

**MULTIPLE OWNERSHIP/REQUEST FOR WAIVER OF
NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE, 47 C.F.R. 73.3555(d)**

I. Introduction

This application seeks Commission approval of the transfer of control of WNDU-TV (“WNDU”), South Bend, Indiana, from the University of Notre Dame du Lac to Gray Television Group, Inc. (“GTG”).¹ GTG is a wholly owned subsidiary of Gray Television, Inc. (“Gray”), a publicly traded corporation with extensive interests in television broadcasting, paging, and newspaper publishing. Through another subsidiary, Gray owns and operates a daily newspaper, *The Goshen News*, published in Goshen, Indiana, approximately 25 miles from South Bend.

Goshen is included in the South Bend DMA and is located within WNDU’s Grade A contour. Under the proposed 2003 “Cross-Media Limits,” common ownership of WNDU (one of five full power television stations in the market) and *The Goshen News* would have been permissible. Under the rules currently in effect, however, the combination would implicate the newspaper/broadcast cross-ownership restriction. *See* 47 C.F.R. § 73.3555(d)(3).

As set forth in detail below, Gray currently is in the process of effectuating a corporate reorganization which will result in the spin-off of the company’s daily newspaper business as well as its paging operations to a new publicly traded corporation, to be named Triple Crown Media, Inc. (“Triple Crown”), which will have largely separate ownership and management. Gray and Triple Crown are both committed to the prompt divestiture of *The Goshen News* in order to achieve compliance with the Commission’s newspaper-broadcast cross-ownership rule

¹ WNDU is an NBC affiliate station currently owned by Michiana Telecasting Corp., which is in turn wholly owned by the University of Notre Dame.

when GTG acquires WNDU-TV. In order to afford time for completion of the pending corporate spin-off and related transactions and for the subsequent orderly divestiture of the Goshen newspaper, however, GTG respectfully requests a temporary waiver of the cross-ownership restriction for a period of six (6) months following consummation of the proposed acquisition of WNDU-TV.² During the requested waiver period, GTG and Triple Crown will operate the newspaper and television station separately and maintain strict separation of management of the two properties.

II. The Proposed Transaction and Concurrent Corporate Reorganization

Gray is a communications company headquartered in Atlanta, Georgia, whose primary mission is to provide quality news and entertainment services to the local markets in which the company operates. The company has been a television broadcast station licensee for more than half a century. Gray, through subsidiaries, currently owns and operates 35 television stations in 29 markets, including seventeen CBS-affiliated television stations, nine NBC-affiliated television stations, and seven ABC-affiliated television stations, as well as five daily newspapers. Gray has a strong nationwide reputation for local news and a commitment to the local communities its stations serve. Many Gray stations are rated the number one or number two station in their respective markets, and many, like WNDU, are popular stations in mid- and smaller market college towns, *e.g.*, Tallahassee, Florida; Lexington, Kentucky; Knoxville,

² GTG certifies as to Form 314, question 6, items 2-4, i.e., that the proposed assignment:

2. does not present an issue under the Commission's policies relating to media interests of immediate family members;
3. complies with the Commission's policies relating to future ownership interests; and
4. complies with the Commission's restrictions relating to the insulation and nonparticipation of non-party investors and creditors.

Accordingly, this Exhibit addresses only Form 314, question 6, item 1, which asks whether the proposed assignment complies with the Commission's multiple and cross-ownership rules.

Tennessee; Madison, Wisconsin; and Charlottesville, Virginia. Thus, Gray is exceptionally well qualified to continue the tradition of public service that WNDU has established in the South Bend market under the stewardship of the University of Notre Dame.

Gray and Triple Crown recognize the need to take prompt steps to eliminate common ownership of WNDU and *The Goshen News* when GTG acquires the television station.³ Indeed, as noted above, Gray recently initiated a corporate reorganization plan that will result in a spin-off of the company's daily newspapers (including *The Goshen News*) and its paging operations to a separate publicly traded entity. Concurrently, the new company will merge with a publicly held sports management firm. After the reorganization, only one existing cognizable shareholder (J. Mack Robinson),⁴ three directors (out of nine), and two officers (neither of whom will serve as president) will have positions or interests in both companies. Over time, the stock ownership and management of the two companies will be dictated by the marketplace and the interests of their separate lines of business. Even at the outset, however, a 6-3 majority of the board of the new entity will be comprised of individuals with no connection to Gray.

Gray and Triple Crown estimate that the new newspaper/paging/sports management company will initially earn approximately \$113 million in annual revenues. Approximately \$60 million of that will come from sports management activities, \$8 million from paging, and \$45 million from newspaper publishing. Of that amount, only approximately \$6 million (or 5.3% of the company-wide total) will be attributable to *The Goshen News*. The television station assets (with approximately \$270 million in annual revenues) will remain in the existing company.

³ In fact, Triple Crown is contractually obligated, upon written notice from Gray, to take prompt steps to effectuate the divestiture.

⁴ Mr. Robinson currently has an attributable voting stock interest in Gray of approximately 28 percent. His voting stock interest in Triple Crown will be approximately 8.5 percent.

In early October 2005, Gray submitted extensive information concerning the proposed spin-off transactions to the SEC for review, including financial information premised on currently held assets – among them, of course, *The Goshen News*. The SEC review process has only recently been completed, and the remaining steps toward shareholder notification and approval and effectuation of the spin-off are underway. Although Gray expects the spin-off and related merger transaction to be completed by the end of this year, it cannot be certain that all the necessary steps to effectuate the sale or exchange of *The Goshen News* will be completed by Triple Crown prior to FCC approval and consummation of the WNDU acquisition. Accordingly, GTG requests a temporary (six months) waiver of the cross-ownership rule to afford adequate time for Triple Crown to complete the orderly divestiture of *The Goshen News*.

In view of the realities of the markets involved, the imminent separation of the television and newspaper businesses into two companies, and the limited degree of involvement by common principals, the policy concerns that underlie the newspaper/broadcast restriction are of at most minimal applicability here. Triple Crown's prospective management is actively preparing to divest the Goshen newspaper, which will bring the companies into compliance with the Commission's rules. Further, as shown below, the limited degree of attributable common ownership of WNDU and *The Goshen News* during the brief period when the requested waiver would be in effect, coupled with the other safeguards described herein, combine to ensure that the impact on competition or diversity of media voices in South Bend or Goshen, Indiana will be *de minimis*.

III. The South Bend DMA and the Goshen Market

The facts clearly show that South Bend and Goshen are distinct communities and media markets and, accordingly, that a temporary waiver of the rules would not have any appreciable negative impact on competition or diversity.

A. South Bend and Goshen Are Geographically and Demographically Distinct

Goshen is located approximately 25 miles east of South Bend, and driving time between the two is approximately 45 minutes, as there is no single major highway that connects the two communities. Another significant city, Elkhart, is located between South Bend and Goshen and thus serves to further separate the two. South Bend is located in St. Joseph County, whereas Goshen is in Elkhart County. The U.S. Census Bureau considers South Bend, Goshen, and Elkhart each as separate communities, and publishes population and demographic data for all three cities separately. Goshen is quite a small community when compared to South Bend. The U.S. Census Bureau estimates that on July 1, 2004, South Bend had a population of 105,494—the 12th largest city in Indiana (the ranking is deceiving, however, as the top 12 Indiana cities separately include six cities and townships that are part of the Indianapolis metropolitan area, two that are part of the Fort Wayne metropolitan area, and two that can be considered suburbs of Chicago). Goshen had a population of 30,555, making it the 74th largest city in Indiana. Elkhart, located between Goshen and South Bend, is Indiana's 35th largest city, with a population of 51,878.⁵ Finally, the U.S. Department of Transportation has proposed that in April 2006, when Indiana is scheduled to join with most other states in observing Daylight Savings Time, St. Joseph County should observe Central time, whereas Elkhart County should observe Eastern

⁵ See generally <http://www.census.gov> and materials contained therein.

time. Thus, if this proposal is finalized, South Bend and Goshen will soon not even be in the same time zone.⁶

B. South Bend and Goshen Are Governmentally and Politically Distinct

South Bend and Goshen have distinct municipal and county governments. They are located in different districts for the Indiana House of Representatives (in fact, there are eight different Indiana House districts included in St. Joseph and Elkhart Counties)⁷ and the Indiana Senate (part or all of six different Indiana Senate districts are in these two counties).⁸ The two cities are also in different United States Congressional Districts and therefore have different representatives in the House of Representatives.⁹ As a result, most politicians and officials serving one locale have little or no incentive to utilize media resources in the other locale for purposes such as campaigning, advertising, debates, and editorials.

C. Goshen Has a Competitive and Diverse Media Landscape, of Which *The Goshen News* and WNDU Are Only Small Parts

In addition to *The Goshen News*, two other newspapers have significant circulation in Goshen: the *South Bend Tribune*, based in South Bend, and *The Truth*, based in Elkhart. The *South Bend Tribune* is part of a grandfathered AM/FM/TV/daily newspaper combination owned by Schurtz Communications. It has a total circulation of 73,028 (Mon-Sat) and 98,846 (Sunday),¹⁰ and part of that circulation reaches approximately 9,981 households in Goshen.¹¹

⁶ See Dept. of Transportation, Standard Time Boundary in the State of Indiana, *Notice of Proposed Rulemaking*, OST Docket No. 2005-22114-581, available at http://dmses.dot.gov/docimages/pdf93/360876_web.pdf.

⁷ See Indiana House Districts, available at <http://www.iau.w.org/capitolsteps/maphouse.pdf>.

⁸ See Indiana State Senate Districts, available at <http://www.iau.w.org/capitolsteps/mapsenate.pdf>.

⁹ See 2001 Congressional Redistricting Plan, available at <http://www.iau.w.org/capitolsteps/mapcongress.pdf>.

¹⁰ See 2005 INTERNATIONAL EDITOR AND PUBLISHER YEARBOOK at I-139 (2005).

The Truth, with a circulation of 31,647 (Mon-Sat) and 32,366 (Sunday),¹² also has substantial readership in Goshen. In addition, the *Goshen College Record* is a weekly student newspaper published by Goshen College, and is available exclusively in Goshen.¹³ The newspaper readers of Goshen therefore have three commercial options and one student option when choosing a newspaper. The voice of *The Goshen News* is certainly not the only one in the community.

Besides newspapers, there are numerous other media voices in Goshen. Goshen receives television service primarily from four TV stations licensed to South Bend (including WNDU) and one licensed to Elkhart.¹⁴ Goshen residents have access to satellite television from DirecTV¹⁵ and Dish Network.¹⁶ In addition, there are 23 commercial FM and AM radio stations available in Goshen,¹⁷ as well as Goshen College's radio station, WGCS.¹⁸ Satellite radio, provided by XM Radio¹⁹ or Sirius,²⁰ is also available. These broadcast and non-broadcast services provide a multitude of viewing and listening options. In addition, Goshen residents may turn to the Internet for its wealth of additional news and entertainment sources.

¹¹ See John S. and James L. Knight Foundation, *Newsroom Diversity Report for South Bend Tribune*, available at http://powerreporting.com/knight/in_south_bend_tribune.html.

¹² See 2005 INTERNATIONAL EDITOR AND PUBLISHER YEARBOOK at 128-I (2005).

¹³ <http://www.goshen.edu/record>.

¹⁴ See BROADCASTING AND CABLE YEARBOOK 2005 at B-51 (2005). The stations in the South Bend DMA are WHME-TV, a WBN affiliate in South Bend; WNDU; WNIT-TV, a noncommercial PBS affiliate in South Bend, WSBT-TV, a CBS affiliate in South Bend; and WSJV, a Fox affiliate in Elkhart.

¹⁵ <http://www.directv.com>

¹⁶ <http://www.dishnetwork.com>

¹⁷ See BIA Financial Network, *FCC Geographic Market Definition for South Bend, IN*.

¹⁸ <http://www.globeradio.org/index.php>.

¹⁹ <http://www.xmradio.com>

²⁰ <http://www.sirius.com>

D. The Goshen News Is Not a Media Voice or Competitor in South Bend

The Goshen News is a small daily newspaper with circulation of 16,094 (Mon-Sat) and 15,572 (Sunday).²¹ This constitutes less than 5 percent of the total homes in the Nielsen television Designated Market Area (“DMA”) of South Bend-Elkhart, which is served by WNDU.²² *The Goshen News* does not have any reported circulation at all in South Bend itself; the most distant area in which sales of *The Goshen News* are reported is Topeka, Indiana, about 14 miles east of Goshen, even farther away from South Bend.²³ The news covered by the *Goshen* daily is pertinent primarily to residents of Goshen and Elkhart County, not to residents of South Bend. Advertisers come almost exclusively from Goshen. Thus, neither residents nor advertisers think of *The Goshen News* as one of South Bend’s media voices. In short, Goshen should not be regarded as part of the “core” South Bend media market, and *The Goshen News* is not a significant competitor to WNDU or the other television stations in the South Bend DMA.

E. The Goshen News and WNDU Will Be Operated Separately During the Waiver Period

To further ensure that the grant of the requested temporary waiver will not have an adverse effect on competition or diversity, GTG and Gray pledge that WNDU and *The Goshen News* will be operated separately during the period the requested temporary waiver is in effect. The two entities serve distinct and widely separated communities with distinct concerns and audiences, and GTG and Triple Crown will not integrate their respective operations in any event.

²¹ See 2005 INTERNATIONAL EDITOR AND PUBLISHER YEARBOOK at 130-I (2005).

²² The South Bend/Elkhart DMA has 332,860 TV households. BROADCASTING AND CABLE YEARBOOK 2005 at A-737 (2005). It is interesting to note that for purposes of the radio/television cross-ownership rule, a newspaper counts as a “voice” in the market only if it has a circulation exceeding 5% of the households in the DMA. As *The Goshen News* reaches only 4.8% of the households in the DMA, it would not count as a voice pursuant to that rule.

²³ See John S. and James L. Knight Foundation, *Newsroom Diversity Report for The Goshen News*, available at http://powerreporting.com/knight/in_the_goshen_news.html.

Nonetheless, GTG hereby confirms that the companies will not staff or operate WNDU and *The Goshen News* on a combined basis, nor sell advertising jointly, during the period in which the waiver is in effect. In addition, Mr. Robinson and the other individuals who will be common participants in Gray and Triple Crown have agreed to execute written recusal commitments to ensure that they are not involved in management of both local outlets during the waiver period. Such recusal commitments have been routinely accepted by the Commission at the parent company level in large corporations with multiple lines of business. *See* 47 C.F.R. § 73.3555, Note 2 (g).

IV. In View of the Geographic, Political, and Economic Separation of South Bend and Goshen, the Abundant Diversity and Competition in Each, and the Public Interest Benefits Inherent in the Transaction, a Temporary Waiver of the Newspaper/Broadcast Cross-Ownership Rule Is Fully Warranted

Gray requests that the Commission grant a temporary waiver of the newspaper/broadcast cross-ownership rule so that the spin-off of Gray's newspaper operations and formation of a new company may be completed in an orderly fashion and the new company may subsequently undertake a prompt divestiture of *The Goshen News* in order to achieve regulatory compliance.

In the past, the Commission has routinely granted temporary waivers of the newspaper/broadcast cross-ownership rule for 6 to 12 months and, in at least one case, granted a waiver for 24 months.²⁴ The agency has found such waivers particularly appropriate where necessary to facilitate complex corporate transactions, such as the planned Gray spin-off and merger and the concurrent acquisition of WNDU.²⁵

²⁴ *See, e.g., UTV of San Francisco*, 16 FCC Rcd 14975, 14990 (2001) (granting 24-month waiver); *Chancellor Media/Shamrock Radio Licenses, L.L.C.*, 15 FCC Rcd 17053, 17058 (2000) (granting 12-month waiver); *Multimedia, Inc.*, 11 FCC Rcd 4883, 4897 (1995) (granting 12-month waiver); *Newcity Communications*, 12 FCC Rcd 3929, 3953 (1997) (granting waiver pending outcome of cross-ownership inquiry).

²⁵ For example, in analogous situations involving multi-station, multi-market merger transactions, the Commission has observed: "Where . . . isolated ownership violations are presented in multi-market transactions involving multiple broadcast stations, the Commission has routinely afforded applicants a reasonable period of time in which

The Commission has concluded that in such transactions, the public interest benefits of allowing orderly divestiture outweigh any negative impacts on competition and diversity during the term of the temporary waiver.²⁶ Further, grant of such waivers helps to avoid “forced sales,” which “‘unnecessarily restrict’ the value of the stations to be divested and ‘artificially limit’ the range of potential buyers to only those with immediate access to the capital needed for such purchases, thereby precluding acquisition by local groups or minority-owned or -controlled entities.”²⁷ Accordingly, grant of temporary waivers allows this kind of transaction to move forward, promoting commerce and the alienability of broadcast and print properties, while ensuring that compliance with the Commission’s ownership rules is maintained in the long term.

Grant of such a temporary waiver clearly would be fully consistent with the Commission’s goals of competition and diversity, as demonstrated in substantial detail above, as well as prior FCC precedent. South Bend and Goshen are geographically, demographically, and politically distinct communities. Each is well served by a variety of media outlets. *The Goshen News* is not a significant media voice or competitor in South Bend, and there are numerous other significant media voices—both print and broadcast—available to serve the residents of Goshen. Thus, there is no reason to think that common ownership of WNDU and *The Goshen News* would have a negative effect on competition and diversity in either market. *See WWTL(TV), Marshfield, Wisconsin*, 102 FCC 2d 1001 (1985) (finding the FCC’s former cross-interest rule inapplicable because the communities served by a television station and a newspaper were 30 miles apart and served by various media outlets); *Newcity Communications*, 12 FCC Rcd 3929

to come into compliance with the relevant rules.” *Counterpoint Communications*, 16 FCC Rcd 15044, 15047 (2001).

²⁶ *See, e.g., UTV of San Francisco*, 16 FCC Rcd at 14988; *Chancellor Media/Shamrock Radio Licenses, L.L.C.*, 15 FCC Rcd at 17056; *Multimedia, Inc.*, 11 FCC Rcd at 4885.

²⁷ *Multimedia, Inc.*, 11 FCC Rcd at 4885.

(1997) (allowing a temporary waiver pending conclusion of cross-ownership inquiry where circulation of a newspaper was low in the principal community of a television station); *Kortes Communications*, 15 FCC Rcd 11846 (2000) (granting a permanent waiver, and citing robust media competition and relatively small newspaper circulation as factors). Accordingly, grant of the requested waiver would accommodate the needs of the parties in moving forward with the WNDU acquisition concurrently with the spin-off and merger transaction, while providing full assurance that the public interest considerations that underlie the rule will be achieved through an orderly but expeditious divestiture.

V. Conclusion

For the reasons set forth above, GTG respectfully requests that the Commission grant a temporary six-month waiver of the newspaper/broadcast cross-ownership rule. The requested temporary waiver, with attendant recusal and unconditional divestiture commitments, will serve the public interest by facilitating speedy completion of the corporate reorganization, based upon the factual circumstances already presented to and reviewed by the SEC, without the disruption and expense that would be caused by an earlier forced sale of the existing newspaper property.

At the same time, Gray's guarantees of separate operation and recusal commitments will ensure that the concerns that underlie the newspaper/broadcast cross-ownership rules are mooted during the brief period that common ownership is allowed. Further, the Commission can have full confidence that Gray, a publicly traded company with an unblemished record in more than 50 years as a broadcast station licensee, will fulfill the commitment to effectuate the divestiture of *The Goshen News* within six months of the consummation of GTG's acquisition of WNDU.