

Barrington Broadcasting Texas Corporation

**EXHIBIT 15
FCC Form 314
Section III, Question 6
Multiple Ownership Compliance**

This application seeks consent to assign the licenses of parent station KVII-TV, Channel 7, Amarillo, Texas, and co-owned satellite station KVIH-TV, Channel 12, Clovis, New Mexico, to Barrington Broadcasting Texas Corporation ("Barrington Texas"). Both stations operate in the small Amarillo, Texas, Designated Market Area, the 130th ranked DMA. KVIH-TV has long operated as a satellite station,¹ and Assignee Barrington Texas respectfully requests that the FCC continue to authorize the operation of KVIH-TV (Clovis) as a satellite of KVII-TV (Amarillo) pursuant to Note 5 of Section 73.3555 which exempts satellite stations from the limits of the local television multiple ownership rules.²

An applicant for satellite status is entitled to a presumption that the proposed satellite operation serves the public interest if it meets three criteria: (1) there is no City Grade overlap between the parent and satellite; (2) the proposed satellite would provide service to an unserved or underserved area; and (3) no alternative operator is ready and able to construct or to

¹ See, e.g., *McAlister Television Enterprises, Inc.*, 60 RR 2d 1379 (1986) (*1986 Satellite Decision*) (noting the history of satellite operations of the Clovis station by three previous owners, the continuing inability of the Clovis area to support a full-service, stand-alone television station and granting authority for the Clovis station to operate as a 100% satellite of KVII-TV, Amarillo).

² Section 73.3555(b)(1) would permit co-ownership of both stations in the Amarillo DMA so long as their Grade B contours do not overlap. The engineering statement in Attachment A hereto (which, as noted below, was originally submitted in connection with Assignor's 2002 application to acquire KVII-TV and KVIH-TV) reflects that there is some but negligible Grade B overlap between the parent and satellite stations. According to the engineering study, the Grade B overlap area includes 487 square kilometers, which is 1.28% of KVII-TV's coverage area and 2.48% of KVIH-TV's coverage area. The population in the overlap area includes just 3,284 persons, which is 0.93% of the population in KVII-TV's area of coverage and 3.77% of the population in KVIH-TV's area of coverage.

purchase and operate the satellite as a full-service station. *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-14 (1991). If one or more of the presumptive criteria are not satisfied, the FCC nevertheless may grant the proposal on an *ad hoc* basis when compelling circumstances warrant. *Id.* at 4214.

The FCC most recently renewed the continuing satellite status for KVIH-TV (Clovis) in October 25, 2002. *See* Attachment B, copy of Letter Decision of Chief, Video Division of Media Bureau, 1800E3-JLB (*2002 Satellite Decision*). As shown below, the core circumstances underlying the previous grant by the FCC exist today; the need for continued satellite status is especially strong in view of the critical challenge of conversion to full-power digital operations; and the attached April 8, 2005 statement from the national media brokerage and appraisal firm of Kalil & Co, Inc. ("Kalil Statement") (*see* Attachment C), demonstrates that it is highly unlikely that an alternative buyer would be willing and able to operate KVIH-TV (Clovis) as a stand-alone, full-service station.

1. Lack Of City-Grade Overlap

Attachment A hereto contains a copy of the Engineering Statement of consulting engineers Cohen, Dippel and Everist submitted in connection with the *2002 Satellite Decision*. It shows that the City Grade contours of KVII-TV (Amarillo) and KVIH-TV (Clovis) do not overlap. The lack of such overlap remains true today as the stations continue to operate with substantially the same technical facilities. Thus, the proposed transaction satisfies the first criterion of the satellite presumption.

2. Service To Underserved Areas

Under the second criterion, an area is deemed unserved if, under the "transmission test," there are two or fewer full-service stations already licensed to the satellite's community of

license. *Television Satellite Stations*, 6 FCC Rcd at 4215. As confirmed by Section 73.606 of the rules, KVIH-TV remains the only television station licensed to Clovis, New Mexico.

Because the satellite station serves an underserved community, the transaction meets the second criterion as well.

3. Unlikelihood Of Finding An Operator Willing and Capable Of Operating KVIH-TV As A Full-Service, Stand-Alone Station

As pointed out in the *1986 Satellite Decision* (§10), “Clovis is just the type of market that the Commission’s satellite policy has been applied in past cases.” As noted in that decision and in the more recent *2002 Satellite Decision*, the Clovis station has long operated as a satellite due to the lack of adequate population and economic base of the sparsely-populated coverage area of the station to support a viable full-service, stand-alone operation. There are five full-service commercial stations providing services to the relatively small Amarillo market. The DMA has declined two market ranks since the FCC, in October 2002, approved the current licensee’s acquisition of the Stations. As noted in its *2002 Satellite Decision*, the Grade B contour of the Clovis satellite includes just over 87,000 persons. In approving the earlier transaction, the FCC found that “given [KVIH-TV’s] long history as a satellite, the sparse population residing within its predicted Grade B contour, and the Amarillo DMA [then] ranking of 128, it does not appear likely that an alternative operator would be willing to operate the satellite as a full-service station” (footnoted omitted). (*See Attachment B at 3.*)

The Kalil Statement further buttresses the continuing validity of the FCC’s determination. As noted in that Statement, Clovis is located more than 100 miles from Amarillo, the population and economic center of the television market. Due to the distance from Amarillo, the coverage contour of KVIH-TV (Clovis) “does not include Amarillo or other significant

population centers that would provide sufficient viewers and advertising to support full-service operations.” (See Attachment C.) The *1986 Satellite Decision* found that the Clovis station had a history of loss operations, and the Kalil Statement confirms that KVIH-TV “has operated at a loss and requires the financial resources of KVII-TV in Amarillo to support its continued operations.” The financial support of the parent station is especially imperative today in view of the need to convert KVIH-TV to full power digital operations. For these reasons and due to the lack of any realistic prospect for KVIH-TV to garner any meaningful network affiliation as a stand-alone station, the Kalil Statement determines that the Clovis station could not viably operate as a stand-alone station. The Statement further reflects that despite extensive efforts over the past year to sell KVII-TV and KVIH-TV, no party has even expressed an interest in acquiring KVIH-TV (Clovis) to operate other than as a satellite station. For all these reasons, the Kalil Statement offers the expert judgment “that is highly unlikely that a qualified buyer would be willing and able to operate KVIH-TV as a stand-alone station.”

Barrington Texas respectfully submits that the record amply supports a favorable presumption under the three-prong satellite standard as well as shows the existence of compelling circumstances warranting the continued authorization of KVIH-TV’s satellite status. Such authorization, of course, would not diminish diversity or competition but would preserve the station’s long-established status. Continuance of the existing satellite status provides the only realistic opportunity for KVIH-TV to continue to provide service (including digital operations) to residents of the sparsely-populated Clovis area that have come to rely on its programming.

ATTACHMENT A

0 20 40 60
Kilometers
U.S. SOURCE: THE BUREAU OF THE CENSUS, 1990

Cohen, Dippell and Everist, P.C.

POPULATION AND AREA DATA
WITHIN PREDICTED GRADE B CONTOUR
FOR KVII-TV, AMARILLO, TEXAS AND
FOR KVIH-TV, CLOVIS, NEW MEXICO
AUGUST 2002

<u>STATION</u>	<u>POPULATION</u> 2000 Census	<u>AREA</u> Sq. km
KVII-TV	351,799	38,159
KVIH-TV	87,073	19,618
Area of Grade B Overlap	3,284	487

ATTACHMENT B



Federal Communications Commission
Washington, D.C. 20554
OCT 25 2002

1800E3-JLB

KVII Operating, L.P.
c/o Jerry V. Haines, Esq.
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20008

NVG-Amarillo, LLC
c/o Elizabeth Hammond, Esq.
Drinker Biddle & Reath, LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005

Mothers Opposed to Mistreatment
of Minors, Inc.
c/o Mark D. Schneider, Esq.
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, D.C. 20005

Re: KVII-TV, Amarillo, Texas,
Facility ID 40446
File No. BRCT-19980330KP
File No. BALCT-20020815AAY

KVIH-TV, Clovis, New Mexico
Facility ID 40450
File No. BALCT-20020815ABD

Television Translator Stations:
K24DU, Facility ID 40445
File No. BALTT-20020815AAZ
K26DR, Facility ID 40444
File No. BALTT-20020815ABA
K43BU, Facility ID 40448
File No. BALTT-20020815AAB
K57CW, Facility ID 40447
File No. BALTT-20020815ABC

Dear Counsel:

This is in reference to the unopposed applications for assignment of the above-captioned television licenses from KVII Operating, L.P. (formerly Marsh Media, Inc.) (KVII) to NVG-Amarillo, LLC (NVG). NVG requests authorization to continue operating KVIH-TV, channel 12, Clovis, New

Mexico as a satellite of KVII-TV, channel 7, Amarillo, Texas. We also have before us the application for renewal of license for KVII-TV, which is opposed.

PENDING APPLICATION FOR RENEWAL OF LICENSE OF KVII-TV

On July 1, 1998, Mothers Opposed to the Mistreatment of Minors, Inc. (MOMM) filed a petition to deny the application filed by Marsh Media, Inc. for renewal of license for KVII-TV, requesting that the Commission deny the application or designate it for hearing. In its petition, MOMM alleged, *inter alia*, that Stanley Marsh III, the principal owner of the licensee, engaged in various activities involving abuse of, or sexual misconduct with minors, and also used the threat of negative exposure on KVII-TV to coerce minors to submit to abuse. MOMM also alleged that Marsh had been indicted on five felony counts for alleged misconduct related to his activities with minors, and acknowledged that while it could not point to any final adjudications of a felony conviction, it believed that Marsh's alleged nonbroadcast misconduct is the type of "shocking" misconduct that the Commission has deemed cognizable under its character inquiry, even in the absence of a criminal conviction.¹

At Exhibit 6 of the pending assignment applications, KVII reports that: (1) the criminal action referred to by MOMM was resolved in 1998 in Potter County, Texas Court, which, pursuant to a plea agreement, dismissed all felony charges against Marsh and accepted his nolo pleas with regard to two misdemeanors, trespass and unlawful restraint; and (2) a related civil litigation was settled in May 2001. In addition, MOMM filed a supplement to its petition to deny the renewal application in May 2001, stating that it "understands that Marsh plans to sell the station and . . . believes that the FCC approval of the assignment of the station license from Marsh to an unaffiliated, independent third-party buyer would both satisfy the concerns raised in the Petition and serve the public interest."

We agree that the allegations made by MOMM raise serious questions regarding Marsh's qualifications to remain a Commission licensee. However, because consummation of the proposed assignments of license would result in the divestiture of all of Marsh's broadcast interests, we will grant the KVII-TV renewal application, conditioned upon prompt consummation of the transactions proposed in the above-captioned assignment applications. The Commission will consider these unresolved character issues in the event that Stanley Marsh III seeks, in the future, to acquire an interest in any other broadcast licensee, or KVII fails to comply with the condition imposed on the grant of the KVII-TV renewal application.

CONTINUING SATELLITE EXCEPTION

NVG proposes to continue operating KVIH-TV, Clovis, New Mexico as a satellite of KVII-TV, Amarillo, Texas, pursuant to Note 5 of Section 73.3555 of the Commission's rules, which exempts satellite stations from application of the local television multiple ownership rules.² The Commission originally granted Marsh Media, Inc. a continuing satellite waiver for KVIH-TV in 1986.³ NVG contends that the circumstances underlying the previous grant of continuing satellite status have not changed.

¹ See *Policy Regarding Character Qualifications*, 6 FCC Rcd 3448, 3450, n.5 (1991) ("Where an applicant has allegedly engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation, such conduct might be a matter of Commission concern even prior to adjudication by another body.")

² 47 C.F.R. § 73.3555, Note 5.

³ *McAlister Television Enterprises, Inc.*, 60 RR 2d 1379 (1986).

Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*, an applicant for satellite status is entitled to a presumption that the proposed satellite operation is in the public interest if it meets three criteria: (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 Applications meeting these criteria, when unrebutted, will be viewed favorably by the Commission. If an applicant cannot 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, NVG has supplied an engineering exhibit demonstrating that no City Grade overlap exists between KVIH-TV and KVII-TV. With respect to the second criterion, NVG has demonstrated, by using our "transmission" test, that the respective area is underserved. The "transmission" test deems an area underserved if there are two or fewer full-service television stations licensed to a proposed satellite's community of license.⁶ Here, KVIH-TV is the only television station licensed to Clovis, New Mexico.

With respect to the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.⁷ In support, NVG submits an August 15, 2002 letter from Brian E. Cobb, an experienced media broker, who opines that if KVIH-TV were converted to a full-service station:

It is highly probable that it would be financially unsuccessful and at a significant competitive disadvantage. A coverage map of the station shows that it is unable to adequately cover the DMA. In fact, the coverage does not include Amarillo or any other significant population center that would provide enough viewers and hence advertisers for KVIH to survive as a stand-alone. Even if it were possible for KVIH-TV to serve a greater portion of the market, it would have little prospect of garnering affiliation agreements with any of the major networks. If KVIH were forced to broadcast as an independent, competing against the other stations that currently serve the market would make the prospects of economic survival slim.

Mr. Cobb concludes that if KVII asked him to act as a broker to attempt to sell KVIH-TV as a stand-alone station, "I would decline since I feel that the financial viability to a new owner would be limited and I would be doing the buyer a disservice."

We are unable to find that NVG's showing meets the third criterion of our "presumptive" satellite standard. NVG does not provide any detailed information regarding efforts to sell KVIH-TV, other than the statement by Mr. Cobb that he would not act as broker in connection with any such efforts. Nevertheless, although this showing does not meet our "presumptive" satellite standard, NVG's showing is strong enough to justify continued satellite status for KVIH-TV under an *ad hoc* basis. We find that given the station's long history as a satellite, the sparse population residing within its predicted Grade B contour,⁸ and the Amarillo DMA ranking of 128, it does not appear likely that an alternative operator would be willing to operate the satellite as a full-service station. Based upon the foregoing, we are persuaded that the factors upon which we based our satellite authorizations in 1986 have not changed to

⁴ *Television Satellite Stations*, 6 FCC Red 4212, 4213-14 (1991) (subsequent citations omitted).

⁵ *Id.* at 4214.

⁶ *Id.* at 4215.

⁷ *Id.*


⁸ The KVIH-TV contour encompasses an area of 19,618 square kilometers with a population of 87,073.

such an extent as to alter the determination here. Under the circumstances in this case, we find that "compelling circumstances" exist for continuing the station's satellite status. Thus, we conclude, continued operation of KVIH-TV as a satellite of KVII-TV would serve the public interest.

We have carefully examined the applications and pleadings submitted herein, and conclude that the conditional renewal of license for station KVII-TV, to permit KVII to divest all of its ownership interests in broadcast stations, will serve the public interest. We further find the proposed assignee fully qualified and that a grant of the assignment applications will serve the public interest.

Accordingly, IT IS ORDERED, That the petition to deny the KVII-TV renewal application, filed by Mothers Opposed to the Mistreatment of Minors, Inc., IS DISMISSED, and the above-referenced application for renewal of license for station KVII-TV, Amarillo, Texas (File No. BRCT-19980330KP) IS GRANTED, subject to the condition that KVII consummate the assignment of its licenses for KVII-TV, Amarillo, Texas, KVIH-TV, Clovis, New Mexico (File Nos. BALCT-20020815AAY and BALCT-20020815ABD), and related television translator stations, within thirty (30) days after grant of the applications for consent to the assignment of the licenses to NVG-Amarillo, LLC is no longer subject to appeal. IT IS FURTHER ORDERED, That NVG's request for continued satellite authorization, pursuant to Note 5 of Section 73.3555 of the Commission's rules, 47 C.F.R. § 73.3555, for KVIH-TV, Clovis, New Mexico to operate as a satellite of KVII-TV, Amarillo, Texas, and the above-referenced applications for assignment of license ARE GRANTED.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

ATTACHMENT C



Kalil & Co., Inc.

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April 8, 2005

Mr. Clay C. Pendarvis
Associate Chief, Video Division, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Application for Assignment of Licenses
KVII-TV, Amarillo, Texas
KVIH-TV, Clovis, New Mexico

Dear Mr. Pendarvis:

In connection with the above referenced applications, I have been requested by the parties thereto to supply you with information related to the continued operation of KVIH-TV, Clovis, New Mexico, as a satellite of parent station KVII-TV, Amarillo, Texas. This letter addresses the feasibility of operating and marketing KVIH-TV as a stand-alone operation rather than as a satellite.

By way of background, I have more than 35 years of experience in the broadcast industry as a broker of broadcast stations. We also have brokers at my firm with experience levels of 5 to 35 years in the following areas of the broadcast industry: sales, management, operations, programming and ownership. I am the founder and president of Kalil & Company, a nationally recognized media brokerage and appraisal firm. I am responsible for the brokerage and appraisal of television stations for Kalil & Co., Inc. and, during the past 35 years, I have personally been involved in the brokerage of hundreds of television stations in the United States. I am also a member of the National Association of Media Brokers.

I am familiar with the Amarillo Designated Market Area (DMA) in which parent station KVII-TV and satellite station KVIH-TV are located, its surrounding television markets, the signals of the television stations available in the market, and the level of competition among them and other relevant market data. As a result, I have enough knowledge to reach certain conclusions concerning KVII-TV and KVIH-TV's positions in the market.

There are five operating full-service commercial television stations assigned to the Amarillo DMA, the 130th ranked television market as defined in Nielsen. KVIH-TV (Clovis) is operated as a satellite of KVII-TV (Amarillo) as previously approved by the FCC. As in the past, the Clovis area continues to lack the population and economic base sufficient to support full-service, stand-alone operations. Clovis is located more than 100 miles from Amarillo, the population and economic center of the television market, and the Grade B contour of the satellite does not include Amarillo or other significant population centers that would provide sufficient viewers and advertising to support full-service operations. As advisor to the Station, our firm is aware that KVIH has operated at a loss and requires the financial resources of KVII-TV in Amarillo to support its continued operations. The financial strain on the licensee will be exacerbated by the upcoming conversion of the station to full-power digital operations.

If KVIH was converted to a full service station, the station would operate at a serious competitive disadvantage and it is highly probable that it would be financially unsuccessful. As noted above, for example, the signal of the station is unable to adequately cover the DMA. In fact, the coverage does not include Amarillo or any other significant population center that would provide enough viewers and hence advertisers for KVIH-TV to survive as a stand-alone.

Even if it were possible for KVIH-TV to serve a greater portion of the market, it would have little prospect of garnering affiliation agreements with any of the major networks. If KVIH-TV were forced to broadcast as an independent, competing against the other stations that currently serve the market, its prospects of economic survival would be slim.

As a result of an insufficient signal to cover key portions of the DMA, the limited population and economic base in that coverage area, and the lack of any prospects of any meaningful network affiliation, it is my opinion that KVIH-TV could not operate successfully as a stand-alone station. For the station to survive and provide service to the community, it should continue to operate as a satellite of a viable sister facility.


The efforts of our firm to market the stations further confirm my judgment that it is highly unlikely that a qualified buyer would be willing and able to operate KVIH-TV as a stand-alone station. Over the past year, Kalil & Co., Inc. has marketed the stations and talked to over 75 potential buyers. At no time during these efforts did any party express an interest in acquiring KVIH-TV to operate it other than as a satellite station. Because KVIH-TV could not, in my judgment, operate viably as a stand-alone station, I would decline to be retained to market it alone as a full-service station.

As noted above, in our professional judgment continued service of KVIH-TV and its conversion to full digital operations depends on its continued satellite status.

Mr. Clay C. Pendarvis
April 8, 2005
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If you have any questions concerning the foregoing opinions, I will be available to respond to them.

Sincerely,



Frank Kalil
President