

**Compliance With Local Television Multiple Ownership Rule,
And Request for Television Satellite Station Status**

The applicant, Pocatello Channel 15, L.L.C. ("Pocatello-15"), is the licensee of commercial full power television stations KBEO(TV), Jackson, Wyoming (Facility ID No. 35103, "KBEO") and KPIF(TV), Pocatello, Idaho (Facility ID No. 86205, "KPIF"), both of which are located in the Idaho Falls-Pocatello, Idaho Designated Market Area ("DMA"). Pocatello-15 holds construction permits to flashcut the stations to digital television ("DTV") on their analog channels, for both KBEO (File Nos. BPCDT-20080304ACP, as modified by BMPCDT-20080620ANL)¹ and KPIF (File Nos. BPCDT-20080304ACO, with minor modification of permit application BMPCDT-20080620AHZ pending, to maximize KPIF's DTV facilities). In each case, the originally granted post-transition DTV facilities were based upon the effective radiated power ("ERP") and antenna height above average terrain ("HAAT") specified for the stations in the final post-transition DTV table of allotments, which were adopted by the Commission to allow KBEO and KPIF to replicate their analog Grade B contour facilities with their DTV facilities, but in each case based on using the existing antenna, transmitter and transmission line used with the stations' licensed analog facilities (rather than the hypothetical antenna pattern assumed for the post-transition DTV table of allotments), resulting in a slight increase in the DTV coverage area by grant of a waiver of the Commission's "no expansion" freeze or policy.

The minor modification of DTV permit application for KPIF proposes to increase the ERP for KPIF's DTV facilities from the currently authorized 239 kilowatts to the maximum 1000 kilowatts permitted for DTV stations on UHF channels, resulting in an increase in the DTV service coverage area.

Under Section 73.3555(b) of the Commission's rules, 47 C.F.R. § 73.3555(b), the local television multiple ownership rule, an entity may own two commercial full power television stations in a DMA only if either: (i) the Grade B contours of the stations do not overlap; or (ii) a second criteria based on the number of independently owned and operated stations in the DMA, which is not applicable to the Idaho Falls-Pocatello DMA. *Id.* Pocatello-15's common ownership of the two stations was approved by the Commission on a waiver basis, based on the *de minimis* amount of predicted analog Grade B contour overlap, relying in part on an OET-69/Longley-Rice showing (see File Nos. BTCCT-20030421ABT and BMPCT-20030619ABA). However, the Commission has not amended the local television multiple ownership rule (or adopted new rules) for application to full power DTV stations after the DTV transition, nor do

¹ Pocatello-15 has discovered a typographical error in the geographic coordinates in the DTV maximization application and granted construction permit for KBEO (File No. BMPCDT-20080620ANL), and will be filing an application for a further minor modification of KBEO's DTV permit to correct the coordinates. Specifically, the geographic coordinates are off by 1 second of north latitude; the correct north latitude should be 42°E 38' 14", and not the 43°E 38' 14" north latitude on the currently granted maximized DTV flashcut construction permit. This exhibit and the supporting technical exhibit are based on the correct coordinates.

DTV stations have a “Grade B” contour. As a result, Pocatello-15 could not certify compliance with the local television multiple ownership rule in response to Section II, Question 4(b) of this application, or in the previously granted DTV flashcut application for KPIF (File No. BPCDT-20080304ACO), which also included a request for satellite television station status for KBEO (the Commission granted both the original KPIF and KBEO flashcut DTV construction permits, and the KBEO DTV maximization construction permit, without directly addressing the request for satellite television station status for KBEO).

Therefore, Pocatello-15 again requests that the Commission grant television satellite station status for KBEO, permitting Pocatello-15 to operate KBEO as a satellite of KPIF, with KPIF as the primary or parent station. KBEO has been operating at a substantial loss every year since first going on the air as a new station in 2001, struggling to attract an affiliation or programming due to the small size of the market (with only about 11,000 people within its analog Grade B contour, by the standard contour prediction method, or about 20,000 people based on an OET-69/Longley-Rice study). Operation of KBEO as a satellite of KPIF would permit Pocatello-15 to achieve certain economies that would greatly improve the service to the public provided by KBEO.²

Criteria For Television Satellite Status. The Commission has established that a request for television satellite station status is entitled to a presumption that the proposed satellite operation is in the public interest if the following three criteria are met: (1) there is no overlap of predicted principal community (or “city grade”) contours between the proposed parent and television satellite stations; (2) the proposed satellite station 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.” See Television Satellite Stations Review of Policy and Rules, 6 FCC Rcd 4212, 69 RR 2d 663 at ¶¶ 1 and 12 (1991)(the “TV Satellite Order”). Applicants that can not meet all three criteria for the presumption may still gain approval for television satellite status on an *ad hoc* basis if they can demonstrate other compelling reasons why the public interest would be served by the grant, based on economic considerations. *Id.* at ¶¶ 2 and 14.

With regard to the first criteria, there is no overlap between the predicted analog city grade contours of KPIF (its 80 dBu contour) and KBEO (its 77 dBu contour); although there is some overlap between the predicted analog Grade B contours for KPIF and KBEO (their 64 dBu and 56 dBu contours, respectively), there is no overlap between the stations’ predicted analog city grade (their 80 dBu and 77 dBu contours, respectively) or Grade A contours (their 74 dBu

² In the alternative, and since the DTV facilities specified in the post-transition DTV table of allotments and in the DTV permit applications are intended to replicate the station’s existing analog Grade B service areas, Pocatello-15 requests that the Commission “grandfather” the prior waiver of the local television multiple ownership rule to permit Pocatello-15 to continue to own and operate both KBEO and KPIF after the DTV transition.

and 71 dBu contours, respectively).³ For the proposed DTV facilities, although there is overlap of the predicted DTV principal community contours (which are the 43 dBu contour for KBEO and the 48 dBu contour for KPIF),⁴ a more detailed OET-69/Longley-Rice study shows that there is no overlap of the DTV principal community contours with respect to population (and only about an unpopulated 14 square kilometers of overlap with respect to area) expected due to intervening terrain. See Satellite Request Technical Exhibit at 1-2, and Figures 2 (terrain profile) and 3 (OET-69/Longley-Rice coverage map). As a result, the first presumptive criteria for television satellite station status, of no overlap of city grade contours, should be met for the proposed DTV facilities.

Turning to the second criteria, KBEO provides service to an underserved area, based on the “transmission test”. Id. at ¶ 19. Under the transmission test, “a proposed television satellite station’s community of license is considered underserved if there are two or fewer full-service stations already licensed to it”, considering all full power television stations (including commercial or noncommercial educational television stations, and other television satellite stations, but not low power television or television translator stations). Id. As reflected in Sections 73.606(b) and 73.622(i) of the Commission’s rules, 47 C.F.R. §§ 73.606(b) and 73.622(i), the analog and digital television tables of allotment, there are only two full power television allotments for Jackson, Wyoming, on Channels 2 and 11. Id. Channel 11 is licensed to KBEO, and per the Commission’s Consolidated Data Base System and industry reference books, the other allotment, Channel 2, is licensed to KJWY(TV), Jackson, Wyoming (Facility ID No. 1283, “KJWY”).⁵ Since there are only two full power television stations (analog or digital) licensed to KBEO’s community of license of Jackson, Wyoming, the second presumptive criteria for television satellite station status, that KBEO would serve an “underserved area”, is met.

Last, multiple efforts have been made to sell KBEO over the seven years since it began operation, including twice listing the station with a broker, but no buyer ready and able to purchase and operate KBEO as a full-service station has been found. See TV Satellite Order at ¶ 20. Attached to this Exhibit 5 is a letter from media broker Donald R. Bussell of Questcom Media Brokerage, Inc. (“Questcom”), summarizing his efforts to identify a buyer interested in purchasing KBEO, during the first brokerage period in 2001 (the “Questcom Letter”). Bussell documents that he identified and contacted qualified potential buyers during the first brokerage period, and provided due diligence information on KBEO to any such potential buyers that expressed an interest. Pocatello-15 notes that KBEO was also listed with Questcom for a second

³ See File Nos. BTCCT-20030421ABT and BMPCT-20030619ABA. See also, Technical Exhibit of du Treil, Lundin & Rackley, Inc. dated September 26, 2008, a copy of which is attached to Exhibit 5 (the “Satellite Request Technical Exhibit”), at Figure 1.

⁴ See Satellite Request Technical Exhibit at Figure 1.

⁵ Pocatello-15 notes that KJWY is itself already licensed as a television satellite station; its parent is the NBC affiliate in the market, KPVI(TV), Pocatello, Idaho (Facility ID No. 1270, “KPVI”).

brokerage period in 2002, and Questcom presented KBEO to an additional qualified potential buyer in 2002 between the two brokerage periods. Despite Bussell's best efforts, no offers were made for KBEO as a result of his brokerage efforts; Pocatello-15 understands that these efforts were unsuccessful in large part due to a lack of interest by any qualified party in purchasing KBEO for a fair price and operating KBEO as a stand-alone full service station.

In addition to Bussell's efforts, Pocatello-15 (or its commonly-owned predecessor, KM Television of Jackson, L.L.C., or "KM"), directly or through its counsel, has contacted, or in a couple of instances were contacted by, approximately 8 to 10 parties that expressed an interest in purchasing KBEO; Pocatello-15 or KM provided due diligence materials and had negotiations with several of these parties, only one of which resulted in an offer. The one offer received for KBEO initially was for a purchase price of \$200,000, which is 20% less than the \$250,000 fair market value of the station as estimated by Bussell, see Questcom Letter at 1, and also was significantly less than the out-of pocket expenses in acquiring the construction permit and purchasing the transmission and other equipment to construct the station⁶ (the interested party that made this initial offer later commented that it saw no value to KBEO, even as a satellite for another station in the market in which it had an interest, at least not enough to pay more than a nominal amount for it, which ended the negotiations).

Pocatello-15 has found no other party interested in making an offer for, or having discussions or negotiations about, the purchase of KBEO since that time. Pocatello-15 notes that parties proposing television satellite station status have not been required to show that there are no buyers even at significantly less than the station's fair market value. Based on Pocatello-15's efforts and as documented by the Questcom Letter, Pocatello-15 has been unable to secure a qualified and interested buyer "ready and able to ... purchase and operate [KBEO] as a full-service station."

Other Compelling Public Interest Reasons Also Support The Grant Of Television Satellite Status, On An *Ad Hoc* Basis. Pocatello-15 submits that KBEO should qualify for satellite television station status by satisfying the three presumptive criteria established by the TV Satellite Order. However, in the event that the Commission finds for what ever reason that KBEO does not satisfy all three presumptive criteria, Pocatello-15 respectfully requests that the Commission consider this request for television satellite status for KBEO on an *ad hoc* basis, as expressly permitted by the TV Satellite Order, based on the economic considerations and other

⁶ Pocatello-15's commonly-owned predecessor-in-interest, KM, paid out \$60,000 in settlement payments to acquire the construction permit for KBEO, and over \$180,000 just for the transmission equipment to build out the station; with the cost of studio equipment, engineering fees, legal fees and installation costs, Pocatello-15 easily has invested over \$300,000 just for the construction of the station (not including any annual operating costs). The offer of \$200,000 for KBEO (which was later withdrawn), therefore, would be for less than two-thirds of the out-of-pocket costs to build the station.

public interest reasons stated herein.⁷ *Id.* at ¶¶ 2 and 14. In support of this request for consideration on an *ad hoc* basis, Pocatello-15 respectfully submits the following public interest arguments:

- (a) **The small size of the Jackson market.** Based on 2000 U.S. Census data, only 8,647 people live in Jackson, Wyoming, and only 18,251 people live in Teton County, Wyoming, where Jackson is located. Furthermore, only 22,722 people (2000 U.S. Census data) are estimated to be within KBEO's proposed 36 dBu noise-limited DTV service area. This small population in the market served by the proposed satellite, KBEO, is consistent with the size of the markets found small enough to justify satellite status for other television stations.⁸

Pocatello-15 also notes that KBEO and Jackson are currently located in the Idaho Falls-Pocatello Designated Market Area ("DMA"), which ranks as only DMA 165, a relatively small television market with a population of about 319,000 people and 108,000 television households;⁹ KBEO therefore serves only about 10% or less of the population or households in its DMA, leaving it at a distinct competitive disadvantage (as far as both ad sales and for network affiliations or other programming) compared to the other stations in its DMA.

- (b) **The only other full power television station in the market is already a satellite.** The Commission has already found that it would serve the public interest for the only other full power television station licensed to Jackson (KJWY) to operate as a satellite of a Pocatello station (KPVI); for the same

⁷ Pocatello-15 submits that to the extent the Commission may find that KBEO may not fully comply with one or more of the presumptive criteria, any such deficiency should be minimal. The fact that the "degree of departure from the presumptive criteria" is minimal should influence - - and in this case reduce - - the other compelling public interest reasons that may need be demonstrated for a grant of satellite status. See TV Satellite Order at ¶ 14. Regardless of that standard, however, Pocatello-15 submits that its *ad hoc* showing should be satisfactorily compelling for grant of satellite status for KBEO.

⁸ See, e.g., Marri Broadcasting, L.P., 16 FCC Rcd 10772 at ¶¶ 7-8 (Video Services Division, 2001)(citing sparse population).

⁹ See 2003 Television Yearbook at 91 (BIA Financial Network, Inc.)(*"Yearbook"*). The Commission has recognized sparse population and the "lack of economic base" as factors supporting grant of satellite status on an *ad hoc* basis. See, e.g., Marri Broadcasting at ¶ 8. The Commission has also recognized that stations in smaller, lower-ranked DMAs may merit satellite status, including for DMAs such as the Wausau-Rhineland Wisconsin DMA (DMA 136 with 162,870 households) and Traverse City-Cadillac Michigan DMA (DMA 118 with 217,730), that are significantly larger than the Idaho Falls-Pocatello DMA (DMA 166 with 108,000 households). See Scanlan Television, Inc., 15 FCC Rcd 2691 at ¶ 5 (Mass Media Bureau, 2000).

reason, KBEO (which is similarly situated to KJWY) should also be permitted to operate as a television satellite station. The Commission has considered whether other stations licensed to the same community as a proposed satellite already are satellites in granting other requests for television satellite status.¹⁰

- (c) **Operating KBEO as a full service station is not economically viable.** First, Pocatello-15 submits the opinion of an experienced media broker that operating KBEO as a full service station would not be economically viable, which is reflected in part by the fact that no qualified buyers expressed any interest in purchasing and operating KBEO as an independent full service station, see Questcom Letter at 1-2, which also has been Pocatello-15's observation as well. In addition, Pocatello-15 attests that KBEO has in fact been operating at an annual loss since it went on the air in 2001.¹¹
- (d) **Operating KBEO as a satellite will allow KPIF to operate on a more equal and competitive basis with other stations in the market.** Pocatello-15 also notes that the Idaho Falls-Pocatello DMA (DMA rank 165) would have at least five independent commercial full power television stations (six full power stations counting the noncommercial educational television station) competing even if KBEO becomes a television satellite station, plus a construction permit has been granted for a sixth commercial full power television station, and there are applications pending for a seventh such station in the market. These five stations,

¹⁰ See, e.g., Emmis Television License Corporation et al., 15 FCC Rcd 18130 at ¶ 9 (Mass Media Bureau, 2000)(the Commission cited as support for grant of satellite status the fact that all other full power television stations licensed to the same community of license as the proposed satellite were already television satellite stations).

¹¹ For example, in 2003 KBEO operated at a net loss of over \$110,000, sustaining operation only through the infusion of cash from Pocatello-15's principal owner; Pocatello-15 has documented this loss more fully in a request for waiver or reduction of its annual regulatory fees filed August 18, 2004 and on file with the Commission. In the most recent three full calendar years for which financial statements are available, KBEO has operated with net losses of about \$75,000 in 2004, of about \$102,000 in 2005, and of about \$88,000 in 2006, and Pocatello-15 does not expect any change in this pattern for the periods since 2006. By his signature on the application to which this exhibit is attached, Kevin Bae, the Vice President and Secretary of Pocatello-15, certifies under penalty of perjury that Pocatello-15 has operated at a net loss each year since KBEO first was placed on the air in 2001, and that all facts stated but not otherwise supported herein are true and correct to the best of his knowledge and belief; financial statements to support these statements would be submitted to the Commission staff on a confidential basis upon request. The Commission has considered the fact that a proposed satellite station has never been profitable in granting satellite status on an *ad hoc* basis in similar cases. See, e.g., Scanlan Television at ¶ 5.

soon to be six (and maybe eventually seven) commercial television stations are competing for only about \$11.8 million dollars in gross ad revenues, the bulk of which will be taken by the affiliates of the top four major networks, leaving an insufficient amount of revenues for KBEO to even come close to covering its operating costs. Most (if not all) of the competing stations operate with the benefit of either a television satellite station in Jackson (i.e., KJWY is the satellite for KPVI) or television translator stations there (for example, ABC affiliate KIFI(TV), Idaho Falls, Idaho appears to have translator K13FZ in Jackson). Grant of satellite status to KBEO would allow Pocatello15 and KPIF to compete on a more equal footing with other stations in the DMA. See Emmis at ¶ 10.

- (e) **The potential population served by KBEO is limited by terrain and sparse population density.** The actual geographic area that KBEO can effectively serve is greatly limited by the mountainous terrain that encircles Jackson (hence the “hole” of Jackson Hole), with some mountains over 13,000 feet above mean sea level (“AMSL”) in the mountain ranges surrounding Jackson, and including directly between Jackson and the named communities of the DMA, Pocatello and Idaho Falls. Combined with the low population density in the area, KBEO would be unable to actually serve any significantly greater population even if it greatly increased its effective radiated power. These factors have been found to support grant of television satellite status in other cases.¹²
- (f) **Pocatello-15 expects to be able to attract and offer better programming if KBEO may be operated as a television satellite station.** Although many of the major or emerging networks are not available off-the-air in Jackson, Pocatello-15 generally has found that they still were not interested in an affiliation with KBEO, at least not unless either KBEO paid substantial reverse compensation (which would make operating KBEO even more uneconomical than it already is) or Pocatello-15 could ensure off-the-air coverage in the named major cities in the DMA, Pocatello and Idaho Falls (which KBEO is not capable of doing on a stand-alone basis due to distance and terrain factors). The Commission has considered the effect of granting satellite status on a station’s ability to keep (or in this case, obtain) network affiliations and other programming. See Scanlan Television at ¶ 9.

¹² See, e.g., Ackerley Group, Inc., 17 FCC Rcd 10828 at ¶¶ 41-42 (2002)(citing difficult terrain, and inadequate signal coverage); Marri Broadcasting at ¶¶ 7-8 (market geographically fragmented, and sparsely populated); LIN Television of San Juan, Inc., 16 FCC Rcd 2297 at ¶ 4 (Mass Media Bureau, 2001)(limited signal propagation due to mountainous terrain).

Based on the compelling public interest factors demonstrated by Pocatello-15 herein - - the small size of the DMA in general and the Jackson market in particular, the lack of economic viability for a stand-alone full service television station in those markets, the difficult mountainous terrain and sparse population that limit the effective signal coverage of KBEO, and the ability of KBEO to compete for ad sales and network affiliations or other programming against other full power stations in the DMA, including those in the primary communities of Pocatello or Idaho Falls in the DMA with existing television satellite or translator stations in Jackson - - Pocatello-15 submits that the Commission should grant television satellite station status to KBEO on an *ad hoc* basis, if not on a presumptive basis.