

Request for Continuing Satellite Waiver

The instant application proposes, *inter alia*, the transfer of licenses of television stations KVAL-TV, Eugene, Oregon, KCBY-TV, Coos Bay, Oregon, and KPIC(TV), Roseburg, Oregon, in the Eugene, Oregon, Nielsen Designated Market Area (“DMA”). These stations operate under a longstanding and a continuing waiver of the Commission’s multiple ownership rules applicable to satellite television stations, and continuation of that waiver is respectfully requested to permit the stations to maintain their service to the public.

I. Background

As the Commission is aware, the geographically remote and lightly populated communities of Coos Bay and Roseburg historically have been served by satellite stations retransmitting the signals of stations license to Eugene. Due to the substantial distances and the mountainous terrain that characterizes much of the market, the smaller communities of Coos Bay and Roseburg are not able to receive adequate over-the-air coverage from the primary stations licensed to Eugene. The geographically remote nature of Coos Bay and Roseburg, together with the small populations of the communities, makes it extremely difficult for local, independent stations to attain commercial viability in these communities.

For these reasons, the NBC affiliate in the DMA, KMTR(TV), Eugene, Oregon, has operated KMCB(TV), Coos Bay, Oregon, and KTCW(TV), Roseburg, Oregon, as satellite stations of KMTR(TV) since 1991 and 1992, respectively. Also, notably, while KEZI(TV), the ABC affiliate licensed to Eugene, does not operate any satellite stations in the DMA, according to the record before the Media Bureau, it has historically established a number of translator stations in the market in order to overcome the widely dispersed and rugged terrain to serve viewers in the DMA. Thus, the affiliates of CBS, NBC and ABC have established geographic parity in the DMA, while at the same time ensuring availability of popular network service to outlying communities in the DMA that would otherwise not be served by a network-affiliated television station.

By taking advantage of the economies of scale made possible by the longstanding satellite operation of KCBY-TV and KPIC(TV), with the operation of KVAL-TV in Eugene, the stations are able to produce local news programming as well as regional news and weather information, which they would not be able to originate absent these relationships. In addition, the relationships allow viewers in Coos Bay and Roseburg, and other communities, to receive CBS network and syndicated programming that is not available from any other station.

Since the stations first went on the air and commenced broadcasting – KPIC(TV) in 1956 and KCBY-TV in 1960 – the stations have been authorized to operate as satellites of KVAL-TV pursuant to the satellite exception to the duopoly rule contained in note 5 of Section

73.3555 of the Commission's Rules.¹ The Commission most recently approved the operation of the stations as satellites of KVAL-TV on April 20, 1999.²

II. Discussion

Pursuant to the policy concerning television satellite stations adopted by the Commission in 1991, *Television Satellite Stations Review of Policy and Rules*, 6 FCC Rcd 4212 (1991) ("Satellite Policy Statement"), continued operation of a satellite station is presumptively in the public interest if the following three criteria are met:

- (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 proposed satellite as a full-service station.

6 FCC Rcd at 4213-14. Additionally, if an applicant is unable to qualify for the presumption, the Commission will evaluate the satellite proposal on an *ad hoc* basis and grant the application if there are other compelling circumstances that warrant approval. *Id.* at 4214.

A. The Presumptive Criteria

No City-Grade Overlap. As demonstrated in the attached Engineering Statement of John E. Hidle P.E., **no** predicted signal overlap area exists between KVAL-TV and KPIC(TV), between KVAL-TV and KCBY-TV, or between KCBY-TV and KPIC(TV). *See Engineering Statement in Support of a Request for a Continuing Satellite Waiver*, at 3 and Exhibit 5. Consequently, the first of the presumptive criteria is satisfied.

Underserved Area. Pursuant to the *Satellite Policy Statement*, a satellite station's community of license is underserved if (a) there are two or fewer full-service television stations licensed to it. KCBY-TV and KMCB(TV), a satellite station of KMTR(TV) in Eugene, are the only full-service television stations licensed to Coos Bay. *See BIA Kelsey, Investing In Television Market Report*, 2013, at Table 7. Therefore, KVAL-TV provides service to an underserved area via KCBY-TV, satisfying the second presumptive criterion with respect to Coos Bay.

With respect to the community of Roseburg, there are three stations currently licensed to the community: KPIC(TV), KTCW(TV) and KTVC(TV). *Id.* As noted, KPIC(TV) is the satellite of KVAL(TV), Eugene, Oregon, an affiliate of the CBS Network. Station KTCW(TV) is a satellite of station KMTR(TV), Eugene, Oregon, an NBC affiliated station. KTVC(TV) is

¹ *See* Engineering Statement of John E. Hidle, P.E., at 1.

² *See* FCC File Nos. BALCT-19981203RR; BALCT-199981203RS; and BALCT-19981203RC, *et al.*

owned by Better Life Television, a Seventh Day Adventist Church religious broadcasting outreach, which appears to broadcast the same programming as KBLN-TV, Grants Pass, Oregon, which is within the Medford, Oregon television market. Better Life Television is a non-profit 501(c)(4) entity which supports its stations through community donations, and is an affiliate of the Three Angels Broadcasting Network.³ Although there are three stations licensed to Roseburg, it is fair to say that the niche programming broadcast by KTVC(TV) does not directly compete for viewers and advertising revenues with KPIC(TV) and KTCW(TV) and their CBS and NBC network programming on a regular basis.

No Alternative Operator Ready and Able to Purchase and Operate KBCY-TV or KPIC(TV). The transferee submits that there is no alternative operator ready and able to assume operation of either of the satellite stations. The Commission's staff previously reviewed the facts surrounding these stations and concluded that finding a buyer to operate the stations on a stand-alone basis was not feasible. As demonstrated in detail the attached Broker's Statement addressed to William Lake of the FCC's Media Bureau, prepared by Lawrence Patrick, Managing Partner of Patrick Communications, it is "precisely this type of DMA that illustrates the importance of satellites in reaching a geographically large market" and operation of KCBY and KPIC as standalone stations "would be unsuccessful" given that "it is highly unlikely that a knowledgeable and experienced television operator could be found that could provide a viable full service operation to outlying communities with KCBY or KPIC as standalone stations."⁴

As a result, with respect to KCBY-TV and Coos Bay, all three of the presumptive criteria are met. Regarding KPIC(TV) and Roseburg, the first and third of the presumptive criteria set forth in the *Satellite Policy Statement* are clearly established. As noted, while three stations are licensed to Roseburg, KTVC(TV) provides niche programming and does not directly compete on a regular basis with the national network and syndicated programming aired on the other two stations in Roseburg. In any case, the transferee submits that the continuation of KCBY-TV and KPIC(TV) as satellites of KVAL-TV remains presumptively in the public interest.

B. Ad Hoc Analysis

Pursuant to the *Satellite Policy Statement*, if an applicant is unable to qualify for the presumption that the satellite operation is in the public interest, the Commission will evaluate the proposal on an *ad hoc* basis. Such an *ad hoc* analysis also supports a grant of the instant satellite waiver requests in this case. The parent/satellite operation of KVAL-TV, KCBY-TV and KPIC(TV) provides residents of the Coos Bay and Roseburg areas with local and national programming that is not available from any other source. As noted above, television viewers in Coos Bay and Roseburg can only receive the over-the-air CBS network by means of these satellite stations. The *Satellite Policy Statement* expressly stated that the sole availability of such network service through a satellite is a "compelling circumstance" justifying approval of

³ http://betterlifetv.tv/about_better_life.php.

⁴ Broker Statement, at 3.

proposed satellite operation even without the benefit of the three-pronged presumption. *Satellite Policy Statement*, 6 FCC Rcd at 4214.⁵

The Commission has also previously acknowledged that long-term satellite operation indicates that standalone operation is likely to be impossible.⁶ As noted above, KPIC(TV) and KCBY-TV have been operating as satellite stations of KVAL-TV since 1956 and 1960, respectively. The Commission's staff reviewed the specific facts surrounding the stations and the operation of the stations as satellites of KVAL-TV, and recognized in 1999 that KCBY-TV and KPIC(TV) could not survive as a stand-alone stations.⁷ Further, as pointed out in the attached Broker's Statement, this is largely because neither station provides a "signal remotely capable of covering the market or even Eugene, the largest city in the DMA."⁸ In addition, KCBY's coverage "would be limited to an area around Coos Bay", KPIC(TV)'s coverage "is centered more on Roseburg", and the signals of both stations are limited to "the southern fringes of the DMA."⁹

If KCBY-TV and KPIC(TV) were not operating as satellites of KVAL-TV, the stations would be forced to function with limited signals, and viewers in the stations' coverage areas would lose CBS programming, as well as the local news, weather and other valuable programming provided by KVAL-TV to KCBY-TV and KPIC(TV). As the Broker Statement concludes, marketing KCBY-TV and KPIC(TV) "as standalone stations would be unsuccessful given the marginalized nature of the operation, and knowing that a buyer would be hard pressed to find compelling programming sufficient to survive."¹⁰

III. Conclusion

In sum, the stations are being transferred as part of a larger transaction, and no new satellite relationship will be created by the proposed transaction. Eugene, Coos Bay, and Roseburg viewers have for many years received a number of benefits from the parent/satellite operations of KVAL-TV, KCBY-TV, and KPIC(TV), including gaining access to national network and popular syndicated programming, as well as additional local programming, *for more than 50 years*. Absent a continuation of the existing relationship between the stations, these public interest benefits would not continue. For all these reasons and those provided above, it is respectfully requested that the longstanding satellite waiver applicable to KCBY-TV and KPIC(TV) as satellites of KVAL-TV be continued.

⁵ See also, *Selenka Communications, LLC*, 25 FCC Rcd 278 (MB 2010) at ¶ 6 (lack of availability of a major network affiliation among factors relevant to grant of satellite waiver).

⁶ See e.g., *Shareholders of Tribune Co. and Sam Zell*, 22 FCC Rcd 21266 (2007) at ¶ 49 (noting that the station had continuously operated as a satellite since it went on-air in 1988 and that the FCC had approved extensions of the satellite waiver for the station on four previous occasions).

⁷ See FCC File Nos. BALCT-19981203RR; BALCT-199981203RS; and BALCT-19981203RC, *et al.*

⁸ Broker Statement, at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.



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April 25, 2013

Mr. William Lake
Chief-Media Bureau
Federal Communications Commission
445 12th Street S.W.
Room 3-C740
Washington, D.C. 20554

Re: KVAL-DT, Eugene, Oregon
KCBY-DT, Coos Bay, Oregon
KPIC-DT, Roseburg, Oregon

Dear Mr. Lake:

I have been asked to opine on the continued operation of KCBY-DT and KPIC-DT as satellites of KVAL-DT with regard to the transfer application of the above television properties. KVAL-DT is the CBS affiliate in the Eugene, Oregon DMA. KCBY-DT and KPIC-DT have operated as long time satellites of KVAL-DT. This letter addresses the feasibility of operating and marketing KCBY-DT and KPIC-DT as full-service standalone operations versus their continued operation as satellites of KVAL-DT.

I am Managing Partner of Patrick Communications, the leading media brokerage firm in the industry with over \$7.5 billion in transactions. I have been involved in the broadcast industry for over forty years and my firm has sold 170 television stations in the past ten years, more than any other brokerage firm. In addition to Patrick Communications, I served from 2005 to 2008 as Chairman of the Board of ION Media Networks, the licensee of 60 television stations. I am also a past president of the National Association of Media Brokers and am the current Chairman of the National Association of Broadcaster's PAC. I also own a minority interest in television stations in New York, Los Angeles, Chicago, Boston, Philadelphia and San Francisco. In addition, I speak regularly to industry groups and have a long history of experience in both television operations and transactions.

I have previously brokered sales of television stations in the Eugene, Oregon DMA and I have also provided numerous opinions to the FCC on satellite waivers. I am very familiar with the Eugene, Oregon market and the various television station signals, competition and market conditions there, as

well as the current television economic environment and station transactional market. I believe that I am qualified to opine on the viability and marketability of KCBY-DT and KPIC-DT as standalone television stations.

There are four independent owners of full power commercial television stations in the market. Five television networks are represented including ABC, NBC, CBS, FOX, and My Network. The stations affiliated with CBS and NBC each have two full power satellites to cover the DMA. The ABC and FOX affiliates have translators to achieve this coverage.

Ranked as the 121st largest DMA in the U.S., the Eugene, Oregon market covers an extremely large geographic area stretching nearly 200 miles across the state of Oregon. Its geographic size essentially mandates the use of a satellite to properly serve the viewing public. The population growth for the market was 0.5 percent for the past five years, and population growth of less than 1.0 percent is projected through 2017. In addition, according to BIA Kelsey, the market is ranked only 134th in terms of television advertising revenue, a level well below its population rank of 121st. This indicates a television economy where there is less advertising revenue available for the pool of stations than most markets of comparable population. Total DMA television advertising dollars declined 3.0 percent from 2007 to 2012. BIA Kelsey projects growth over the next five years of only 2.3 percent.

The competition among the major network affiliated stations in this DMA is very strong. KVAL-DT and its satellites KCBY-DT and KPIC-DT, the subjects of this letter, lead the market with an estimated revenue share of 27.4 percent, while the ABC affiliate is close behind with an estimate share of 25.0 percent. The Fox affiliate has an estimate share of 21.5 percent and the NBC affiliate and its satellites have an estimated 19.9 percent of market revenues.

Given this level of competition, KVAL-DT needs its satellite stations, KCBY-DT and KPIC-DT, the subjects of this letter, to effectively compete with the other owners in the market. The level of service provided to the various communities that make up this geographically challenging market would be diminished significantly if KVAL-DT was forced to operate without KCBY-DT or KPIC-DT. Coverage maps for KVAL-DT, KCBY-DT and KPIC-DT are attached to this letter.

Finally, both KCBY-DT and KPIC-DT would be unable to operate as viable standalone full power stations. On its own, neither station provides a signal remotely capable of covering the market or even Eugene, the largest city in the DMA. KCBY-DT's coverage would be limited to an area around Coos Bay and KPIC-DT's coverage is centered more on Roseburg, both on the southern fringes of the DMA. Given that all of the major network affiliations are already present in the DMA, there would be no primary network television programming available to either KCBY-DT or KPIC-DT, and the stations would not have access to programming sufficient to viably compete for audience and revenue. More importantly, not only would the stations have to function with limited signals without primary network programming, viewers in the coverage area would be denied CBS network programming via over-the-air service, as well as all the local news, weather and public service programming that KVAL-DT provides via its



satellites KCBY-DT and KPIC-DT to these viewers. It is precisely this type of DMA that illustrates the importance of satellites in reaching a geographically large market.

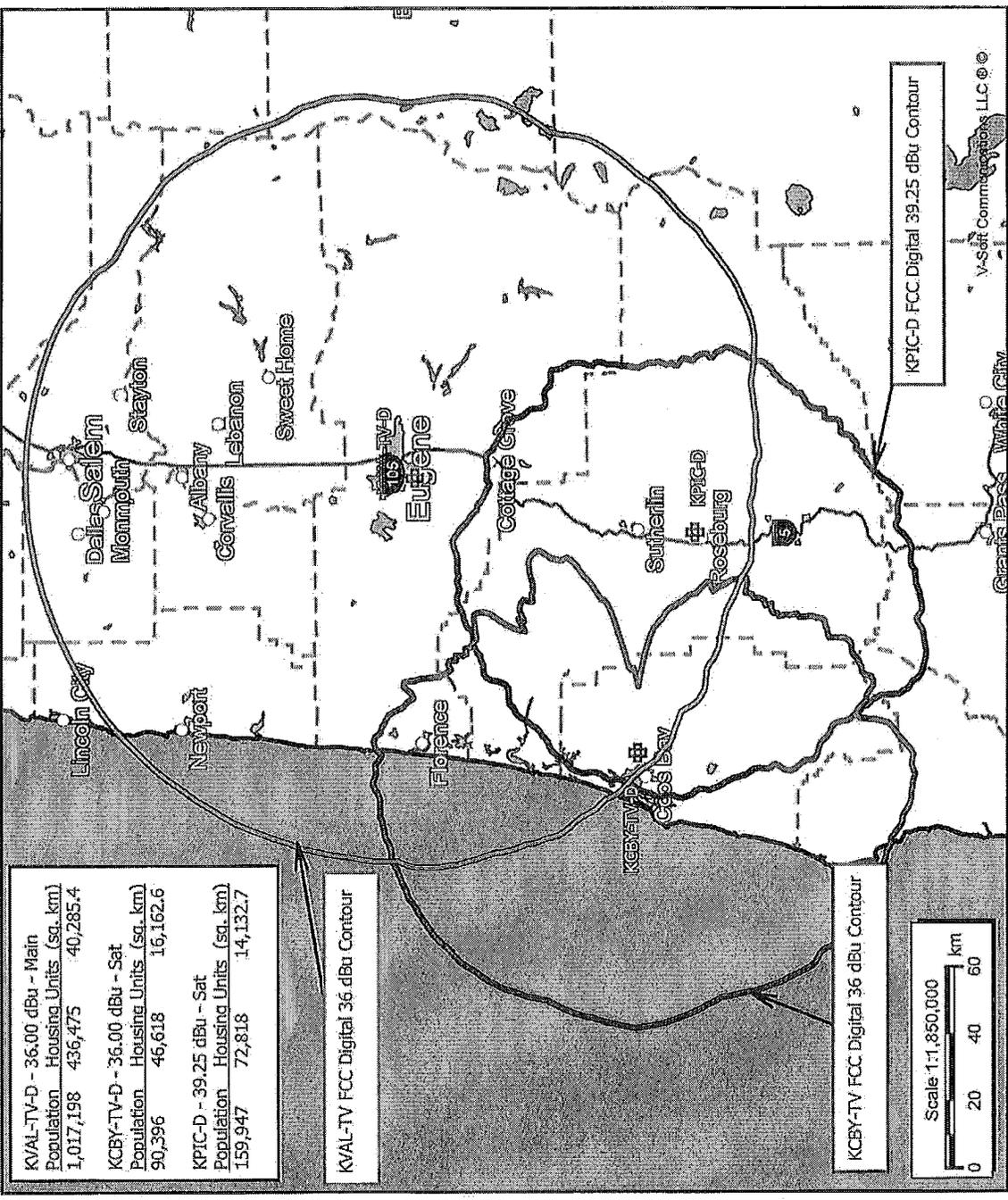
As a broker, I believe that the marketing of KCBY-DT and KPIC-DT as standalone stations would be unsuccessful given the marginalized nature of the operation, and knowing that a buyer would be hard pressed to find compelling programming sufficient to survive. It is highly unlikely that a knowledgeable and experienced television operator could be found that could provide a viable full service operation to outlying communities with KCBY-DT or KPIC-DT as standalone stations.

Sincerely,



W. Lawrence Patrick
Managing Partner



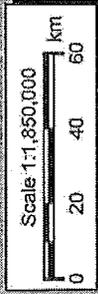


KVAL-TV, Eugene-MAIN
 KCBY-TV, Coos Bay-SAT
 KPIC-TV, Roseburg-SAT

KVAL-TV-D - 36.00 dBu - Main	
Population	Housing Units (sq. km)
1,017,198	436,475 40,285.4
KCBY-TV-D - 36.00 dBu - Sat	
Population	Housing Units (sq. km)
90,396	46,618 16,162.6
KPIC-TV-D - 39.25 dBu - Sat	
Population	Housing Units (sq. km)
159,947	72,818 14,132.7

KVAL-TV FCC Digital 36 dBu Contour

KCBY-TV FCC Digital 36 dBu Contour



KVAL-TV-D
 BLCDT20090612AGY
 Latitude: 44-00-07 N
 Longitude: 123-06-53 W
 ERP: 30.64 kW
 Channel: 13
 Frequency: 213.0 MHz
 AMSL Height: 640.7 m
 Elevation: 394.7 m
 Horiz. Pattern: Omni

KPIC-D
 BLCDT20120423ABP
 Latitude: 43-14-08 N
 Longitude: 123-19-18 W
 ERP: 50.00 kW
 Channel: 19
 Frequency: 503.0 MHz
 AMSL Height: 502.8 m
 Elevation: 453.8 m
 Horiz. Pattern: Directional

KCBY-TV-D
 BLCDT20090612AGE
 Latitude: 43-23-26 N
 Longitude: 124-07-46 W
 ERP: 5.00 kW
 Channel: 11
 Frequency: 201.0 MHz
 AMSL Height: 316.0 m
 Elevation: 261.0 m
 Horiz. Pattern: Directional

KPIC-D FCC Digital 39.25 dBu Contour

V-Sat Communications LLC