

KGCW(DT), Burlington, IA  
FCC Form 315  
Exhibit 20

**REQUEST FOR FAILING STATION WAIVER**

Nexstar Broadcasting, Inc. (“Nexstar”), the proposed transferee of KGCW(DT), Burlington, Iowa and, via a separate application, the proposed assignee of WHBF-TV, Rock Island, Illinois (collectively, the “Stations”), hereby requests a waiver of Section 73.3555(b), the local television multiple ownership rule, to permit Nexstar’s common ownership of the Stations based on KGCW’s status as a “failing station.”<sup>1</sup>

**I. KGCW MEETS THE COMMISSION’S CRITERIA FOR A FAILING STATION WAIVER**

The Commission’s local television multiple ownership rule precludes common ownership of the Stations absent grant of a waiver. The Stations are both located in the Davenport, IA/Rock Island-Moline, IL Designated Market Area (“DMA”), as defined by Nielsen, and have overlapping Grade B contours.<sup>2</sup> In addition, there are fewer than eight independently owned and operated television voices in the market. Accordingly, Nexstar requests a waiver of the Commission’s multiple ownership rules pursuant to the failing station exception.<sup>3</sup>

The Commission recognizes that a waiver of the television duopoly rule will serve the public interest when the acquisition involves a “failing” station – a station that has been struggling for “an extended period of time both in terms of audience share and financial performance.”<sup>4</sup> The Commission presumes that such a waiver serves the public interest when

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<sup>1</sup> This request is associated with Nexstar’s application to acquire control of KGCW. WHBF-TV is currently licensed to Coronet Communications Company (“Coronet”). On September 26, 2013, in connection with a separate transaction, Coronet filed an assignment application seeking FCC approval to assign WHBF-TV to Nexstar. *See* FCC File No. BALCDT-20130926ARO. That application is pending.

<sup>2</sup> *See Attachment A.* Although Grade B contours are no longer relevant in the digital environment, the Stations’ digital Noise Limited Service contours (NLSC), which the Commission generally considers equivalent to analog Grade B contours, also overlap.

<sup>3</sup> *See* 47 C.F.R. § 73.3555(b) and Note 7, ¶ 2.

<sup>4</sup> *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 at ¶ 79 (1999) (“Local Ownership Order”).

the following four criteria are satisfied: (1) at least one of the merging stations has had low all-day audience share (4% or lower); (2) the financial condition of one of the merging stations is poor; (3) the merger will produce public interest benefits; and (4) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station.<sup>5</sup> As shown below, each prong of the failing station test is satisfied with respect to KGCW.

**A. KGCW's All-Day Audience Share Is No More Than 4%**

The first criterion for a failing station waiver is that the failing station have all-day audience share of no more than 4%.<sup>6</sup> The Commission did not establish a specific time period over which the failing station's audience share should be reviewed when it adopted the failing station waiver standard. In the past, however, the Commission has reviewed audience share data for the three years immediately prior to the filing of the application.<sup>7</sup> KGCW easily satisfies the first prong of the Commission's test.

KGCW has a history of all-day audience shares well below 4%. KGCW's highest audience share was 1.9, earned in May 2011.<sup>8</sup> Its lowest, conversely, was 1.1, earned in February 2011.<sup>9</sup> Moreover, over the most recent 15 periods in which KGCW's share was measured, the station averaged only a 1.42 share, well below the 4% benchmark set by the Commission.<sup>10</sup> This evidence, over a period of more than three years, demonstrates that

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<sup>5</sup> *Id.* ¶ 81.

<sup>6</sup> *Id.*

<sup>7</sup> *See, e.g., KSMO Licensee, Inc.*, 20 FCC Rcd. 15254, 15258 (MB 2005).

<sup>8</sup> *See Attachment B* (Nielsen Ratings Information).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

KGCW's low audience share is in no way an aberration. KGCW clearly meets the first criterion for a failing station waiver.

**B. KGCW's Financial Condition Is Poor**

The second criterion is that the failing station has had negative cash flow from its operations for the three consecutive years immediately prior to the application requesting consent to the proposed transfer.<sup>11</sup> As demonstrated by the financial information attached hereto, the current financial condition of KGCW is poor.<sup>12</sup> Specifically, KGCW has incurred operating losses over the last three full years. In 2010, the station had a net income loss of \$277,046; in 2011, its net income loss was \$36,587, and in 2012, it operated with a net income loss of \$228,854.<sup>13</sup> Projections for 2013 indicate that the station will suffer a loss of \$357,200 in net income.<sup>14</sup> The Commission consistently has recognized such inability to generate positive cash flow and operating income as determinative of poor financial condition for purposes of granting a failing station waiver.<sup>15</sup> Accordingly, KGCW's current and past financial condition satisfies the second prong of the Commission's test.

**C. Nexstar's Acquisition of KGCW Will Produce Public Interest Benefits**

The third criterion for a failing station waiver is that the proposed transfer will produce tangible and verifiable public interest benefits that outweigh any harm to competition and

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<sup>11</sup> Local Ownership Order, ¶ 81.

<sup>12</sup> See Attachment C (KGCW – Income Statement). KGCW's financial statements have been maintained on a combined basis with a commonly owned station. The financial information has been broken out for KGCW in the attached exhibit.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., *Hispanic Keys Broadcasting Inc.*, 19 FCC Rcd. 4603, 4605 (MB 2004).

diversity.<sup>16</sup> The proposed combination of WHBF-TV and KGCW would provide programming and public interest benefits that KGCW could not provide absent common ownership with WHBF-TV. These benefits include increased local news and public affairs programming, and non-broadcast activities designed to engage the community and promote charitable causes. These tangible and verifiable public interest benefits more than outweigh any speculative harm to competition and diversity in the market.

Following its acquisition of KGCW, Nexstar is committed to providing the station with the resources and expertise necessary to augment KGCW's local news, weather, and sports programming. Currently, KGCW airs a late night thirty minute newscast (a repeat of a commonly owned station's nightly newscast that is produced by a third party), and an early morning syndicated agriculture news program. Nexstar's common ownership of WHBF-TV and KGCW would allow KGCW to augment this programming by broadcasting an additional nightly newscast during prime time, initially contemplated to be a rebroadcast of WHBF-TV's early evening newscast. Eventually, Nexstar hopes to begin producing a separate local nightly newscast for KGCW. Further, KGCW will join other stations owned by Nexstar in both Iowa and Illinois in implementing statewide news coverage on a regular basis. KGCW is also committed to providing additional local emergency information and weather coverage to its viewers following its acquisition by Nexstar. Additionally, KGCW plans to produce and air a sports program focused on local high school and collegiate athletics.

KGCW also anticipates expanding coverage of local issues of public importance. First, KGCW will begin broadcasting local political debates. Second, it will hold regular "ascertainment" meetings with stakeholders to better understand issues of concern to the

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<sup>16</sup> Local Ownership Order, ¶ 81.

community. The station will then produce and air programming focused on these issues. Finally, the station will seek to work with the religious community to record and broadcast religious services so that individuals unable to leave their homes may “attend.”

Nexstar’s common ownership of WHBF-TV and KGCW, moreover, would allow KGCW to expand its work in the community. Following its acquisition by Nexstar, KGCW anticipates co-sponsoring various events designed to tangibly and directly benefit the community, including blood drives, food bank donation programs, home building projects for low income families, and coat/clothing drives. KGCW will actively encourage its viewers to take part in these efforts, and station staff members will participate as well, working alongside viewers in a joint effort to better the community.

Common ownership of WHBF-TV and KGCW would pave the way for dramatic improvements in the broadcast of news, public affairs, and locally produced issue-responsive programming. Public outreach programs designed to benefit the local community would also be expanded. Accordingly, the third prong of the Commission’s standard for a failing station waiver is more than satisfied.

**D. There Is No Out-Of-Market Buyer for KGCW**

The fourth criterion of the Commission’s failing station standard is that the proposed assignee is the only reasonably available candidate willing and able to acquire and operate the station and that selling the station to an out-of-market buyer would result in an artificially depressed price.<sup>17</sup> In examining this factor, the Commission has required that “active and serious efforts” be made to market the station.<sup>18</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

In 2012, the parent company of KGCW retained Fred Kalil, a Vice-President with Kalil & Co., Inc., a well-known television brokerage company, to market the station (along with six other commonly owned stations) to out-of-market buyers.<sup>19</sup> Although Mr. Kalil had contact with more than two dozen potential purchasers, none submitted an offer to purchase KGCW on a stand-alone basis.<sup>20</sup> As Mr. Kalil explains in his declaration attached hereto, “KGCW-TV was an albatross among the Grant stations. ... As an affiliate of the CW, KGCW-TV would not be considered a top tier station. Most buyers we talk to are looking for Big 4 affiliates (ABC, CBS, FOX, NBC), especially when considering a standalone opportunity.”<sup>21</sup>

Mr. Kalil’s statement establishes that, although “active and serious” efforts were made to sell KGCW, Nexstar is the only reasonably available candidate willing and able to acquire and operate KGCW on a stand-alone basis, and selling the station to an out-of-market buyer on a stand-alone basis would result in an artificially depressed price. Thus, the Commission’s fourth criterion for a failing station waiver is met.

## **II. CONCLUSION**

As demonstrated above, the proposed assignment of KGCW to Nexstar satisfies all of the requirements of the Commission’s failing station waiver standard. KGCW’s all-day audience share has been far below 4% for at least the past three years. The station has suffered negative operating cash flow in each of 2010, 2011, 2012, and 2013. Common ownership of WHBF-TV and KGCW will result in tangible public interest benefits, including expanded local news, local

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<sup>19</sup> See Attachment D (Declaration of Fred Kalil).

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

outreach, and local public affairs programming. Despite extensive marketing efforts by Kalil & Co., Inc., no out-of-market buyer is reasonably available to purchase the station on a stand-alone basis. These factors clearly demonstrate that grant of the requested waiver of the Commission's television duopoly rule will serve the public interest.