raycom has requested a failing station waiver to permit its ownership of Drewry stations KEYU and KFDA-TV and continued authority for Drewry station KWAB-TV to operate as a satellite of KWES-TV. For the reasons stated below, we grant the requests and the applications.

Failing Station Waiver. Nielsen Media Research (Nielsen) assigns Drewry stations KEYU and KFDA-TV to the Amarillo Designated Market Area (DMA). Section 73.3555(b)(2) of the Commission's rules[2] permits common ownership of two full-power television stations licensed in the same DMA, the Grade B contours of which overlap,[3] provided that, at the time the application to acquire the station(s) is filed: (1) at least one of the two stations is not ranked among the top four stations in the DMA, based on the most recent all-day audience share; and (2) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA after the merger. While KEYU is not ranked among the top four stations in the market, there are fewer than eight independent licensees in the Amarillo DMA. Drewry acquired KEYU in 2010 pursuant to a failing

[1] A Drewry entity, Texhoma Broadcasting, LLC (Texhoma), holds an option to acquire KAUZ-TV from Hoak. Texhoma has exercised this option and, upon its acquisition at closing by Raycom, will assign the station's license to American Spirit. As this application is, therefore, part of the larger Drewry-Raycom transaction, the parties have requested concurrent processing. Upon consummation, Raycom and American Spirit will enter into a shared services agreement (SSA) with respect to KAUZ-TV, terminating a grandfathered joint sales agreement currently in effect. We have reviewed the SSA and find that it is consistent with our rules and policies. Public Notice, "Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests," 29 FCC Rcd 2647 (2014).

[2] 47 C.F.R. § 73.3555(b)(2).

[3] Although the rule refers to Grade B contours, we note that, following the digital transition, the Commission has developed the digital noise-limited contour to approximate the same probability of service as the analog Grade B contour and that it has stated that the two are roughly equivalent. *See* 47 C.F.R. § 73.622(e); *2010 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*, Notice of Inquiry, 25 FCC Rcd 6086, 6117 (2010). In this instance, both the historic analog Grade B contours and the digital noise-limited contours of the stations overlap.

station waiver,[4] and Raycom submits that the public interest would be served by a continuation of that waiver.[5]

The Commission has defined a "failing station" as one that has been struggling "for an extended period of time both in terms of its audience share and financial performance."[6] The criteria for a "failing station" waiver of the television duopoly rule are:[7]

1. One of the merging stations has an all-day audience share of no more than four per cent;
2. The station has had a negative cash flow for the previous three years;
3. The merger would produce tangible and verifiable public interest benefits; and
4. The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station, and selling the station to an out-of-market buyer would result in an artificially depressed price.

A waiver will be presumed to be in the public interest if the applicant satisfies each criterion.

The applicants provide Nielsen ratings demonstrating that KEYU has had an all-day audience share of less than 2 percent during each of the last five Nielsen ratings books. They also submit financial data confirming that, while the station's financial performance has improved, without the synergies of joint operation with KFDA-TV it would have had a significant negative cash flow for each of the previous three years. These showings satisfy the first two criteria of the waiver standard.

With respect to the public interest benefits attendant to joint operation, the applicants note that, upon acquiring KEYU out of bankruptcy, Drewry replaced the station's transmission facilities, enabling it to operate at full power with new equipment and broadcast in high definition. In addition, common ownership allowed KEYU to begin producing two daily 30-minute local news programs in Spanish, utilizing KFDA-TV resources but its own dedicated team of producers and anchors. Raycom states that it will maintain this service to the Amarillo community, which otherwise would likely lose its only source of Spanish-language local news and information programming. This showing is consistent with those we have found acceptable in previous decisions.[8]

Finally, an analysis by media brokerage firm Kalil & Co., Inc. (Kalil) of the marketability of KEYU as a stand-alone Telemundo affiliate in the Amarillo DMA concludes that an in-market buyer would be the only reasonably available candidate willing and able to acquire and operate the station. In particular, Kalil notes that in the last five years there have been no sales of stand-alone, full-power Telemundo stations in comparable markets. It also opines that Amarillo, as the 50th largest Hispanic market in the country, does not have a Hispanic population base large enough to support stand-alone operation. With little to no opportunity to obtain another network affiliation, much less a top-four

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4 *Borger Broadcasting, Inc., Debtor-in-Possession*, Letter to Counsel, 25 FCC Rcd 1204 (MB 2010).

5 47 C.F.R. § 73.3555, Note 7. *See also Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903 (1999) (*Local Ownership Order*).

6 *Local Ownership Order*, 14 FCC Rcd at 12939.

7 47 C.F.R. § 73.3555, Note 7; *Local Ownership Order*, 14 FCC Rcd at 12939.

8 *See, e.g., WBUI(TV)*, 22 FCC Rcd 16852 (MB 2007).

network, KEYU would be a money-losing enterprise upon acquisition by an out-of-market buyer. This showing is also consistent with those we have found acceptable in previous decisions.[9]

We find that the applicants have submitted detailed information sufficient to show that KEYU is a "failing station." Consistent with the *Local Ownership Order*, we believe that the combined operation of the stations will pose minimal harm to our interest in diversity and competition and that allowing KEYU to operate in tandem with a stronger station will help it to remain a viable voice in the market, through a definite improvement in facilities and programming. This outcome clearly will benefit the public interest.

Satellite Exception. Raycom has requested authority to continue operating KWAB-TV as a satellite station, pursuant to Note 5 of Section 73.3555 of the Commission's rules.[10] In *Television Satellite Stations*,[11] the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is 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.[12] If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis and grant the application if there are compelling circumstances that warrant approval.[13]

With respect to the first criterion, we note 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. The digital Principal Community contour thus does not provide an equivalent standard for determining whether a station qualifies for the presumptive satellite exemption. However, prior to the digital transition, there was no City Grade contour overlap between KWAB-TV and KWES-TV.

Regarding the second criterion, the Commission's "transmission" test deems an area underserved if there are two or fewer full-power television stations (including commercial, noncommercial, and satellite stations) licensed to the proposed satellite's community of license. Here, KWAB-TV is the only full-power television station licensed to Big Spring, Texas.

As for the third criterion, Raycom submits a statement from Kalil, which highlights the challenging nature of attempting to sell KWAB-TV as a stand-alone, full-power station. In particular, Kalil states that KWAB-TV is the only full-power television station in the Odessa-Midland DMA that is

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[9] *See, e.g., Minden Television Company*, Letter, 24 FCC Rcd 10151 (MB 2009) (seller engaged consultant to market station whose efforts yielded no credible out-of-market buyer).

[10] 47 C.F.R. § 73.3555, Note 5.

[11] *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212, 4215 (1991)(subsequent history omitted)(*Television Satellite Stations*).

[12] *Id.* at 4213-14. The Commission most recently authorized KWAB-TV as a satellite in 2008. *Kathleen A. Kirby, Esq.*, Letter, 23 FCC Rcd 16444 (MB Vid. Div. 2008).

[13] *Id.* at 4212.

not licensed to either Odessa or Midland, the main population centers in the market. Its community of license, Big Spring, is located in the less-populated eastern portion of the DMA, and its predicted coverage area would serve only about 50,000 people, putting it at a significant competitive disadvantage. Thus, with no real chance of obtaining a proper network affiliation, the cost of outfitting, staffing, and programming KWAB-TV could not be covered by the advertising revenues to be generated in Big Spring.

While the instant request does not satisfy the Commission's presumptive satellite exemption standard, Raycom has provided information sufficient to warrant continued satellite operation for KWAB-TV under our *ad hoc* analysis. Given the station's long history as a satellite, the sparse population within its coverage area, and insufficient advertising revenues to support ongoing operational costs, it is unlikely that an alternative operator would be willing and able to operate KWAB-TV as a stand-alone facility. Accordingly, we find that the continued operation of KWAB-TV as a satellite of KWES-TV would serve the public interest.

In light of the above discussion, we find that the applicants are fully qualified and conclude that the grant of the applications would serve the public interest.

ACCORDINGLY, IT IS ORDERED That the request for a "failing station" waiver of Section 73.3555(b)(2) of the Commission's rules to permit the continued common ownership of KEYU(TV), Borger, Texas, and KFDA-TV, Amarillo, Texas, IS GRANTED. IT IS FURTHER ORDERED That the request to continue operating KWAB-TV as a satellite station pursuant to Section 73.3555, Note 5, of the Commission's rules IS GRANTED. IT IS FURTHER ORDERED That the Applications ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau