

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	
)	
RED RIVER BROADCAST CORP.)	
)	
)	
For a Construction Permit for a New)	File No. BPCT-941227KI
Television Station on Channel 46,)	
Sioux Falls, South Dakota)	
)	
)	
For Modification of Facilities of)	File No. BPCT-941227KH
Television Station KDLT-TV,)	
Channel 5, Mitchell, South Dakota)	

MEMORANDUM OPINION AND ORDER

Adopted: March 4, 1997

Released: March 6, 1997

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it for consideration the above-captioned unopposed application for a new television construction permit on Channel 46 in Sioux Falls, South Dakota, filed by Red River Broadcast Corp. (Red River).¹ Red River is the licensee of station KDLT-TV (NBC), Channel 5, Mitchell, South Dakota, whose Grade B contour overlaps the proposed Grade B contour of the new station. Red River proposes to convert station KDLT-TV into a satellite of the new station, and requests a grant of the application pursuant to the exception to the duopoly prohibition for satellite operation as set forth in Note 5 of Section 73.3555 of the Commission's rules. Also before the Commission is Red River's above-captioned application to modify KDLT-TV's facilities. Red River proposes to relocate KDLT-TV's site nearer to Mitchell, its community of license, and farther away from Sioux Falls, the site of new Channel 46.

2. Red River contends that the operation of station KDLT-TV as a satellite of the new station on Channel 46 in Sioux Falls meets the three criteria established by the Commission in *Television Satellite Stations*, 6 FCC Rcd 4212 (1991). Pursuant to that policy, an applicant for satellite status is entitled to a presumption that the proposed operation is in the public interest if

¹ Red River initially filed its application for Channel 36 at Sioux Falls. However, a competing application was filed against it. Red River then filed a petition for rule making to allot an additional channel to Sioux Falls in order to eliminate the need for a comparative hearing. That petition was granted on January 26, 1996, and Red River subsequently amended its application to specify proposed operation on Channel 46. *Amendment of Section 73.606(b) Table of Allotments, TV Broadcast Stations (Sioux Falls, South Dakota)*, 11 FCC Rcd 1069 (1996).

it meets the following three criteria: (1) there is no City Grade contour overlap between the parent and 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 proposed satellite as a full-service station. 6 FCC Rcd at 4213-14. Applications meeting this criteria, when unrebutted, will be viewed favorably by the Commission. *Id.* at 4214. If an applicant cannot qualify for the presumption, we will evaluate the proposal on an *ad hoc* basis and grant the application if there are other compelling circumstances that warrant approval. *Id.* While Red River does not meet all three criteria for a presumptive waiver, for the reasons set forth below, we find that the operation of KDLT-TV as a satellite of the new station would be consistent with our policy based on an *ad hoc* analysis.

3. With respect to the first criterion, a review of station KDLT-TV's modified facility and the proposed facilities of the new Channel 46 station demonstrates that their City Grade contours do not overlap. With respect to the second criterion, an applicant can use two different tests to demonstrate that an area is underserved. Under the "transmission test," a proposed satellite community of license is considered underserved if there are two or fewer full-service stations already licensed to it. *Television Satellite Stations*, 6 FCC Rcd at 4215. Our records show that KDLT-TV is the only television station licensed to Mitchell. Accordingly, Mitchell qualifies as an underserved area.

4. As to the third criterion, to qualify for the presumption, an applicant must demonstrate that no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service station. 6 FCC Rcd at 4215. In the case of new applicants seeking satellite authorization, economic showings are acceptable. *Id.* Initially, we note that Red River does not base its satisfaction of the third criterion on efforts to sell station KDLT-TV, and, in fact, wishes to keep the station and operate it as a satellite of new Channel 46. Red River asserts that, because the station has for years been barely able to compete in a small market which continues to decline, it is apparent that no other operator would be able to operate Channel 5 in Mitchell as a full-service station. While we do not find that this argument meets the third criterion, we find that Red River has made a strong enough showing to justify satellite operation under our *ad hoc* analysis. *See, e.g., Plains Television Partnership*, 9 FCC Rcd 4435 (1994); *Sunshine Television, Inc.*, 8 FCC Rcd 4428 (1993).

5. First, as Red River notes, Mitchell, KDLT-TV's city of license, has a population of only 13,800. The Commission has authorized satellite operations in communities considerably larger than Mitchell. For example in *Eagle 22, Ltd.*, 7 FCC Rcd 5295 (1993), the Commission approved satellite operation in a community with a population of 87,758. Second, Red River has shown declining economic and demographic trends in the Sioux Falls market. Davison County, in which Mitchell is located, has experienced a decline in population from 17,820 in 1980 to 17,475 in 1992. Likewise, the national ranking of the Sioux Falls-Mitchell market has steadily declined, from 95th ADI in 1986 to 105th (DMA) in 1996, harming the market's ability to obtain national advertising dollars. The number of television households in the market has also declined

during this time period, from 231,800 in 1986 to 228,730 now.²

6. In addition, as Red River points out, all other communities in the market, with the single exception of Sioux Falls, including several that are larger than Mitchell, are served only by satellites of the Sioux Falls stations or have no television allocations at all. For example, Channel 9 in Aberdeen (population of 25,200) is a satellite of station KSFY-TV, the ABC affiliate in Sioux Falls. Similarly, the only commercial television assignments in Pierre (pop. 12,900) and Huron (pop. 12,300) also serve as satellites of Sioux Falls network affiliates. Two other communities that are larger than Mitchell -- Watertown (pop. 18,100) and Brookings (pop. 16,270) -- have no commercial television allotments. We agree with Red River's contention that these facts tend to demonstrate that operation of KDLT-TV as a satellite is warranted. *Sidney T. Warner*, 64 RR 2d 1774 (1988) (inability to support full-time station shown by fact that other similarly-sized communities in region were satellites of network affiliates).

7. Additionally, Red River asserts that KDLT-TV has been able to operate as a full-service station licensed to Mitchell only because it reaches enough of Sioux Falls to bring in advertising revenue. In fact, it continues, approximately 95% of KDLT-TV's advertising revenue comes from businesses located in Sioux Falls. However, Red River states, KDLT-TV has been able to deliver a good quality signal to only a fraction of the population of Sioux Falls, as compared to its competitors. Thus, it asserts, many residents of the market cannot receive a fourth television "voice", depriving them of over-the-air NBC programming and the diversity of media voices that the Commission strives to promote. This is due in large part to severe shadowing of KDLT-TV's signal. Red River asserts that, because KDLT-TV's transmitter must be located a significant distance to the west in order to cover Mitchell, and two ridges lie between KDLT-TV's transmitter and Sioux Falls, its ability to reach Sioux Falls residents is impaired. In terms of population, approximately 220,289 people, or 63% of those falling within KDLT-TV's Grade B contour, live in areas shadowed by terrain. Red River states that KDLT-TV's coverage disadvantage is worsened by the fact that all of KDLT-TV's competitors operate VHF satellite stations to serve the large, sparsely populated areas of the market west of Sioux Falls, while Red River does not. Consequently, Red River concludes, KDLT-TV's ratings and market shares run a distant third to its competitors³, and these sharp disparities in viewership would continue to impede the economic viability of any potential stand-alone station in Mitchell. However, as a result of Red River building a new full-service station in Sioux Falls and modifying the facilities of KDLT-TV by relocating its transmitter site, the severe terrain shadowing problem will be eliminated and service to Mitchell will be substantially improved. Station KDLT-TV from its new location will serve 22,000 people who could not previously

² *Television and Cable Factbook*, years 1986-1996.

³ According to *BIA Publications, Inc.*, KDLT-TV's share of the Sioux Falls-Mitchell DMA for 1995 was 14%, compared to the ABC and CBS affiliates whose shares were 32% and 46%, respectively.

receive KDLT-TV, providing them with over-the-air NBC programming for the first time.⁴

8. In addition, Red River claims that KDLT-TV is desperately in need of capital improvements. Red River notes that the previous licensee was forced to limit capital improvements and other expenditures in an effort to stay afloat, including reducing news coverage from seven to five days a week, and reducing the news staff to 15. While KDLT-TV's network competitors have staffs of 70 to 75 persons, KDLT-TV's staff consists of only 44 persons. With its competitive disadvantage, Red River states that it has less revenue to spend on service directed specifically to its community of license, Mitchell. While it is fully committed to serving Mitchell, it states that it does not have the resources to expand the programming devoted to that community. Given the lack of growth of Mitchell and the Sioux Falls market, Red River asserts that the economic situation for the station is unlikely to improve. However, Red River anticipates that the satellite combination will generate sufficient revenues to allow it to upgrade the quality of its service to Mitchell.

9. Moreover, Red River asserts that it is apparent that no alternative operator would be able to operate KDLT-TV as an independent full-service station, because KDLT-TV has barely remained viable even with its network affiliation. Since Red River will retain its NBC affiliation for Channel 46, any buyer of KDLT-TV would assertedly have to operate Channel 5 as an independent station or as an affiliate of an emerging network. The fact that an allotted channel remained dark in Sioux Falls for decades until very recently, *see* fn. 1, Red River contends, underscores the unlikelihood that anyone would be interested in such a station licensed to Mitchell, over 65 miles away. Finally, with the inauguration of new Channel 46 and KDLT-TV as its satellite, Red River points out, there will be no decrease in the number of voices in the Sioux Falls market. There will remain four separately owned television stations.⁵ In sum, we believe that Red River has made a showing here of compelling circumstances to warrant satellite operation based on the unique facts of this case. KDLT-TV's community of license has a small population and declining economic and demographic trends; and all other communities in the market are either served by satellites of stations licensed to Sioux Falls or have no television allocations at all. Furthermore, Red River has succeeded in operating KDLT-TV as a full-service

⁴ Two areas, containing a total of 9,000 viewers, will lose service from KDLT-TV which will not be replaced by Channel 46. However, Red River states that one-half of the southern loss area receives NBC service from KTIV(TV), Sioux City, Iowa. Red River commits to serve the other half of the southern loss area with a new TV translator station. In the northern loss area, Red River has a TV translator in Brookings, South Dakota, which will initiate service within the next three months. The remaining northern loss area will be served by new TV translator service from Red River as well. Red River states that cable service is currently provided to all of the communities in both the northern and southern loss areas, except Badger, which will be served by the proposed translator. Additionally, Red River pledges to operate at KDLT-TV's current site until the new translators have been constructed. In view of the above replacement service, we believe that grant of the modification would be in the public interest.

⁵ The other stations are: KSFY (ABC), Channel 13, licensed to Elcom of South Dakota, Inc.; KELO (CBS), Channel 11, licensed to Midcontinent Television of South Dakota, Inc.; and KTTW (Fox), Channel 17, licensed to Independent Communications, Inc.

station in Mitchell only because it has been able to bring in Sioux Falls advertising revenue. While the station is not in bankruptcy, Red River has shown that it is experiencing difficult economic circumstances. Further, while Red River desires to improve service to Mitchell, KDLT-TV's city of license, it can only do that if the station is approved for operation as a satellite of new Channel 46 in Sioux Falls. This is apparently the only way that is economically viable for Red River to improve service to Mitchell, its community of license, and at the same time add new service to thousands of viewers in Mitchell and the Sioux Falls market. Moreover, as a result of this waiver, there will be no decrease in the number of voices in the Sioux Falls market. Finally, it appears unlikely that any alternative operator would be willing and able to operate the proposed satellite in Mitchell as a stand-alone full-service station.

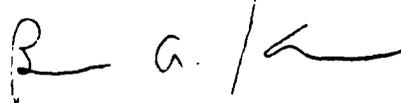
10. Based on our review of the information submitted, we conclude that Red River has set forth sufficiently compelling arguments to support an *ad hoc* determination that a grant of the waiver of the duopoly rule pursuant to the satellite exception set forth in Note 5 to Section 73.3555 would serve the public interest. However, in a recent *Notice of Proposed Rulemaking*, the Commission has undertaken a reexamination of its broadcast television ownership policies, including the continued exemption of satellite stations from broadcast ownership restrictions. See *Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91-221 and 87-8, FCC 96-438 (released November 7, 1996). Accordingly, we will condition the grant of this satellite waiver on whatever action is taken in that proceeding. In view of the foregoing, and having determined that the applicant is qualified to operate the stations as proposed, we find that a grant of these applications will serve the public interest, convenience and necessity.

11. Accordingly, IT IS ORDERED, That the request by Red River for operation of station KDLT-TV, Mitchell, South Dakota, pursuant to the satellite exception to the duopoly rule, Section 73.3555 of the Commission's rules, IS GRANTED, subject to the outcome of the Commission's pending television ownership rule making in MM Docket Nos. 91-221 and 87-8.

12. IT IS FURTHER ORDERED, That the application (File No. BPCT-941227KH) for modification of the facilities of station KDLT-TV, Mitchell, South Dakota, IS GRANTED.

13. IT IS FURTHER ORDERED, That the application (File No. BPCT-941227KI) for a construction permit for a new television station on Channel 46 at Sioux Falls, South Dakota, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau