Federal Communications Commission
Washington, D.C. 20554

January 29, 2016

DA 16-103
Released: January 29, 2016

Gray Television Licensee, LLC
c/o Derek Teslik, Esq.
Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004

Knoxville TV LLC
c/o Mark J. Prak, Esq.
Brooks Pierce McLendon Humphrey & Leonard, LLP
P.O. Box 1800
Raleigh, NC 27602

Re: KAKE(TV), Wichita, KS, ID No. 65522
File No. BALCDT-20151014AEC
KLBY(TV), Colby, KS, ID No. 65523
File No. BALCDT-20151014AEF
KUPK(TV), Garden City, KS, ID No. 65535
File No. BALCDT-20151014AEG.

Dear Counsel:

This letter is in reference to the unopposed, above-captioned application (Application) to assign the licenses of digital television stations KAKE(TV), Wichita, Kansas, KLBY(TV), Colby, Kansas, and KUPK(TV), Garden City, Kansas, from Gray Television Licensee, LLC (Gray) to Knoxville TV LLC (Knoxville TV). Knoxville TV has requested authority for KLBY and KUPK to continue operating as satellites of KAKE, pursuant to Note 5 of Section 73.3555 of the Commission's rules,[1] as well as a continuing waiver of Section 73.1125 of the Commission's rules[2] to use KAKE as the main studio for the satellite stations. For the reasons set forth below, we grant the requests and the application.

Satellite Exception. In *Television Satellite Stations*,[3] 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 exception standard applicable to new

---

[1] 47 C.F.R. § 73.3555, Note 5.

[2] 47 C.F.R. § 73.1125.

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

satellite stations. The presumptive satellite exception 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.[4] 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.[5]

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, Knoxville TV demonstrates that, prior to the digital transition, there was no City Grade contour overlap between KAKE and either KLBY or KUPK.

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, KLBY is one of two full-power television stations licensed to Colby, Kansas, and KUPK, likewise, is one of two full-power television stations licensed to Garden City, Kansas.

As for the third criterion, Knoxville TV submits a statement from W. Lawrence Patrick, Managing Partner of media brokerage firm Patrick Communications, who highlights the challenging nature of attempting to sell KLBY and KUPK as stand-alone, full-power stations. In particular, Patrick states that the Wichita-Hutchinson DMA "covers an extremely large geographic area encompassing many different population centers...essentially mandat[ing] the use of satellites to properly serve the viewing public." While it is ranked the 65th largest DMA in terms of population, Wichita-Hutchinson is ranked only 80th in terms of television advertising revenue, indicating "a television economy where there is significantly less advertising revenue available for the pool of stations than most markets of comparable population size." KAKE thus "needs its satellite stations...to effectively compete with the other owners in the market." Furthermore, neither KLBY nor KUPK provides a signal capable of covering the market, and, with all of the major network affiliations already present in the DMA, neither "would have access to programming sufficient to viably compete for audience and revenue. In conclusion, Patrick states that "no knowledgeable and experienced television operator could be found" to operate KLBY and KUPK as stand-alone, full-power stations.

While the instant request does not satisfy the Commission's presumptive satellite exception standard, Knoxville TV has provided information sufficient to warrant continued satellite operation for KLBY and KUPK under our *ad hoc* analysis. Given the stations' long history as satellites,[6] the geographically challenging nature of the market, lack of access to compelling programming, and insufficient advertising revenues to support ongoing operational costs, it is unlikely that an alternative operator would be willing and able to operate the stations as stand-alone facilities. Accordingly, we find that the continued operation of KLBY and KUPK as satellites of KAKE would serve the public interest.

[4] *Id.* at 4213-14.

[5] *Id.* at 4212.

[6] Knoxville TV states that KLBY and KUPK have been operated as satellites of KAKE since at least 1988. *Application of Sidney T. Warner*, Memorandum Opinion and Order, 3 FCC Rcd 4034 (1988).

Main Studio Waiver. The main studio rule requires a station to locate its main studio (1) within its principal community contour; (2) within the principal community contour of any other broadcast station licensed to its community of license; or (3) within 25 miles of the center of its community of license.[7] A licensee must acquire written authorization to move and maintain a main studio outside of these locations.[8]

Commission staff first granted a waiver of the main studio rule to KLBY and KUPK in 2003 and 2013, respectively,[9] and Knoxville TV states that the facts on which the Commission previously relied remain true today. It notes that both Colby and Garden City have small and declining populations, as well as estimated median per capital income significantly below that of the rest of the state, making the maintenance, operation, and staffing of a main studio economically challenging. It also observes that the only other full-power television stations licensed to the communities operate pursuant to their own main studio waivers, so that the grant of a continued waiver will not place those stations at a competitive disadvantage. Finally, Knoxville TV states that it will retain a presence in Colby and Garden City and continue to maintain a toll-free telephone number and website through which residents of those communities can obtain programming and other information.

We believe that the public interest would be served by waiver of the main studio rule to permit continued co-location of the main studios for KAKE, KLBY, and KUPK, maintaining the existing operating arrangement.

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

ACCORDINGLY, IT IS ORDERED That the request to continue operating KLBY and KUPK as satellite stations pursuant to Section 73.3555, Note 5, of the Commission's rules IS GRANTED. IT IS FURTHER ORDERED That the request for waiver of Section 73.1125 of the Commission's rules to use KAKE as the main studio for KLBY and KUPK IS GRANTED. IT IS FURTHER ORDERED That the Application IS GRANTED.

Sincerely,

David Brown / For

Barbara A. Kreisman
Chief, Video Division
Media Bureau

---

[7] 47 C.F.R. § 73.1125(a).

[8] 47 C.F.R. § 73.1125(d)(2).

[9] Request for Waiver of Section 73.1125 KLBY(TV), Colby, Kansas, Letter (July 23, 2003); Request for Waiver of Main Studio Rule, KUPK, Garden City, Kansas, Letter (Jan. 28, 2013).