

Statement in Support of Failing Station Waiver

This application proposes the assignment of license of commercial television station WCWF(TV), Suring, Wisconsin from LIN of Wisconsin, LLC (“Assignor”) to WCWF Licensee, LLC, a subsidiary of Sinclair Broadcast Group (collectively, “Assignee”).

In a contemporaneously filed application, Assignee proposes to acquire the license of WLUK-TV, Green Bay, Wisconsin from Assignor. Stations WCWF(TV) and WLUK-TV are located in the Green Bay-Appleton DMA. Thus, grant of these applications will convey Assignor’s attributable interests in these two full power commercial television stations in the Green Bay-Appleton DMA to Assignee.

LIN acquired WCWF(TV) pursuant to a “failing station” waiver granted by the Commission on April 8, 2011, under Note 7(2) to the Duopoly Rule.¹ As part of the pending merger of LIN’s ultimate parent with Media General, Inc. (“Media General”), those parties have requested reauthorization of the failing station waiver, and that request is currently before the Commission. The instant application seeks, upon the closing of that merger, the assignment of WCWF(TV) from Assignor (as controlled by post-merger Media General) to Assignee. Assignee therefore requests continuation of the failing station waiver to ensure that Assignee may own the combination of WCWF(TV) and WLUK-TV in compliance with the Duopoly Rule.² Because WCWF(TV)’s performance has not materially changed since 2011, nor since submission of Media General’s pending request for continuation of WCWF(TV)’s failing station waiver, Assignee hereby requests reauthorization of that waiver.

Although the common ownership of WCWF(TV) and WLUK-TV has generated public interest benefits, WCWF(TV) has continued to be unprofitable and struggled to find a competitive foothold in the Green Bay-Appleton market. Reauthorization of the existing waiver would serve the public interest by enabling Assignee to take advantage of the resources of in-market station WLUK-TV to preserve and enhance WCWF(TV)’s service.

The Commission has identified the following four criteria—all of which are satisfied here—for waiver of the Duopoly Rule on the ground that one of the stations is a failing station:

¹ *In re WCWF(DT), Suring, WI*, 26 FCC Rcd 5189 (MB 2011) (“*In re WCWF*”). As noted in that decision, and still consistent today, WCWF(TV) is not among the top-four ranked stations in the Green Bay-Appleton, WI DMA.

² The digital noise-limited contours of WCWF(TV) and WLUK-TV overlap. As the Media Bureau has noted, although the Duopoly Rule refers to television stations’ Grade B contours, following the transition to digital broadcasting, the FCC has treated digital noise-limited contours as the “functional equivalent” of Grade B contours for purposes of this rule. *Riverside Media, LLC*, 26 FCC Rcd 16038, 16060 n.2 (2011) (citation omitted). The Commission has proposed replacing the Grade B contour overlap test with a digital noise-limited contour test. *2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, MB Docket Nos. 14-50, *et al.*, FCC 14-28 (rel. April 15, 2014).

- One of the stations has a low all-day audience share (*i.e.*, 4 percent or lower);
- The financial condition of one station is poor (with a waiver more likely to be granted if the station has had negative cash flow for the previous three years);
- The merger will produce public interest benefits; and
- The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station, and selling the station to an out-of-market buyer would result in an artificially depressed price.³

Low All-Day Audience Share. WCWF(TV) consistently has failed to achieve a meaningful audience share. During the July 2014 sweeps period, WCWF(TV) achieved an audience share of less than two percent, and its audience share was substantially below 4 percent for each of the four preceding sweeps periods. With a consistent failure to achieve an audience share at the 4 percent benchmark, WCWF(TV) satisfies the first criterion of the failing station exception.

Poor Financial Condition. This prong of the standard focuses on the three years immediately preceding the filing of the application. With its low audience share, WCWF(TV) has struggled financially since commencing service. As previously demonstrated in the Media General – LIN merger application, the station experienced negative cash flow continuously over a three-year period both before and after its acquisition by LIN.⁴ Thus, the second prong of the failing station test is satisfied.

Public Interest Benefits. The programming and operational improvements resulting from common ownership with a stronger in-market station will continue with reauthorization of the existing waiver. Since acquiring WCWF(TV), LIN has improved the station's programming line-up. WCWF(TV) now carries programming on its primary channel from the CW program service, which provides a popular slate of network programming.

WCWF(TV) also airs locally-produced public interest programs including the following:

- ***Weekly Public Affairs Series.*** WCWF(TV) airs a weekly locally-produced half-hour public affairs show, *CW 14 Focus*. Hosted by seasoned reporter Robert Hornacek, the program covers local, state and federal politics and other matters of interest to residents of the Green Bay-Appleton communities.

³ *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903 (1999) ("*Local Ownership Order*"), *recon. granted in part*, 16 FCC Rcd 1067 (2001).

⁴ The financial data, as received from LIN relating to the station's current operations are confidential and are being submitted under separate cover, with a request for confidential treatment.

- *Quarterly Town Hall Meetings.* On a quarterly basis, WCWF(TV) airs, live and in prime time, hour-long town hall meetings. The quarterly programs address issues of interest to residents of the Green Bay-Appleton DMA, including such topics as education, crime, economics and politics.
- *Hourly Weather Reports and Breaking News Updates.* WCWF(TV) lacks the personnel and facilities to monitor and report weather conditions and breaking news in the Green Bay-Appleton DMA. WCWF(TV) uses the existing robust weather-related and news resources of WLUK-TV to produce and air regularly-scheduled hourly weather reports and breaking news updates, including live cut-ins when necessary for severe weather coverage.
- *Coverage of Local Live Events.* Each year, a number of local events of community interest occur in the Green Bay-Appleton DMA. Illustrative events in the past have included the weeklong aircraft convention and air show in Oshkosh, Wisconsin (the largest air show of its kind in the world); county fairs in Outagamie and Brown counties, located in Seymour, Wisconsin, and Green Bay, Wisconsin, respectively; the "Polka Days" celebration in the Polish community of Pulaski, Wisconsin; the "Packers Family Night" featuring a Packers scrimmage at Lambeau Field; the annual Fourth of July festival and fireworks in downtown Green Bay; and the annual Oneida Pow-Wow hosted by the Oneida Nation. WCWF(TV) provides live coverage of these events.
- *High School Sports.* WCWF(TV) broadcasts local high school and league sporting events. The station also presents a weekly 30-minute live television program devoted to high school athletics in northeast Wisconsin. The program includes highlights from a variety of sports for both boys and girls and interviews with students and coaches.

Through such enhancement efforts, WCWF(TV) has achieved a strong community-oriented focus.

Upon consummation of the Transaction, Assignee will continue to provide news, weather, and public affairs programming, as well as local event coverage, designed to serve the needs and interests of the residents of Suring and the surrounding area.

In short, the public has benefited from WCWF(TV)'s ability to operate under a failing station waiver, as WCWF(TV) has been able to take advantage of programming resources, newsroom personnel, and financial strengths of its sister station to deliver improved services that were not possible previously. Assignee will ensure that WCWF(TV) viewers continue to benefit from the robust service made possible by common ownership and operation with the Owned Station. The operational and programming improvements resulting from WCWF(TV)'s

operation pursuant to a failing station waiver demonstrate the public interest benefits of continued common ownership and satisfy the third prong of the failing station test.

No Rational Out-of-Market Buyer. Buyers are not willing and able to acquire and operate a failing station such as WCWF(TV) without the ability to operate it in conjunction with a stronger, in-market station such as WLUK-TV and thereby take advantage of the operational and economic synergies that generate public interest benefits like those described above.

In the letter from W. Lawrence Patrick attached hereto at Attachment 1, Mr. Patrick describes the difficulty of finding any buyer willing to undertake the challenge of operating WCWF(TV) on a standalone basis. Mr. Patrick further explains that, on the basis of his evaluation of factors, including WCWF(TV)'s standalone financial performance, the significant capital expenditures required to operate WCWF on a standalone basis, and the current economic and competitive environment, "WCWF-DT would be unable to operate as a viable standalone full power station or to maintain the local programming and service to the community that it currently provides." Thus, the fourth prong of the failing station test is satisfied because an in-market buyer is the only reasonably available candidate to operate WCWF(TV).

The applicants submit that the public interest would be served by reauthorization of the failing station waiver in order to allow WCWF(TV) to continue to operate as part of a duopoly. In adopting the failing station exception to the Duopoly Rule, the Commission stated that allowing failing stations to combine with stronger stations would "pose minimal harm to our diversity and competition goals, since their financial situation typically hampers their ability to be a viable 'voice' in the market."⁵ That clearly has been demonstrated here, as WCWF(TV)'s combination with WLUK-TV has made available financial, operational, and programming resources that have allowed service improvements—even though those improvements to date have not resulted in the station having a significant audience share or positive financial performance.

In light of the demonstrable benefits of common ownership, and given that WCWF(TV) remains a "failing" station under the Note 7(2) standard, the public interest would be served by reauthorization of WCWF(TV)'s existing waiver of the Duopoly Rule. As the Commission found in granting WCWF(TV)'s initial waiver request, the combination "will pose minimal harm" to "diversity and competition goals" and "allowing WCWF(TV) to be operated by a stronger station in the market will result in a definite improvement in facilities and programming, an outcome which clearly benefits the public interest."⁶

⁵ *Local Ownership Order*, 14 FCC Rcd at 12938-39.

⁶ *In re WCWF* at 5194.

ATTACHMENT 1



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May 8, 2014

Mr. William Lake
Chief-Media Bureau
Federal Communications Commission
445 12th Street S.W.
Room 3-C740
Washington, D.C. 20554

Re: WCWF-DT, Suring, Wisconsin

Dear Mr. Lake:

I have been asked to opine on the continued operation of WCWF-DT, based on a failing station analysis, with the other stations owned by Media General in the Green Bay-Appleton, Wisconsin DMA in regard to the transfer application of the above television properties. The subject stations include WBAY-DT, WLUK-DT and WCWF-DT. It my understanding that Media General will be divesting of either WBAY-DT or WLUK-DT, and will retain one station in addition to WCWF-DT.

WCWF-DT is the CW network affiliate in the DMA. WCWF-DT was purchased as a failing station in 2010. This letter addresses the feasibility of operating and marketing WCWF-DT as a full-service standalone operation versus its continued operation and common ownership with a Media General station in the DMA based on a failing station waiver.

I am Managing Partner of Patrick Communications, the leading media brokerage firm in the industry with over \$7.5 billion in transactions. I have been involved in the broadcast industry for over forty years and my firm has sold 170 television stations in the past ten years, more than any other brokerage firm. In addition to Patrick Communications, I served from 2005 to 2008 as Chairman of the Board of ION Media Networks, the licensee of 60 television stations. I am also a past president of the National Association of Media Brokers and am the current past chairman of the National Association of Broadcaster's PAC. I also own a minority interest in television stations in New York, Los Angeles, Chicago, Boston, Philadelphia and San Francisco. In addition, I speak regularly to industry groups and have a long history of experience in both television operations and transactions.

I have previously brokered sales of television stations in the Green Bay-Appleton, Wisconsin DMA and I have also provided numerous opinions to the FCC on failing station waivers. I am very familiar with the Green Bay-Appleton, Wisconsin market and the various television station signals, competition and market conditions there, as well as the current television economic environment and station transactional market. I believe that I am qualified to opine on the viability and marketability of WCWF-DT as a standalone television station.

There are three primary independent owners of full power commercial television stations in the market. Six television networks are represented including ABC, NBC, CBS, FOX, CW, and My.

Ranked as the 70th largest DMA in the U.S., the Green Bay-Appleton, Wisconsin market covers two primary population centers. The population growth for the market was 0.6 percent for the past five years, and population growth of 0.8 percent is projected through 2018. Total DMA television advertising dollars declined 3.0 percent from 2008 to 2013. BIA Kelsey projects growth over the next five years of 4.3 percent and much of that is attributable to the 2016 election cycle.

The competition among the major network affiliated stations in this DMA is very strong with FOX, ABC and CBS all within a few points of each other in terms of revenue share. The FOX affiliate has a 29.7 share, the ABC a 28.4 share and the CBS a 24.0 share. WCWF-DT, the subject station of this letter, has a 2.8 percent share of revenue. In fact, WCWF-DT's share of revenue has significantly declined over the past few years. WCWF-DT has the second lowest revenue share in the market, followed only by the My network station with a 2.0 share.

Given this level of competition, WCWF-DT would be unable to operate as a viable standalone full power station or to maintain the local programming and service to the community that it currently provides. WCWF-DT also has the distinct disadvantage of being licensed to Suring, Wisconsin and has a signal that is incapable of covering the major population centers of the DMA. WCWF-DT's network affiliation has not proven sufficient to achieve a competitive position in the market capable of generating a revenue base sufficient for a standalone operation.

All of the major network affiliations are already present. There would be no primary network and little secondary television programming available to WCWF-DT other than what it already has. WCWF-DT benefits significantly from common ownership with another in-market station in terms of shared expenses and facilities so that WCWF-DT's audience enjoys a level of local news, weather and public service programming that WCWF-DT could never afford to provide as a standalone station with such a small and declining revenue base.

Further, as a broker, I believe that the marketing of WCWF-DT as a standalone station would be unsuccessful given the marginalized nature of the operation, and knowing that a buyer would be hard pressed to find compelling programming sufficient to survive. The challenges of marketing WCWF-DT are set forth below.

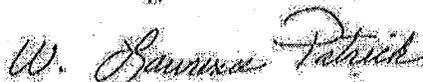
As noted, WCWF-DT is licensed to Suring, one of the smaller population centers in this DMA as well as one that is not centrally located in the market. As such, WCWF-DT would have difficulty achieving full signal coverage of the market over-the-air as well as reaching all DMA cable head ends. The costs of providing a full programming schedule given the CW network affiliation and the number of other stations in the market competing for quality syndicated programming would be prohibitive. Finally, given that the CW network fares poorly locally in comparison to the other networks represented in this DMA, WCWF-DT will continue to struggle to sustain a level of advertising revenue sufficient to cover its operational costs. Local market conditions are still poor here, particularly for WCWF-DT which continues to lose market revenue share even as the overall market shows very modest increases.

The history of WCWF-DT supports this analysis. Prior to this transaction, I am aware that the station was aggressively marketed for a three-year period by another broker. This effort ended in 2010 with no success at finding an out-of-market buyer for WCWF-DT. A few non-disclosure agreements were initially signed, but there was no real significant interest in the station at all. The station's circumstances have not improved since then.

As a broker, if I were asked today to market the station solely as a standalone station, I would be hard-pressed to identify potential viable buyers. I would have to invest in a widespread direct mail effort as well as trade press advertising in order to try and find a qualified out-of-market buyer. The cost of these efforts would be prohibitive, and would take a significant investment of my time as well. Given the low chance of success in finding any buyer other than an in-market-buyer, I would decline to take the listing. It is my opinion, that marketing WCWF-DT as a standalone station today would result in finding no viable buyers—just like the station sales effort a few years ago. If a buyer is found, it is my opinion that it would only be at a very depressed price.

Therefore, based on my twenty years of media brokerage experience and actual experience with the sale of CW network affiliates, it is my opinion that no knowledgeable and experienced television operator could be found that would provide a viable full service operation with WCWF-DT as a standalone station and that an effort to find a qualified out-of-market buyer would either be fruitless or at a very depressed price.

Sincerely,



W. Lawrence Patrick
Managing Partner