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Rocky Mountain Broadcasting Company
c/o Suzanne E. Rogers
Law Offices of Suzanne E. Rogers
445 Capitol Mall, Suite 210
Sacramento, CA 95814

Gray Television Licensee, LLC
c/o Joan Stewart
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Re: KMTF(TV), Helena, Montana
Facility ID No. 68717
File No. BALCDT-20140519AHJ

Dear Counsel:

This letter grants the above-captioned, uncontested application to assign the license of television station KMTF(TV), Helena, Montana ("KMTF"), from Rocky Mountain Broadcasting Company ("Rocky Mountain") to Gray Television Licensee, LLC ("Gray")(collectively, the "Applicants"),¹ and, in connection therewith, grants a "failing" station waiver of the local television ownership rule to permit

¹ Uhlmann/Latshaw Broadcasting, LLC ("ULB") holds a 51 percent interest in Rocky Mountain, with Meridian Communications of Montana, Inc. ("Meridian") holding the remaining 49 percent interest. On September 18, 2006, Rocky Mountain applied for consent to transfer control of KMTF, in its entirety, from ULB to Meridian. On October 27, 2010, Rocky Mountain filed an amendment to its transfer of control application that included various broadcast sharing agreements, including a joint sales agreement and shared services agreement, between it and Beartooth Communications Company (former licensee of KTVH-DT). See FCC File No. BTCCT-20060915APG; See also *Meridian Communications of Idaho, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 678, 682, n. 26 (2011) (noting that the staff will examine the transfer of control application for compliance with the Commission's rules and policies requiring that a licensee retain *de facto* control over its stations). Rocky Mountain has requested dismissal of its transfer of control application, which the Commission granted on November 4, 2014. Accordingly, we find that there are no pending matters before us that preclude action on the instant assignment application and "failing" station waiver. See also *Beartooth Communications Company*, Order and Consent Decree, 29 FCC Rcd 12011 (MB 2014)(terminating an investigation into alleged violations of the Commission's local television ownership rule); Letter from Barbara Kreisman, Chief, Video Division, Media Bureau, FCC to Erwin G. Krasnow, Counsel for MMM License, LLC (rel. Oct. 9, 2014)(granting withdrawal of Petition alleging violations of the Commission's local television ownership rule). As stated in the instant application, "under the terms of the APA all sharing agreements between KTVH-DT and KMTF(TV) will terminate upon consummation of the contemplated transaction." File No. BALCDT-20140519AHJ, Exhibit 1.

common ownership of KMTF and KTVH-DT, Helena, Montana² Both KTVH-DT and KMTF are located in the Helena, Montana, Nielsen designated market area (“DMA” or “market”).

Background. Under the Commission’s local television ownership rule, two television stations licensed in the same DMA that have Grade B contour overlap³ may be commonly owned if: (1) at least one of the stations is not ranked among the top four stations in the DMA; and (2) at least eight independently owned and operating, full power commercial and non-commercial educational television stations would remain in the DMA after the merger.⁴ While KMTF is not ranked among the top four stations in the market, there would be fewer than eight independent voices that remain in the Helena, Montana DMA.⁵ Gray therefore requests a waiver of the local television ownership rule, pursuant to the Commission’s “failing” station standard.⁶

The Commission’s *Local Ownership Order*⁷ defined a “failing” station as one that has been struggling for “an extended period of time both in terms of its audience share and financial performance.”⁸ The *Local Ownership Order* further established the following criteria for a “failing” station waiver of the Commission’s multiple ownership rules: (1) one of the merging stations has had an all-day audience share of no more than four percent; (2) the station has had negative cash flow for the previous three years immediately prior to the application; (3) the merger will produce tangible and verifiable public interest benefits that outweigh any harm to competition and diversity; and (4) 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.⁹ If the applicant satisfies each criterion, a waiver of the duopoly rule will be presumed to be in the public interest.

Discussion. We find that the Applicants “failing” station waiver request meets all all four prongs of the presumptive “failing” station waiver standard and is thereby in the public interest. First, the Applicants submit that Nielsen ratings for KMTF’s all-day audience share during the February 2014

² 47 C.F.R. § 73.3555(b); The Commission approved the application for assignment of KTVH-DT from Beartooth Communications Company to Gray on October 15, 2014. The transaction was consummated on November 1, 2014. See File No. BALCDT-20140516AAM.

³ Following the digital transition the Commission has treated a station’s digital noise-limited contour as the “functional equivalent” of a station’s analog-Grade B contour for purposes of the local television ownership rule. *Riverside Media*, Letter, 26 FCC Rcd 16038, 16060, n. 2 (2011)(citations omitted). On April 15, 2014, the Commission tentatively concluded the digital noise-limited contour should replace the analog Grade B contour in determining whether the local TV ownership rule is implicated. *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*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 4371, 4383, para. 26 (2014)(“2014 Quadrennial Review”).

⁴ 47 C.F.R. § 73.3555(b)(2).

⁵ The Helena DMA is ranked number 205 out of 210. KMTF is a “CW Plus” affiliate.

⁶ 47 C.F.R. § 73.3555, Note 7.

⁷ *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)(“*Local Ownership Order Reconsideration*”).

⁸ *Local Ownership Order*, 14 FCC Rcd at 12938, para. 79.

⁹ 47 C.F.R. § 73.3555, note 7; *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

sweeps period was 0.2%. In fact, the Applicants filing shows that ratings during sweeps periods for the past three year have consistently been below 1%.¹⁰ These ratings are well below the 4% threshold required by the first criterion of the waiver standard.

With regard to the second criterion, the Applicants have submitted financial data for the prior three consecutive years demonstrating that KMTF would be unable to support itself independently. Initially, the Applicants submitted financial data showing that, while KMTF had negative balances in retained earnings for the period of 2011 through first quarter 2014, the station only had net operating losses in 2012 and first quarter of 2014. KMTF actually had net operating gains in 2011 and 2013. Nonetheless, KMTF contends that it only averaged \$2,414.36 in annual income from 2011 to first quarter of 2014 and that this financial evidence demonstrates a history of severe financial hardship and an inability to operate as a stand-alone station.¹¹ Following an inquiry from Commission staff, the Applicants amended the showing by submitting revised financial data removing the revenue received by KMTF as part of its Joint Sales Agreement (“JSA”) with KTVH-DT.¹² This revised financial data provides cash flow statements for KMTF as a standalone station and shows negative cash flows on an annual basis.¹³ Accordingly, we find that KMTF has indeed suffered negative cash flows for the previous three consecutive years (2011, 2012 and 2013) and thereby satisfies the second criterion.

Third, the Applicants state that consolidating the operation of KMTF and KTVH-DT will benefit the public interest by: (1) providing new and expanded local news programming through maintenance of proper staffing levels; (2) creating an enhanced web presence that allows viewers to access more local news and information; and (3) providing educational and informational children’s programming during weekdays instead of solely on Saturday mornings.¹⁴ Consistent with the third criterion, we find that allowing KMTF to operate in tandem with KTVH-DT will help produce public interest benefits by making KMTF a more viable local voice in the market through increased community involvement and enhanced program offerings, notably local news, local weather, and children’s programming.

With regard to the fourth criterion, the Applicants submit the Declaration of Frank J. Higney, Vice President of Kalil and Company (“Kalil”), a media brokerage and consulting firm and state that the only offers extended for KMTF in the past two years was conditioned upon offers to also purchase KTVH-DT.¹⁵ In March 2012 Kalil was retained to solicit interest in KTVH-DT. As part of this effort, Kalil contacted more than 30 potential buyers. Eight expressed interest, and four made offers, three from out-of-market buyers and one from an in-market buyer. According to Kalil, because KMTF’s advertising time is sold by KTVH-DT pursuant to a JSA, prospective buyers viewed KMTF as a “value added asset” to KTVH-DT and expressed interest in also buying KMTF.¹⁶ Kalil states that “each of the prospective

¹⁰ File No. BALCDT-20140519AHJ, Attachment 18 (Amended Failing Station Waiver Request) at 2 and Attachment A (“Waiver Request”).

¹¹ Waiver Request at 2-3 and Attachment B.

¹² *Id.* at 3 and Attachment D. The Commission’s 2014 *Quadrennial Review* made JSAs that involve the sale of more than 15 percent of another in-market station’s local advertising time attributable. 2014 *Quadrennial Review*, 29 FCC Rcd at 4527, para. 340. As previously noted, all sharing agreements between KMTF and KTVH-DT, including the existing JSA and SSA, will be terminated upon consummation of the instant transaction. *Supra*, note 1.

¹³ *Id.* at Attachment D (showing negative annual cash flow for the three prior consecutive years).

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at 4 and Attachment C.

¹⁶ *Id.* at Attachment C, paras. 3-6

buyers only considered and included KMTF in its offer for KTVH...no prospective buyers considered or expressed interest in KMTF as a stand-alone property.”¹⁷

While, as an initial matter, Kalil did not market KMTF independently, the efforts Kalil undertook after prospective buyers began to express interest in KMTF are indicative of efforts that a broker would likely undertake to sell KMTF on an independent basis. Note 7 of Section 73.5555 of the Commission’s rules identifies “one way” to demonstrate compliance with the fourth criterion is to include “an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit and that no reasonable offer from an entity outside the market has been received.”¹⁸ In light of the facts and circumstances by which the sale of KMTF came about, it would be contrary to the public interest to now require Rocky Mountain to independently list KMTF for sale when it is clear, based on Kalil’s efforts, that prospective buyers were only interested in purchasing KMTF along with KTVH-DT.¹⁹ It is clear that the only interest in acquiring KMTF was contingent upon acquisition of the much stronger KTVH-DT. Applicants have adequately demonstrated that Gray is the only reasonably available candidate willing and able to acquire and operate KMTF and we find that selling KMTF as a standalone station is not only highly unlikely, but if possible would likely result in an artificially depressed price.

We are persuaded that grant of a waiver is warranted on the grounds that KMTF is a “failing” station. The combined operation of KMTF and KTVH-DT will pose minimal harm to our diversity and competition goals because the financial situation of KMTF hampers the station’s ability to be a viable voice in the market absent a “failing” station waiver. We find that combined operation of KTVH-DT and KMTF will benefit the public interest. In view of the foregoing, and having determined that the applicants are fully qualified, we also find that grant of the above-referenced assignment application would serve the public interest, convenience and necessity.²⁰

ACCORDINGLY, IT IS ORDERED, That the application for assignment of the license of KMTF(TV), Helena, Montana, from Rocky Mountain Broadcasting Company to Gray Television Licensee, LLC, File No. BALCDT-20140519AHJ, pursuant to Section 310(d) of the Communications Act of 1934, 47 U.S.C. § 310(d), **IS GRANTED.**

IT IS FURTHER ORDERED, That the request by Gray Television Licensee, LLC, for a waiver of Section 73.3555 of the Commission’s rules, 47 C.F.R. §73.3555, pursuant to Note 7, the “failing” station waiver standard, to permit common ownership of Station KTVH-DT and Station KMTF(TV), Helena, Montana, **IS GRANTED.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ *Id.* at Attachment C, para. 6

¹⁸ 47 C.F.R. § 73.3555, Note 7.

¹⁹ Kalil states that by being located in one of the smallest DMAs in the country (number 205 out of 210), finding an independent buyer for KMTF is “extremely negligible” and as a “CW Plus” affiliate KMTF’s programming is not sufficient to generate revenue that would support a standalone operation. Waiver Request at Attachment C, para. 7.

²⁰ 47 U.S.C. § 310(d).