



Federal Communications Commission
Washington, D.C. 20554

August 29, 2002

Chelsey Broadcasting Company of Casper, LLC,
Chelsey Broadcasting Company of Cheyenne, LLC
c/o William B. Wachtel, Esquire
712 Fifth Avenue
45th Floor
New York, NY 10019

Re: KGWN-TV, Cheyenne, WY
Facility ID No. 63166
File No. BALCT-20020619ABK

KSTF(TV), Scottsbluff, NE
Facility ID No. 63182
File No. BALCT-20020619ABL

KGWR-TV, Rock Springs, WY
Facility ID No. 63170
File No. BALCT-20020619ABN

KGWL-TV, Lander, WY
Facility ID No. 63162
File No. BALCT-20020619ABP

Dear Mr. Wachtel:

This is in reference to the unopposed applications for assignment of the above-captioned television licenses from Benedek License Corporation ("Benedek")¹ to Chelsey Broadcasting Company of Casper, LLC and Chelsey Broadcasting Company of Cheyenne, LLC, both of which are subsidiaries of Chelsey Broadcasting Company, LLC ("Chelsey"). Chelsey requests authorization to continue operating KSTF(TV), Scottsbluff, Nebraska as a satellite of KGWN-TV, Cheyenne, Wyoming; and waivers of the main studio rule to permit continued operation of KGWR-TV and KGWL-TV without local main studios.

CONTINUING SATELLITE EXCEPTION

Chelsey proposes to continue operating KSTF(TV), Scottsbluff, Nebraska as a satellite of KGWN-TV, Cheyenne, Wyoming, pursuant to Note 5 of Section 73.3555 of the Commission's Rules, which exempts satellite stations from application of the local television multiple

¹ Benedek's ultimate parent company is Stations Holdings Company, Inc., Debtor-in-Possession ("SHC"). An FCC Form 315 application to transfer control from SHC to Gray Communications Systems, Inc. is currently pending (See BTCCT-20020610AAV, *et al.*).

ownership rule.² The Commission originally granted satellite status to KSTF(TV) in 1995 and authorized continued satellite status for the station in 1996.³ Chelsey contends that the circumstances underlying the previous grant of continuing satellite status have not changed.

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 un rebutted, 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, Chelsey has supplied an engineering exhibit demonstrating that no City Grade overlap exists between KGWN-TV and KSTF(TV). With respect to the second criterion, Chelsey 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 Only one other full-service television station is licensed to Scottsbluff, KSTF(TV)'s community of license.⁷

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.⁸ Chelsey contends that there is substantial and long-standing evidence of the inability of KSTF(TV) to operate as a full-service, stand-alone station and the unavailability of a qualified buyer to purchase KSTF(TV) for full-service, stand-alone operation. For example, Chelsey notes that the Commission has approved continuing satellite status for this station on two previous occasions. Chelsey cites *Stauffer Communications*, where the Commission in 1995 relied on a media broker's statement that Scottsbluff could not sustain a full-service station and that the paucity of available advertising revenue would cause a competent media brokerage firm to refuse to list the station on a full-service, stand-alone basis. Chelsey asserts that today, as was the case in 1995 and 1996, no prospective purchaser would be interested in the satellite station on a "stand alone" basis. As support, Chelsey submits a June 3, 2002, declaration from K. James Yager, President and Chief Operating Officer for Benedek, who points out that the Cheyenne-Scottsbluff Nielsen Designated Market Area ("DMA") is ranked 197th and is one of the least-

² 47 C.F.R. § 73.3555, Note 5.

³ See *Stauffer Communications, Inc.*, 10 FCC Rcd 5165 (1995) ("*Stauffer Communications*") and *Letter from Barbara A. Kreisman, Chief, Video Services Division, to William H. Fitz, Esquire*, Files Nos. BALCT-19960111P-IX, BALTTV-19960111IY, and BALTT-19960111IZ, JA-JB (April 8, 1996) ("*Benedek Letter*").

⁴ *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-4214 (1991) (subsequent citations omitted).

⁵ *Id.* at 4214.

⁶ *Id.* at 4215.

⁷ KDUH(TV), channel 4 (ABC) is currently licensed to Scottsbluff, Nebraska.

⁸ *Television Satellite Stations*, 6 FCC Rcd at 4215.

populated television markets in the country with only 51,000 TV households. Yager also asserts that KSTF(TV) has experienced losses for many years and that Benedek has made serious but unsuccessful attempts to sell KGWN-TV and KSTF(TV) over the years.

We are unable to find that Chelsey's showing meets the third criterion of our "presumptive" satellite standard. Chelsey does not provide any detailed information regarding its efforts to sell KSTF(TV), other than providing a general statement from the station's president that "serious efforts" have been made to sell the station. Nevertheless, although this showing does not meet our "presumptive" satellite standard, Chelsey's showing is strong enough to justify continued satellite status for KSTF(TV) under an *ad hoc* basis. We find that, given the station's history as a satellite, the sparse population of the community of license, the Cheyenne-Scottsbluff DMA ranking of 197, and Yager's declaration that KSTF(TV) has incurred substantial economic losses, it does not appear likely that an alternative operator would be willing to operate the satellite as a full-service station. Based upon the representations of Yager and the history of the station, we are persuaded that the factors upon which we based our satellite authorizations in 1995 and 1996 have not changed to 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 KSTF(TV) as a satellite of KGWN-TV would serve the public interest.

MAIN STUDIO WAIVERS

Chelsey states that KGWR-TV, Rock Springs, WY and KGWL-TV, Lander, WY currently operate as satellites of KGWC-TV, Casper, WY pursuant to the satellite exemption requirements of Note 5 to Section 73.3555(b) of the television duopoly rule.⁹ However, under the Commission's revised duopoly rule, an entity may own, operate or control two television stations licensed in the same DMA if: (1) the Grade B contours of the stations do not overlap; or (2) if at least one of the stations is not ranked among the top four stations in the DMA in terms of audience share and eight or more independently owned commercial and noncommercial television stations will be licensed in the DMA post-merger. 47 C.F.R. § 73.3555(b). Ownership of more than one television station in a particular DMA, however, is permitted where the stations' Grade B contours do not overlap or overlap only to an insubstantial degree.

According to Nielsen Media Research, KGWR-TV, KGWL-TV and KGWC-TV are assigned to the Casper-Riverton, Wyoming DMA. Chelsey states that the Grade B contours of KGWR-TV and KGWL-TV do not overlap the Grade B contour of KGWC-TV, and that KGWR-TV and KGWL-TV have only *de minimis* Grade B overlap. Therefore, Chelsey asserts, a satellite exemption is no longer required to permit common ownership of KGWR-TV, KGWL-TV, and KGWC-TV pursuant to the local television multiple ownership rule, 47 CFR § 73.3555(b), since there is either *de minimis* or no Grade B contour overlap among the stations. Chelsey requests, instead, a waiver of the main studio rule, 47 CFR § 73.1125, to permit continued operation of KGWR-TV and KGWL-TV without local main studios.

⁹ 47 C.F.R. § 73.3555, Note 5; *Stauffer Communications, supra*; *Benedek Letter, supra*.

The Commission's policy has been to issue waivers of the television duopoly for commonly-owned 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.¹⁰ The Commission reiterated this policy when it adopted new multiple ownership rules in 1999.¹¹ Chelsey's engineering exhibit demonstrates that the Grade B overlap area of KGWR-TV and KGWL-TV encompasses less than 1% of the population of each station (*i.e.*, eight persons), while including somewhat more than 1% of the area of each station. However, using the terrain-sensitive Longley-Rice¹² model, Chelsey's engineers have determined that the actual overlap area would constitute 0.28% of the Grade B contour of KGWL-TV and only 0.17% of the Grade B contour of KGWR-TV. Based upon the engineering data submitted, the staff has conducted its own analysis and confirmed that the terrain-limited Grade B contour overlap area of KGWR-TV and KGWL-TV encompasses less than 1% of the population of either station and less than 1% of the area of each station. We, therefore, conclude that common ownership of KGWL-TV and KGWR-TV would not result in the stations serving common populations or areas to any significant degree. Because there is either *de minimis* or no Grade B contour overlap among the stations, Chelsey's ownership of KGWL-TV, KGWR-TV and KGWC-TV complies with Section 73.3555(b)(i) of the television duopoly rule.

Next, we address Chelsey's request for waivers of Section 73.1125, the Commission's main studio rule, and its proposal to continue to use the main studio of KGWC-TV in Casper for both stations KGWR-TV and KGWL-TV. Section 73.1125(a) requires that each broadcast station operate a main studio within either the principal community contour of any station, of any service, licensed to its community of license or within 25 miles of the reference coordinates of the center of its community of license, whichever it chooses. *See Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691 (1998). Under Section 73.1125(c)(2), a licensee may request a ruling from the Commission permitting it to locate its main studio outside of these locations.

In support of its waiver requests, Chelsey claims that it cannot support main studios in Lander and Rock Springs for economic reasons. Chelsey indicates that while the Casper-Riverton DMA is geographically large, it has a small, rapidly decreasing population. The DMA previously was ranked 192 in 1995 but is currently only the 200th-ranked DMA. Chelsey points out that no other commercial television stations are licensed to Rock Springs and Lander. According to the declaration of K. James Yager, President and Chief Operating Officer for

¹⁰ See, e.g., *WNNE Licensee, Inc. et al.*, 13 FCC Rcd 12677 (1998); *Hubbard Broadcasting Inc.*, 2 FCC Rcd 7374 (1987).

¹¹ See *Review of the Commission's Regulations Governing Television Broadcasting* ("Local Ownership Order"), 14 FCC Rcd 12903, 12929 n96 (1999), *recon. granted in part*, 16 FCC Rcd 1067 (2001) ("Local Ownership Reconsideration Order"), *appeal pending sub nom. Sinclair Broadcast Group, Inc. v. FCC*, No. 01-1079 (D.C. Cir. 2001).

¹² The Commission has previously used terrain-limited analyses to conclude that no actual contour overlap exists. See, e.g., *John H. Phipps, Inc.*, 11 FCC Rcd 13053, 13054 n.1 (1996) (Commission's engineering analysis confirms that, due to intervening terrain, no actual overlap exists); *Heritage Media Services, Inc.*, 13 FCC Rcd 5644, 5648-49 (1998) (granting a *de minimis* duopoly waiver where a terrain-limited analysis showed that the mountainous real-world overlap area encompassed 0.83% and 0.50% of the stations' predicted contour areas and 0.23% and 0.26% of the populations).

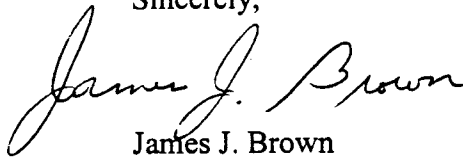
Benedek, KGWR-TV and KGWL-TV are unable to generate sufficient revenue to support their operations and joint operation of the stations in conjunction with KGWC-TV is necessary for their survival. Chelsey also represents that it will establish toll-free telephone numbers, affording residents with easier access to the studio in Casper. Finally, Chelsey states that staff at the Casper main studio will mail items in the public file to citizens of Rock Springs and Lander, if requested to do so.

We recognize that the Casper-Riverton, Wyoming market has a small population and that no other commercial television stations are licensed to Lander and Rock Springs.¹³ Moreover, Casper-Riverton is ranked as the 200th DMA and Yager has declared that the two stations cannot generate sufficient revenue to support their operations. In addition, the Commission has previously recognized stations KGWR-TV and KGWL-TV as satellites of KGWC-TV.¹⁴ Consequently, both KGWR-TV and KGWL-TV have operated without main studios for several years. Chelsey's pledge to provide toll-free numbers for Lander and Rock Springs's residents will, however, improve their accessibility to the main studio in Casper. Accordingly, we conclude that the public interest will be served by the grant of main studio waivers for both KGWR-TV and KGWL-TV.

Based upon the above representations, we find that grant of waivers of the main studio rule to both KGWL-TV and KGWR-TV under these circumstances is appropriate and in the public interest. Chelsey's toll-free numbers must be published in the local telephone directories to permit residents of Rock Springs and Lander to stay in contact with the main studio in Casper.

Accordingly, Chelsey's request for continued television satellite authorization, pursuant to Note 5 of Section 73.3555 of the Commission's Rules, 47 C.F.R. § 73.3555 Note 5, for KSTF(TV), Scottsbluff, Nebraska as a satellite of KGWN-TV, Cheyenne, Wyoming IS GRANTED and Chelsey's request for waivers of Section 73.1125(a) of the Commission's Rules, 47 C.F.R. § 73.1125(a), for KGWL-TV, Lander, Wyoming and KGWR-TV, Rock Springs, Wyoming ARE GRANTED.

Sincerely,



James J. Brown
Deputy Chief, Video Division
Media Bureau

cc: Benedek License Corporation
c/o William H. Fitz, Esquire

¹³ Although station KCWC-TV (Channel 4) has a main studio and is licensed to Lander, it is a noncommercial educational station and thus does not compete with KGWL-TV.

¹⁴ See *Stauffer Communications, supra* and *Benedek Letter, supra*.