



Federal Communications Commission
Washington, D.C. 20554

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Cross Hill Communications LLC
c/o Davina Sashkin, Esq.
Fletcher, Heald & Hildreth PLC
1300 N. 17th Street
11th Floor
Arlington, VA 22209

Gray Television Licensee LLC
c/o John R. Feore, Jr., Esq.
Cooley LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, D.C. 20004

Re: WYCI(DT), Saranac Lake, New
York
Fac. ID No. 77515
File No. BALCDT-20191028AAS

Counsel:

This letter grants the above-captioned unopposed application (Application) for consent to assign the license of television station WYCI(DT), Saranac Lake, New York, from Cross Hill Communications, LLC (“Cross Hill”), to Gray Television Licensee, LLC (“Gray”) (collectively, the Applicants) and, in connection therewith, grants a “failing” station waiver of section 73.3555(b) of the Commission’s rules (“Local Television Ownership Rule”), to permit common ownership of WYCI(DT) and WCAX-TV, Burlington, Vermont.¹

¹ 47 CFR §73.3555(b)(2). See *2010/2014 Quadrennial Review Order*, Second Report and Order, 31 FCC Rcd 9864 (2016) (*2016 Order*); see also *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 et al.*, Order, DA 19-1303 (Dec. 20, 2019) (*2019 Order*). The *2019 Order* clarified that, as a result of the recent Third Circuit decision vacating and remanding the Commission’s 2017 reconsideration of the *2016 Order*, the Newspaper/Broadcast Cross-Ownership Rule, Radio/Television Cross-Ownership Rule, Local Television Ownership Rule, Local Radio Ownership Rule, and Television Joint Sales Agreement attribution standard are reinstated as they existed prior to the Commission’s 2017 reconsideration. *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 et al.*, MB Docket No. 14-50, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) vacated and remanded, *Prometheus Radio Project*, 939 F.3d 567 (3rd Cir. 2019), petition for rehearing en banc denied.

Under the Local Television Ownership Rule, a party may own, operate, or control two television stations within the same Nielsen Designated Market Area (“DMA”) if the digital noise-limited contours (NLSC) of the stations do not overlap, or if eight or more independently owned and operating commercial and noncommercial television stations will be licensed to the DMA post-merger, and at least one of the stations is not ranked within the top four stations in the DMA in terms of audience share.²

Here, the NLSC contours of WYCI(DT) and WCAX-TV overlap³ and the Burlington-Plattsburgh DMA would have less than eight independently owned and operating full power television broadcast stations following consummation. Thus, the proposed common ownership of WYCI(DT) and WCAX-TV would violate the Local Television Ownership Rule. Accordingly, the Applicants have requested a waiver of the Local Television Ownership Rule under the “failing” station waiver standard.

A “failing” station is defined as one that “has been struggling for an extended period of time both in terms of its audience share and financial performance.”⁴ In order to meet the “failing” station waiver standard, applicants must show that: (1) one of the merging stations has had a low all-day audience share (i.e. 4% or lower); (2) the financial condition of one of the merging stations is poor; (3) the merger will produce 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.⁵ If the applicants satisfy each criterion, a waiver of the Local Television Ownership Rule will be presumed to be in the public interest.⁶ A station’s qualification for a failing station waiver is reviewed on a “case-by-case basis.”⁷

Discussion. As discussed below, we find that the Applicants have adequately shown that their Application meets all four prongs of the “failing” station waiver of the Local Television Ownership Rule.

First, with respect to audience share, the Applicants state, and we have confirmed, that over the past twelve months, WYCI(DT) did not achieve audience share above the 4% threshold. The Applicants state that this low audience share is explained by the fact that WYCI’s signal does not reach the major population centers of the DMA and have filed a technical exhibit demonstrating this fact.⁸ Accordingly, we find that the Applicants have satisfied the first criterion of the waiver standard.

Second, with respect to WYCI(DT)’s financial condition, the Applicants submitted financial statements for 2016, 2017, and 2018. Staff analysis of the financial statements confirms that WYCI(DT) has had net operating losses in each of the three full years preceding the filing of the Application. Additionally, the Applicants state that the losses occurred despite the fact that the licensee reduced its expenses over the prior three years.⁹ Accordingly, we find that the Applicants have satisfied the second criterion of the failing station waiver standard.

Third, the Applicants state that consolidated operations of the two stations will result in tangible

² *Id.*

³ See Engineering Statement of Chesapeake RF Consultants, LLC, Figure 1 and 2.

⁴ *Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd 12903, 12938, ¶ 79 (1999) (“*Local Ownership Order*”), *recon. granted in part*, 16 FCC Rcd 1067 (2001).

⁵ *Id.* at 12939–40, ¶ 81; 47 CFR § 73.3555, note 7.

⁶ *Id.*

⁷ 47 CFR § 73.3555, note 7.

⁸ See WYCI(DT) Assignment Application, File No. BALCDT-20191028AAS, Description of Transaction at 2.

⁹ See Description of Transaction, at 2–3.

and verifiable public interest benefits that would outweigh any harm to competition and diversity.¹⁰ Specifically, the Applicants represent that Gray intends to make the following improvements that will result in public interest benefits: (1) improving the station's physical plant, which will make an over-the-air signal available to several hundred thousand additional viewers¹¹; (2) instituting newscasts on WYCI(DT), which presently has no news broadcast, that would include local news and breaking emergency weather information; (3) adding two hours of high-quality, local news each weekday morning by extending station WCAX-TV's leading local news brand to WYCI(DT); (4) airing cut-ins on WYCI(DT) that will consist of coverage of local breaking news or severe weather affecting the local area; and (5) pairing WYCI(DT) with its Washington, D.C. news bureau "to ensure that its local communities are fully informed of developments in the nation's capital."¹² Based on the aforementioned proposed improvements, we find that the combined operation of the stations will pose minimal harm to diversity and competition and will result in WYCI(DT) becoming a more viable local voice in the market through a definite improvement in its facilities and programming.¹³

Fourth, the Applicants state that Gray is the only reasonably available purchaser willing and able to operate WYCI(DT).¹⁴ According to the declaration of Gregory Uhrin ("Uhrin"), a co-manager and the Chief Operating Officer of Cross Hill, he and WYCI(DT)'s general manager began searching for a buyer of the station in the summer of 2018.¹⁵ Although they did not hire a broker, Uhrin states that they contacted several potential buyers.¹⁶ After a year of marketing efforts, they received an offer from a single buyer for "approximately half of the station's fair market value and would have required seller financing over ten (10) years."¹⁷ Shortly thereafter, Gray approached Cross Hill with a fair market value offer.¹⁸ Uhrin subsequently solicited additional offers from the potential buyers he had previously contacted, but did not receive any additional offers. Consistent with our previous decisions, we find that Gray is the only reasonably available candidate willing and able to acquire and operate WYCI(DT), and that selling the station to an out-of-market buyer would result in an artificially depressed price.¹⁹ Therefore, the fourth criterion of the failing station waiver standard is met.

As discussed, based on the showings submitted under the failing station waiver criteria established in the *Local Ownership Order*, we are persuaded that grant of a waiver is warranted on the ground that WYCI(DT) is a "failing" station. Furthermore, in light of the above discussion, we find that

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* at 5-6.

¹³ *Local Ownership Order*, 14 FCC Rcd at 12938, ¶ 80.

¹⁴ Description of Transaction at 6.

¹⁵ See Declaration of Gregory Uhrin, Attach. to Description of Transaction, ¶ 12 (Uhrin Decl.).

¹⁶ The potential buyers included, among others, Lilly Broadcasting Company, Ventura Broadcasting Company, Bill Christian, Outside TV, and Gray Television. *Id.* at ¶ 13.

¹⁷ *Id.* at ¶ 15.

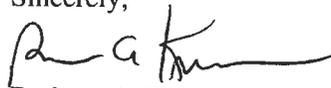
¹⁸ *Id.* at ¶ 16.

¹⁹ See, e.g., *Pappas Arizona License, LLC*, Letter Order, 28 FCC Rcd 17048, 17049 (MB 2013) (finding fourth criterion satisfied where out of 40 out-of-market prospective buyers contacted, only one made an offer, which was seen as having an unreasonable contingency); *Venture Technologies Group LLC*, Letter Order, 28 FCC Rcd 1992, 7993 (MB 2013) (finding fourth criterion met where no offers made out of several dozen out-of-market prospective buyers contacted).

the Applicants are fully qualified and conclude that the grant of the unopposed assignment application would serve the public interest.²⁰

ACCORDINGLY, IT IS ORDERED that the request for a “failing” station waiver of the Local Television Ownership Rule, section 73.3555(b), to permit Gray Television Licensee, LLC, to own and operate both WYCI(DT) and WCAX-TV, **IS GRANTED. IT IS FURTHER ORDERED** that the application to assign the license of WYCI(DT) from Cross Hill Communications, LLC, to Gray Television Licensee, LLC (File No. BALCDT-20191028AAS), **IS GRANTED.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁰ See 47 U.S.C. § 310(d).