



Federal Communications Commission
Washington, D.C. 20554

OCT 08 2002

Smith Television of North Dakota License Holdings, Inc.
c/o Jacqueline P. Cleary, Esquire
Hogan & Hartson, LLP
555 Thirteenth Street, NW
Washington, DC 20004

North Dakota Television License Sub, LLC
c/o Lewis J. Paper, Esquire
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, NW
Washington, DC 20037

Re: KFYR-TV, Bismarck, ND
Facility ID No. 41427
File No. BALCT-20020807AAZ

KQCD-TV, Dickinson, ND
Facility ID No. 41430
File No. BALCT-20020807ABB

KMOT(TV), Minot, ND
Facility ID No. 41425
File No. BALCT-20020807ABA

KUMV-TV, Williston, ND
Facility ID No. 41429
File No. BALCT-20020807ABC

KVLY-TV, Fargo, ND
Facility ID No. 61961
File No. BALCT-20020807AAY

Gentlemen:

This is in reference to the unopposed applications for assignment of the above-captioned television licenses from Smith Television of North Dakota License Holdings, Inc. ("Smith") to North Dakota Television License Sub, L.L.C. ("NDTV").¹ Pursuant to the satellite exception to

¹ In addition to the above-captioned television licenses, Smith also seeks to assign the following television translator licenses to NDTV: K13PL, Glendive, MT (Facility ID No. 41421, File No. BALTTV-20020807ABD); K02GA, Lisbon, ND (Facility ID No. 61979, File No. BALTTV-20020807ABE); K09JM, Jamestown, ND (Facility ID No. 61971, File No. BALTTV-20020807ABF); and K09MF, Wahpeton, ND (Facility ID No. 61966, File No. BALTTV-20020807ABG).

the multiple ownership rules set forth in Note 5 of Section 73.3555 of the Commission's Rules, Smith operates television stations KQCD-TV, Dickinson, North Dakota, KMOT(TV), Minot, North Dakota, and KUMV-TV, Williston, North Dakota as satellites of KFYZ-TV, Bismarck, North Dakota. NDTV seeks to maintain the satellite status of these stations after consummation of the proposed assignments. The Commission has previously authorized continued satellite status for these stations in 1998.² NDTV 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.³ 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.⁴

With respect to the first criterion, NDTV has submitted an engineering study which demonstrates that the City Grade contours of KFYZ-TV and its three satellites, KQCD-TV, KMOT(TV), and KUMV-TV, do not overlap. Moreover, the engineering study demonstrates that there is no City Grade contour overlap between the three stations. Thus, all of the stations meet the first component of the presumption.

With respect to the second criterion, the Commission utilizes one of two methods to determine whether the area where each satellite station is located is underserved. One method, the "reception" test, deems an area as underserved if 25 percent or more of the area located within the satellite's Grade B contour, but outside the parent's Grade B contour, receives four or fewer services other than the service provided by the satellite.⁵ Utilizing the reception test, the engineering exhibit indicates that four or fewer services are received in 96% of that portion of KMOT(TV)'s Grade B contour located outside the KFYZ-TV Grade B contour. Therefore, KMOT(TV) serves an "underserved" area. As for KUMV-TV and KQCD-TV, in 98% of the area within each of the two stations' Grade B contours, but located outside the KFYZ-TV Grade B contour, four or fewer services are received. Thus, NDTV has also demonstrated that the areas where satellite stations KUMV-TV and KQCD-TV are located are "underserved."

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

² See Letter from Barbara A. Kreisman, Chief, Video Services Division, to William S. Reyer, Esquire, Files Nos. BALCT-19980506IA-IC, IF, BALTTV-19980506IE, IF-II (August 14, 1998).

³ *Television Satellite Stations*, 6 FCC Red 4212, 4213-4214 (1991) (subsequent citations omitted).

⁴ *Id.* at 4214.

⁵ *Id.*

station.⁶ NDTV argues that the satellites suffer from an inability to reach enough viewers to generate sufficient advertising support. The stations' Designated Market Area ("DMA"), Minot-Bismarck-Dickinson, North Dakota, ranked 152, has a small population density, with only 136,060 television households covering more than half of North Dakota and counties in two other states. The average population density of the entire DMA is less than one television household per square kilometer, and the county in the DMA with the most television households, Burleigh County, has only 26,470 households. Further, NDTV contends that none of the satellites operating as a stand-alone station would be able to reach the most populated county with its off-air signal. Next, NDTV argues that the current state of this sparsely populated market demonstrates the necessity of satellites because every full-power commercial station in the Minot-Bismarck-Dickinson DMA has at least one satellite station. Thus, satellites seem to offer the only feasible way to provide local television service to large segments of the Minot-Bismarck-Dickinson DMA. Finally, NDTV has submitted a 1998 statement from a media broker who states that he would have no interest in listing either station KQCD-TV, KMOT(TV), or KUMV-TV for sale on a stand-alone basis. The broker states that none of the satellites would be able to afford the equipment and staff necessary to operate as a viable stand-alone station. Moreover, continues NDTV, the broker's statement does not even take into account the stations' "imminent extra costs of constructing and operating digital facilities."

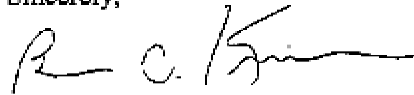
We are unable to find that NDTV's showing meets the third criterion of our "presumptive" satellite standard. NDTV does not provide any detailed information regarding its efforts to sell KSTF(TV), other than a four-year old statement from a media broker indicating that it is unlikely that an alternative operator would be willing to operate the satellites as full-service stand-alone facilities. Nevertheless, although this showing does not meet our "presumptive" satellite standard, NDTV's showing is strong enough to justify continued satellite status for KQCD-TV, KMOT(TV), or KUMV-TV under an *ad hoc* basis. We find that, given the stations' history as satellites, the sparse population density of the communities of license, and the Minot-Bismarck-Dickinson DMA ranking of 152, it does not appear likely that an alternative operator would be willing to operate the satellites as full-service stations. Based upon the information before us, we are persuaded that the factors upon which we based our continuing satellite authorizations in 1998 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 stations' satellite status. Thus, we conclude, continued operation of KQCD-TV, KMOT(TV), and KUMV-TV as satellites of KFYR-TV would serve the public interest.

We have reviewed the assignment of license applications and find that grant of the applications will serve the public interest, convenience and necessity. Accordingly, the request for continued operation of stations KQCD-TV, Dickinson, North Dakota, KMOT(TV), Minot, North Dakota, and KUMV-TV, Williston, North Dakota, pursuant to the satellite exception to Note 5 of Section 73.3555 of the Commission's Rules, IS GRANTED. Further, we note that NDTV has amended its applications to eliminate observer rights of Halyard Capital Fund, L.P., an insulated limited partner, in the governing board of North Dakota Holdings, L.L.C., a parent entity of NDTV. As such, grant of the applications is conditioned on NDTV's certification that

⁶ *Television Satellite Stations*, 6 FCC Red at 4215.

Halyard Capital Fund, L.P. will have no observer rights with respect to North Dakota Holdings, L.L.C. Therefore, the applications for assignment of television and television translator licenses from Smith Television of North Dakota License Holdings, Inc. to North Dakota Television License Sub, L.L.C. ARE GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Kreisman".

Barbara A. Kreisman
Chief, Video Division
Media Bureau