

REQUEST FOR SATELLITE WAIVER/MULTIPLE OWNERSHIP COMPLIANCE

ComCorp of Bryan License Corp, licensee of KYLE(TV), respectfully requests that the Commission continue to waive the provisions of Section 73.3555(b) in accordance with Note 5 thereto, and grant the instant application for consent to transfer of control. This request represents nothing more than a continuation of the *status quo* after the proposed transfer of negative control only. At the time that ComCorp of Bryan License Corp. acquired the license for KYLE(TV), the Commission granted to it a satellite waiver to permit its current operation, and no change is now proposed to that operation. *See, Silent Minority Group, Inc.*, DA 96-1928, released November 19, 1996.

As set forth herein, ComCorp of Bryan License Corp. is, through intervening subsidiaries, wholly owned by Communications Corporation of America ("CCA"). In addition, CCA, through intervening subsidiaries, wholly owns ComCorp of Texas License Corp., the licensee of KWKT(TV), Waco, Texas. KWKT(TV) and KYLE(TV) are located in the same DMA and have overlapping Grade B signal contours. Accordingly, a continued waiver pursuant to Note 5 of Section 73.3555 of the Commission's rules is requested, although as indicated below, apparently unnecessary. KYLE(TV) has operated as a satellite of KWKT(TV) since KYLE(TV)'s acquisition by ComCorp of Bryan License Corp. in 1996.

In *Television Satellite Stations*, 6 FCC Rcd 4212 (1991), the Commission adopted a presumption that satellite operations are in the public interest if an applicant can satisfy the following public interest criteria: (1) there is no city-grade overlap between the parent station and the proposed satellite station; (2) the proposed satellite station 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 stand-alone facility. 6 FCC Rcd at 4213-14.

Applications that qualify for the presumption and are unrebutted will be viewed favorably by the Commission. *Id.* at 4214. Where an applicant is unable to qualify for the presumption, the proposal will be evaluated on an *ad hoc* basis and granted if other circumstances warrant approval. *Id.* In this case, the applicants herein clearly qualify for the presumption that the continued satellite waiver will continue to serve the public interest.

As demonstrated in the attached engineering report, the city-grade contours of Stations KYLE(TV) and KWKT(TV) do not overlap. While this engineering report is a copy of the one which was submitted with the original satellite waiver request as granted by the Commission, there have been no modifications of the technical facilities of the stations since that time, and the report therefore continues to depict the current signal contours of the stations.

Under the second element of the test, an area is “underserved” if there are two or fewer full-service stations licensed to the community of license of the satellite station. 6 FCC Rcd at 4215. In this case, the only other full-power television station licensed to Bryan, Texas, is Station KBTX-TV. Further, this station is co-owned with and operates as a satellite of KWTX-TV, Waco, Texas.

With regard to the third prong of the test, it is clear that there is no realistic possibility of changing the operation of the station to a stand-alone television station. First, it must be remembered that there is no actual change in the operation of the station proposed. Rather, the same licensee will continue to operate the station. The only proposed change is the transfer of 50 percent of the stock of the ultimate parent of the licensee.

Second, the proposed transfer of negative control is part of an overall, larger transaction involving ten stations, including eight full-power television stations. As indicated above, the

proposed transfer of negative control involves the ultimate parent company, not the individual licensee. Thus, the proposed transfer does not involve merely one station, or even simply the parent and satellite stations. Rather, KYLE(TV) is one integral part of a larger transaction, with the overall transaction based upon continuing ownership of all of the currently owned stations. Accordingly, the proposed transaction which is the subject of the application does not afford any opportunity for the assignment of the one station license to a third party, outside of the current agreement.

Finally, it must be remembered that KYLE(TV) has operated as a satellite for virtually its entire existence. As set forth in the initial satellite waiver request, the original permittee of KYLE(TV), after placing the station on the air, found that it was unable to continue operations as a stand-alone facility. After considerable discussions with other prospective purchasers, only licensees with other stations in the market were interested in purchasing the facility. The overall circumstances which led to this situation remain unchanged. These factors include (1) the relatively small size of Bryan vis-a-vis the entire DMA; (2) the fact that KYLE(TV) does not provide a viewable, off-the-air signal to a majority of the DMA due to the large geographic size of the market; (3) the existence of four network-affiliated stations in the market; and (4) the close proximity of Bryan to the Houston DMA (the 11th largest television market), which is immediately adjacent to Brazos County, in which Bryan is located.

These factors make it clear that KYLE(TV) would be at a severe competitive disadvantage if it were to attempt to operate on a stand-alone basis. First, as indicated in the attached engineering report, the KYLE(TV) signal covers less than one-fourth of the market. Additionally, only other television station licensed to Bryan, with which KYLE(TV) would be

forced to compete head-to-head is a VHF station which is operated as a satellite and is affiliated with CBS. The operational advantages and cost savings for that station, KBTX-TV, which would flow from both VHF as opposed to UHF operation and co-ownership with another station in the market would place KYLE(TV) at a severe competitive disadvantage. Further, there are numerous other media outlets in the market with which KYLE(TV) would be forced to compete. There are ten television stations licensed to the Waco/Bryan/College Station television market. *See Broadcasting and Cable Yearbook 2003-2004* at B-213. The following is a list of those stations, including their call signs, communities of license, network affiliations, and licensees.

1. KCEN-TV - Temple - ABC - Channel 6, Inc.
2. KWTX-TV - Waco - CBS - Gray Television, Inc.
3. KBTX-TV - Bryan - CBS - Gray Television, Inc. *satellite of KWTX-TV
4. KAMU-TV, College Station - PBS - Texas A&M University
5. KXXV(TV) - Waco - NBC - Centex Television, L.P.
6. KWBW-TV - Waco - PBS - Baylor University
7. KWKT(TV) - Waco - Fox - ComCorp of Texas License Corp.
8. KYLE(TV) - Bryan - Fox - ComCorp of Bryan License Corp. *satellite of KWKT(TV)
9. KNCT(TV) - Belton - PBS - Central Texas University
10. KAKW(TV) - Killeen - Univision - Univision Communications, Inc.

Broadcasting and Cable Yearbook 2003-2004 at B-83, 86, 88-89. Additionally, the *Broadcasting and Cable Yearbook* also indicates that there are 15 radio stations in the Bryan-College Station radio market, 13 radio stations in the Waco radio market, and an additional 13 radio stations in the Killeen-Temple radio market. *Id.* at D-756, D-758, D-762. Thus, there is substantial radio and television competition in the market, not to mention LPTV, cable, and DBS competition.

Moreover, as indicated from the above list of television stations within the DMA, it appears that a satellite waiver of little significance. Pursuant to Section 73.3555(b)(2) of the

Commission's Rules, two stations within the same DMA may be owned by the same entity, so long as there are eight remaining independent television voices in the market. As indicated above, there are ten television stations in the market, owned by eight independent licensees. As the proposed transfer involves only the continuation of an existing combined ownership of stations, there will be no reduction in the number of voices in the market. Further, KYLE(TV) is not ranked in the top four stations in the market. Accordingly, continuation of the common ownership of KWKT(TV) and KYLE(TV) would be in compliance with the Commission's multiple ownership rules.