



Federal Communications Commission  
Washington, D.C. 20554

DA 12-1439  
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Re: Assignment of License for  
WACY-TV, Appleton, Wisconsin  
Facility ID No. 361  
File No. BALCDT-20120503AEN

Dear Counsel:

This is in reference to the application for consent to assign the license for WACY-TV, Channel 27, Appleton, Wisconsin, from Ace TV, Inc. ("Ace") to Journal Broadcast Corporation ("Journal"). The application is unopposed. The application requests a waiver of Section 73.3555(b) of the Commission's rules, the television duopoly rule,<sup>1</sup> to permit Journal, licensee of station WGBA-TV, Green Bay, Wisconsin, to acquire WACY-TV. Both WGBA-TV and WACY-TV are located in the Green Bay-Appleton, Wisconsin Nielsen Designated Market Area ("DMA").

Journal currently provides all of WACY-TV programming pursuant to a grandfathered local marketing agreement dated June 7, 1993.<sup>2</sup> Because WACY-TV would be the second station in the DMA licensed to Journal,<sup>3</sup> its proposed acquisition of WACY-TV is governed by Section 73.3555(b) of the

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<sup>1</sup> 47 C.F.R. § 73.3555(b).

<sup>2</sup> See *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12965 (1999) ("Local Ownership Order") (providing grandfathered status to local marketing agreements entered into prior to November 5, 1996). As part of its 2002 Biennial Regulatory Review, the FCC subsequently stated that this grandfathering policy remained unchanged. See *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13812 (2003).

<sup>3</sup> Journal is the successor-in-interest to the grandfathered WACY-TV LMA as a result of its purchase of WGBA-TV

Commission's rules.<sup>4</sup> That rule provides, in pertinent part, that the same entity may own or control two television stations in the same market so long as: (1) the stations' relevant service contours do not overlap, or (2) at the time the application is filed, at least one of the stations is not ranked among the top four stations in audience rankings in the DMA and at least 8 independently owned and operating full-power commercial and noncommercial educational television stations would remain in the market after the proposed acquisition. Neither of these two bases for common ownership, however, is applicable to the proposed transaction. The service contours of the two stations overlap<sup>5</sup> and, while WACY-TV is not ranked among the top four stations in the DMA, there would not be 8 remaining independently owned and operating television stations in the Green Bay-Appleton, Wisconsin DMA following the proposed merger. Accordingly, Journal requests a waiver of Section 73.3555(b)(2) of the Commission's rules to permit it to acquire WACY-TV on the grounds that it is a "failed" station.<sup>6</sup>

**Duopoly Waiver Request.** The Commission's Local Ownership Order established a two-prong test for a waiver of the television duopoly rule for a "failed" station, defined as a station "that has been dark for at least four months or is involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings." These two criteria are:

- (a) The waiver applicant must provide relevant documentation, i.e., proof of the length of time that the station has been off the air,<sup>7</sup> or proof that the station is involved in bankruptcy or insolvency proceedings, and;
- (b) The in-market buyer is the only reasonably available entity willing and able to operate the station; and selling the station to another buyer would lead to an artificially depressed price for the station.

If the applicant satisfies both criteria, a waiver of the rule will be presumed to be in the public interest.<sup>8</sup>

Where a buyer proposes to acquire a station that has been operating pursuant to a grandfathered LMA, however, the showing under the first prong "may be based on circumstances existing just prior to the parties entering into the LMA," not the circumstances prior to the filing of the application.<sup>9</sup> This

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from Aries Telecommunications Corporation in 2004. See BALCT-20040505AAL.

<sup>4</sup> 47 C.F.R. § 73.3555(b).

<sup>5</sup> Both stations' historic analog Grade B contours overlapped. The Commission has recognized that a station's digital noise limited contour approximates the same service area as the analog Grade contour. *Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507 (2005). In the *2010 Quadrennial Regulatory Review NPRM*, the Commission tentatively concluded that it would eliminate the contour overlap approach and rely solely on Nielson DMA's. *Notice of Proposed Rulemaking*, 26 FCC Rcd 17489, 17502 (2011). We note, however, that the stations' digital noise-limited contours also overlap.

<sup>6</sup> 47 C.F.R. § 73.3555, Note 7. See also *Local Ownership Order* at 12936.

<sup>7</sup> In the case of a silent station, the station must provide a statement that it went dark due to financial distress, not because of other, non-financial difficulties.

<sup>8</sup> *Local Ownership Order* at 12939.

<sup>9</sup> *Id.* at 12965.

policy applies when a successor-in-interest broker to a grandfathered LMA seeks to convert the LMA into an ownership interest. Moreover, if the station to be acquired has been operating under a grandfathered LMA, the applicant is not required to satisfy the second prong, which requires it to demonstrate that it is the only buyer willing and able to operate the station or that a sale of the station to an out-of-market buyer would result in an artificially depressed price.<sup>10</sup> Based on the facts of this case, we find that WACY-TV has satisfied the relevant criteria for a “failed” station waiver such that we can presume that waiver of the duopoly rule is in the public interest.

**Silent Authority and Financial Condition.** According to the applicants, both WACY-TV and WGBA-TV had troubled financial histories prior to the commencement of the WACY-TV LMA. With regard to WACY-TV, in 1991, Appleton Midwestern Television, Ltd., the licensee of WACY-TV (then WXYZ-TV) at the time, underwent a bankruptcy reorganization and liquidation. The Commission’s records reflect that the assignment of WACY-TV’s license to the bankruptcy trustee was approved on November 18, 1991.<sup>11</sup> The bankruptcy trustee took WACY-TV silent on February 14, 1992. Ace acquired WACY-TV, which was still silent, on August 3, 1992.<sup>12</sup> It was not until June 2, 1994, that WACY-TV resumed full-time operation, more than two years after it had gone silent. The applicants explain that this restoration of service coincided with the date on which the WACY-TV LMA became effective, providing the station with the financial means needed to restore operation.

**Public Interest.** As to the public benefits to be achieved in this case, the applicants assert that the relationship between WGBA-TV and WACY-TV has permitted both stations to benefit from certain combined back-office functions. In turn, WACY-TV, which is not affiliated with any of the “Big 4” networks, has been able to broadcast significant amounts of locally-produced, locally-focused programming that would otherwise not have been possible. WACY-TV produces and broadcasts the N.E.W. Sports Showdown program that focuses on local high school and college sports in northeast Wisconsin. Furthermore, WACY-TV projects that it will broadcast nearly 235 hours of locally produced programming in 2012, an average of almost four-and-a-half hours of locally-produced programming per week.

**Conclusion.** The applicants have submitted sufficient information to show that WACY-TV qualifies as a “failed” station under the Commission’s ownership rules, because the station was silent for a period significantly greater than four consecutive months prior to the LMA due to its dire financial situation and related bankruptcy proceeding. WACY-TV’s operations were restored only through the financial assistance and operational efficiencies generated by the LMA. As a result, both WACY-TV and WGBA-TV have been able to produce and broadcast programming that furthers the public interest. Moreover, we have reviewed the assignment application, and find that the applicants are fully qualified, and that grant of the instant application will serve the public interest, convenience and necessity.<sup>13</sup>

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<sup>10</sup> See *Review of the Commission’s Regulations Governing Television Broadcasting*, 16 FCC Rcd 1067, 1077 (2001). See also *Pappas Telecasting of the Carolinas*, 17 FCC Rcd 842, n.3 (MB 2002).

<sup>11</sup> See BALCT-19911031KJ.

<sup>12</sup> See BALCT-19920526KG.

<sup>13</sup> The applicants note that the proposed acquisition implicates that FCC’s radio-television cross ownership rule, because the predicted 2 mV/m daytime contour of Journal’s WTMJ(AM) encompasses both Appleton, Wisconsin, the community of license of WACY-TV, and Green Bay, the community of license of WGBA-TV. See 47 C.F.R. §

Accordingly, IT IS ORDERED, That the request for a "failed" station waiver of the television duopoly rule, Section 73.3555(b), to permit Journal Broadcast Corporation to own and operate both WACY-TV, Appleton, Wisconsin, and WGBA-TV, Green Bay, Wisconsin, IS GRANTED.

IT IS FURTHER ORDERED, That the application for consent to the assignment of license of WACY-TV, Appleton, Wisconsin, from Ace TV, Inc. to Journal Broadcast Corporation (File No. BALCDT-20120503AEN), IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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73.3555(c)(1)(ii). Once the radio-television cross ownership rule is triggered by contour encompassment, the Commission determines compliance with the rule on an Arbitron Metro basis. WACY-TV is located in the Appleton-Oshkosh Arbitron Metro and WGBA-TV is located in the adjacent Green Bay Arbitron Metro. The FCC's radio-television cross ownership rule permits the ownership of one radio and two television stations in the same market, regardless of the number of independent voices remaining in the market. Following the proposed acquisition, Journal will own one television station and one radio station in the Appleton-Oshkosh Arbitron Metro Market and one television station and one radio station in the Green Bay Arbitron Metro. Thus, the acquisition complies with the radio-television cross-ownership rule.