

Request for Continuing Satellite Waiver

The transferee certifies that the instant application complies with the Commission's multiple ownership rules except as they apply to the common ownership of television stations KELO-TV, Sioux Falls, South Dakota; KDLO-TV, Florence, South Dakota; and KPLO-TV, Reliance, South Dakota in the Sioux Falls (Mitchell) Nielsen Designated Market Area (DMA), and the common ownership of television stations WTEN(TV), Albany, New York and WCDC-TV, Adams, Massachusetts in the Albany-Schnectady-Troy DMA. These stations operate under a continuing waiver of the Commission's multiple ownership rules applicable to satellite television stations, and continuation of that waiver is respectfully requested to permit the stations to maintain their service to the public.

In *Television Satellite Stations Review of Policy and Rules*,¹ the Commission set out three criteria under which the Commission will presume that the common ownership of a main and satellite station is in the public interest. Those criteria are that: (1) there is no City Grade overlap between the parent and satellite stations; (2) the proposed satellite will provide service to an underserved area; and (3) no alternative operator is ready and able to construct or purchase and operate the satellite as a full-service station.²

With respect to the first criterion, as the digital transition has been completed, there is no equivalent contour to the City Grade contour for purposes of the waiver standard.³ Nevertheless, the satellite waivers for these stations were originally granted at a time when the stations were operating with analog contours, and were re-affirmed after the transition to digital television.

With respect to the second criterion, each of the communities of license of the satellite stations is underserved as there is only one television station licensed to the community. Specifically, Reliance is underserved because KDLO-TV is its only television station, Florence is underserved because KPLO-TV is its only television station, and Adams, Massachusetts is underserved because WCDC-TV is its only television station.⁴

With respect to the third criterion, it is submitted that there is no alternative operator ready and able to assume operation of these stations. The Commission's staff reviewed the facts surrounding these stations only two years ago and concluded that

¹ 6 FCC Rcd 4212 (1991).

² *Id.* at 4213.

³ *See, e.g., Selenka Communications, LLC*, 25 FCC Rcd 278 (MB 2010) at ¶ 3.

⁴ Except where otherwise noted, source for information regarding stations and markets discussed herein is Warren Communications News, Television & Cable Factbook 2012.

finding a buyer to operate the stations on a stand-alone basis was not feasible.⁵ At that time, the licensees were operating under the protection of bankruptcy and no plan or proposal for the company's future even contemplated operating KDLO-TV or KPLO-TV independently of KELO-TV, or WCDC-TV independently of WTEN(TV). While the licensee has now emerged from bankruptcy protection, the underlying facts concerning the operation of each of the stations remain, and dictate against these stations' independent operation.

Sioux Falls (Mitchell) DMA

KELO-TV signed on the air in 1953 as South Dakota's first television station. It shortly thereafter built its two satellite stations specifically to fill in areas in the enormous market that KELO-TV could not reach. KDLO-TV signed on the air in 1955 and KPLO-TV signed on in 1957. Both stations have operated continuously as satellites of KELO-TV ever since.⁶ The Sioux Falls, South Dakota DMA covers a vast area. It is made up of some 60 counties located in four different states and covers more than half of South Dakota. Each of the other Top Four network affiliates in the market is similarly licensed to the population center of Sioux Falls and operates one or more satellite stations to achieve better coverage of the DMA. Specifically, ABC affiliate KSFY-TV operates satellite KABY-TV in Aberdeen, South Dakota to cover the northern portion of the market and satellite KPRY-TV in Pierre, South Dakota, to cover the western portion. The Fox affiliate, KTTW-TV, operates KTTM-TV in Huron, South Dakota. The NBC affiliate, KDLT-TV, operates KDLV-TV in Mitchell, South Dakota. The vast area that each Sioux Falls primary station must serve dictates that each rely on satellite stations to reach the widely-dispersed viewers throughout the market.

Outside of the population center of Sioux Fall, the market is more rural and sparsely-populated. As a result, since neither KDLO-TV nor KPLO-TV can serve the population center of Sioux Falls, they would be severely disadvantaged with respect to other stations in the market.

Finally, as indicated above, each of the Top Four television networks is carried on a primary station licensed to the population center of Sioux Falls. Were either KDLO-TV or KPLO-TV to be operated on a stand-alone basis, it is likely that neither could secure a Top Four network affiliation agreement.

Albany-Schnectady-Troy DMA

The situation for WCDC-TV is similar. First, it appears that WCDC-TV too has operated as a satellite station ever since it signed on the air in 1956. Second, if WCDC-TV were to attempt to operate as a stand-alone station, it is likely that the station would not be able to secure a network affiliation. The DMA has a full complement of ABC (WTEN), NBC (WNYT), CBS (WRGB), and FOX (WXXA) network affiliates. In addition, ABC and NBC affiliates are licensed to the adjacent Springfield-Holyoake

⁵ See *New Young Broadcasting Holding Company, Inc.*, 25 FCC Rcd 7518 (MB 2010).

⁶ See www.keloland.com/ourhistory/, last visited August 8, 2012.

market as well, making the need for an additional outlet for those networks even less likely. Finally, WCDC-TV would be disadvantaged as a stand-alone station with respect to its competitors because of its less complete coverage of the market. A review of the station's contour shows that of the 14 counties in the DMA, WCDC-TV only has complete coverage of three. In contrast, all of the non-satellite stations in the market appear to wholly encompass 11 counties and one station completely covers 13 of the counties, plus all but a portion of the 14th county.

The Commission has previously acknowledged that long-term satellite operation indicates that stand alone operation is likely to be impossible.⁷ The Commission has also recognized that the unavailability of a network affiliation agreement and compromised contour coverage of a market are likely deterrents to a buyer coming forward to operate a satellite station as a stand-alone station.⁸ For all of these reasons, the Commission should grant the continuing satellite waivers applicable to stations KDLO-TV, KPLO-TV, and WCDC-TV.

⁷ See e.g., *Shareholders of Tribune Co. and Sam Zell*, 22 FCC Rcd 21266 (2007) at ¶ 49 (noting that the station had continuously operated as a satellite since it went on-air in 1988 and that the FCC had approved extensions of the satellite waiver for the station on four previous occasions).

⁸ See e.g., *Selenka Communications* at ¶ 6 (lack of availability of a major network affiliation among factors relevant to grant of satellite waiver); *Kathleen A. Kirby, Esq.*, 23 FCC Rcd 16444 (MB 2008) (limited coverage area, lack of network affiliation, and length of time operating as a satellite relevant to grant of satellite waiver); *Esteem Broadcasting of North Carolina LLC*, 22 FCC Rcd 19232 (MB 2007) (limited coverage area, lack of network affiliation, and length of time operating as a satellite station relevant to grant of satellite waiver).