

MULTIPLE OWNERSHIP

The proposed transferee, Mrs. Myoung Hwa Bae ("Mrs. Bae"), is a Member currently holding a 33⅓% membership interest in Pocatello Channel 15, L.L.C. ("Pocatello-15"), the permittee for a new commercial full power television station on Channel 15 at Pocatello, Idaho (File No. BPCT-970328KK; Facility ID No. 86205, the "Station"), and proposes by this application to acquire the remaining 66⅔% membership interests in Pocatello-15 and the Station from the other two Members. Pocatello-15 does not hold any interest in any other broadcast stations that are subject to the Commission's broadcast multiple ownership rules, 47 C.F.R. § 73.3555, other than the construction permit for the Station. Since Mrs. Bae would end up holding 100% of the membership interests in, and would be the only Member, officer or director of, Pocatello-15, Mrs. Bae would become the only attributable interest holder in Pocatello-15 as a result of the proposed transfer, and therefore Mrs. Bae is the only party to the transferee's portion of this application.¹

Mrs. Bae also is the President, Treasurer, Manager, sole Director, and Member holding 100% of the membership interests in KM Television of Jackson, L.L.C. ("KM-Jackson"), licensee of commercial full power television broadcast station KBEO(TV), Jackson, Wyoming (Facility ID No. 35103, "KBEO"), among other stations that are not relevant to analysis of compliance with the Commission's broadcast multiple ownership rules. See Exhibit 16. Therefore, this exhibit demonstrating compliance with the Commission's local television broadcast multiple ownership (or "duopoly") rule, § 73.3555(b), is required. Pocatello and the Station are located in Bannock County, Idaho, which is in the Idaho Falls-Pocatello, Idaho Designated Market Area ("DMA"), as defined by Nielsen Media Research ("Nielsen"). See 2001 *Television & Cable Factbook* ("Factbook") at A-404. Although Teton County, Wyoming also is assigned to the Idaho Falls-Pocatello, Idaho DMA, *id.*, KBEO itself appears to have been assigned by Nielsen to the Salt Lake City, Utah DMA. *Id.* at A-1419; see also, Factbook 2003 (online version).² However, Mrs. Bae has been advised informally by the Commission staff that BIA, a private database on which the Commission staff relies and on which the Commission's television market definitions are based (but to which Mrs. Bae does not have access), lists KBEO as being "located" in the same Idaho Falls-Pocatello, Idaho

^{1/} Although Mrs. Bae's stepson, Kevin Bae, was the original Manager of Pocatello-15, he resigned that position in March 2002, and Pocatello-15 has been managed by its Members since that time. Since the governing documents for Pocatello-15 require a unanimous vote for any significant action, each of the three Members (including Mrs. Bae) currently have negative control over Pocatello-15, and under this application it is proposed that Mrs. Bae gain positive control.

^{2/} The Commission recently clarified that in such circumstances, where "a station's community of license is physically located in one DMA, but the station is assigned by Nielsen to a different DMA", that the "station will be considered to be 'within' a given DMA if it is assigned to that DMA by Nielsen, even if that station's community of license is physically located outside the DMA." See 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277, Report and Order and Notice of Proposed Rulemaking, FCC 03-127 at n.399 (released July 2, 2003)(the "2002 Biennial Review Order"). The effectiveness of the 2002 Biennial Review Order has been stayed by the U.S. Court of Appeals for the Third Circuit.

DMA as the Station, such that compliance with Section 73.3555(b), the local television multiple ownership rule, must be addressed.

Under Section 73.3555(b)(2), Mrs. Bae may “own, operate, or control” two commercial television broadcast stations in the same DMA only if the Grade B contours do not overlap, see § 73.3555(b)(1), or under certain other conditions that are not applicable in this case. However, “[t]he Commission's policy has been to issue permanent waivers of the television duopoly rule upon application showing mergers between television stations with *de minimis* Grade B contour overlap, i.e., an area of overlap that encompasses less than one percent of the area and population of the Grade B contour of each station.”³ The Commission also has expressly found that Longley-Rice or other “terrain-limited analysis” models may be used to show that no Grade B contour overlap exists, or to show that the Grade B overlap area falls below the 1% threshold to qualify as *de minimis*.⁴

The Technical Exhibit⁵ attached to this exhibit shows that there is no Grade A contour overlap between the Station and KBEO, but that there is some limited Grade B contour overlap based on the standard predicted contours. See Technical Exhibit at 4 and Figure 4, Sheet 3 of 5. Specifically, the population within the predicted Grade B contour overlap area is estimated to be

^{3/} See Review of the Commission's Regulations Governing Television Broadcasting, 14 FCC Rcd 12903, 17 CR 1 at n.96 (1999)(“1998 Biennial Review”), citing WNNE Licensee, Inc., 13 FCC Rcd 12677 (1998) and Hubbard Broadcasting Inc., 2 FCC Rcd 7374 (1987). The *de minimis* waiver policy was continued in effect under the local television duopoly rules adopted by the 1998 Biennial Review, id., and which remain in effect due to the stay of the 2002 Biennial Review Order.

^{4/} See Heritage Media Services, Inc., 13 FCC Rcd 5644, 11 CR 550 at ¶¶ 7-9 and 12 (1998), citing 47 C.F.R. § 73.684(f) and Mad River Broadcasting Company, 4 FCC Rcd 6456 at n.3 (1989), Kathleen Bailey d/b/a Capital Foothill Broadcasters, 4 FCC Rcd 1429 at n.3 (1989), and John H. Phipps, Inc., 11 FCC Rcd 13053 at n.1 (1996) (Commission's engineering analysis confirms that, due to intervening terrain, no actual overlap exists).

^{5/} See Technical Exhibit dated September 2003 and prepared by du Treil, Lundin & Rackley, Inc. (the “Technical Exhibit”). The Technical Exhibit was prepared in support of an amendment to a minor modification of construction permit application that Pocatello-15 has pending for the Station (File No. BMPCT-20030619ABA). The purpose of the minor modification application is to propose a new transmitter site located about 0.25 miles from the site authorized in the construction permit, as well as a slightly different antenna pattern and rotation. The purpose of the amendment is to change the rotation of the antenna pattern further to the east, to move a predicted “null” in the pattern that may otherwise reduce the signal strength over the community of license of Pocatello, and to provide this new multiple ownership exhibit. Mrs. Bae notes that this amendment rotates the antenna pattern proposed for the Station more toward KBEO, increasing the predicted Grade B overlap over that which exists with the existing construction permit, see Technical Exhibit at Figure 4, Sheet 3 of 5; as a result, the area and population in any Grade B contour overlap area between the Station's current construction permit and KBEO would be less than under the proposed minor modification of the Station's permit, and therefore the *de minimis* waiver requested herein would be appropriate regardless of whether the minor modification of the permit is granted.

only 22 people, which is only 0.01% of the population within the proposed Grade B contour of the Station and only 0.08% of the population within the proposed Grade B contour of KBEO, id. at 5, in both cases well below the 1% threshold for a *de minimis* overlap.

With respect to area, the geographic area within the predicted Grade B contour overlap area is estimated to be 192 square kilometers, which is 1.08% of the area within the proposed Grade B contour of the Station and 1.38% of the area within the proposed Grade B contour of KBEO, id., so slightly over the 1% threshold for a *de minimis* overlap using standard predicted contours. However, the Technical Exhibit demonstrates that if terrain factors are taken into account, there is little or no overlap between the Grade B contours of the Station and KBEO. See Technical Exhibit at 5 and Figure 4, Sheets 3, 4 and 5 of 5. Both the terrain relief map and a terrain profile demonstrate the significant mountainous terrain between the Station and KBEO, which would obstruct the signals of each station and limit their Grade B contours, and any overlap between same. Id. at 5 and Figure 4, Sheets 3 and 4 of 5.

Finally, Figure 4, Sheet 5 of 5 depicts the Grade B contours of the Station and KBEO as calculated using the Longley-Rice terrain-dependent propagation model (with the predicted Grade B contours using the standard predicted contour method superimposed thereon). Id. at 5 and Figure 4, Sheet 5 of 5. The Longley-Rice model shows that KBEO is not predicted to provide any Grade B or better service within the Station's Grade B contour, and therefore there is no Grade B contour overlap between the Station and KBEO. Id. In addition, the Longley-Rice model also shows that the Station would not provide any significant service (with a Grade B or better signal strength) within the predicted Grade B contour overlap area. Id.

Therefore, Mrs. Bae respectfully requests a permanent waiver of Section 73.3555(b), the Commission's local television multiple ownership rule, on the basis of her showing that there will be no actual Grade B contour overlap between the Station and KBEO, when the service areas of the respective stations are evaluated using the Longley-Rice propagation model. To the extent that either the Station or KBEO is predicted to provide service in any Grade B contour overlap area, such service would be *de minimis*, since the population (an estimated 22 people, using the standard predicted contours) and the geographic area (using the Longley-Rice terrain-dependent propagation model, as permitted by Commission policy and precedent) within any such overlap area would both be well less than 1% of the population and area within the Grade B contours with respect to both the Station and KBEO.