Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application for Review of:	)	
	)	
FCC Consent to the Voluntary Assignment of the License for KSPR(TV), Springfield, MO	))	File No. BALCT-20061005ADY
	)	
From Piedmont Television of Springfield License, LLC (Assignor), to Perkin Media, LLC (Assignee)	)))	Accepted / Filed OCT 19 2015 Federal Communications Commission Office of the Secretary
	)	
Filed by Koplar Communications International, Inc. on August 29, 2007	))	
	)	

To: The Secretary's Office

MOTION TO DISMISS AS MOOT

Perkin Media, LLC ("Perkin"), by its attorneys, respectfully requests the Commission to dismiss as moot an Application for Review filed in 2007 by Koplar Communications International, Inc. ("KCI") in connection with the above-captioned transaction.[1] In that eight year old pleading, KCI objected to various agreements between Perkin and KY3, Inc. ("KY3") designed to support the operations of Perkin's KSPR(TV).[2] As described below, the Commission should dismiss as moot the *2007 KCI Appeal* because both the facts and the law to which KCI's objections relate have changed dramatically in the intervening years and the issues raised by KCI have been thoroughly overtaken by Commission decisions. Moreover, the policy questions raised by KCI are under active consideration by the Commission in a pending rulemaking proceeding. Even if KCI's concerns were relevant to the Springfield market in 2015

[1] Koplar Communications International, Inc., Application for Review, File No. BALCT-20061005ADY (filed Aug. 29, 2007) (the "*2007 KCI Appeal*").

[2] Id.

and beyond, which they are not, the Commission's active rulemaking proceeding would be the appropriate venue for their consideration.

The Springfield market has changed dramatically since 2007 and, most relevant to the *2007 KCI Appeal*, KY3 recently requested FCC consent to the assignment of the license of KYTV(TV) to a subsidiary of Gray Television, Inc. ("Gray").[3] KY3 had provided advertising sales services to Perkin under an Advertising Representation Agreement, held an Option Agreement giving it the right to purchase KSPR(TV), and had guaranteed the loan Perkin used to acquire the station. Gray has reported to the FCC in its pending application that it will not seek to acquire from KY3 any rights under the Option Agreement and upon its acquisition of KYTV(TV) Gray would not provide any advertising sales services to Perkin.[4] Moreover, Gray will not provide any loan guarantees to Perkin. Thus, upon consummation of Gray's acquisition of KYTV(TV), the very relationships between KYTV(TV) and KSPR(TV) that are the subject of the *2007 KCI Appeal* will not exist. And in 2011, four years after the *2007 KCI Appeal* was filed, a company under common control with KCI became the Springfield market's Fox affiliate. Market issues that KCI asked the Commission to resolve in the *2007 KCI Appeal* thus have been addressed by KCI's own free-market actions rather than by government mandate. The *2007 KCI Appeal* is moot.

Likewise, shifts in the legal landscape since 2007 have rendered the *2007 KCI Appeal* moot, as the Commission has and continues to address the "far-reaching policy implications" KCI identified in the appropriate Commission forum: notice and comment rulemaking. For example, KCI objected to certain Media Bureau precedent finding that joint sales relationships

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3 FCC File No. BALCDT-20150917ACT.

4 *See* Attachment 1, Letter from Kevin Latek, Gray Television, Inc., to Marlene Dortch, Federal Communications Commission, FCC File No. BALCDT-20150917ACT (Oct. 16, 2015).

among television licensees did not create an attributable ownership interest.[5] Last year, the Commission revised its rules to provide that television joint sales relationships involving more than 15% of a station's advertising time are attributable and to provide parties a reasonable amount of time to reform or unwind existing arrangements.[6] In the same document, the Commission affirmatively declined to regulate shared services agreements between television licensees, the subject of other KCI concerns, and requested further comment on such arrangements in a proceeding that remains pending at the Commission.[7] Also in 2014, the Media Bureau addressed transfer applications involving financing guarantees and options,[8] elements of the 2007 transaction to which KCI objected.[9] These new policy decisions have been implemented in transaction after transaction subsequent to these orders.[10]

In short, the issues KCI raised in 2007 have been passed upon by the Commission in rulemaking proceedings (or remain the subject of a pending proceeding) and the Commission's approach to existing relationships determined. The Commission repeatedly has declined to pre-judge the outcome of pending rulemaking proceedings in the context of individual station

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5 *E.g.*, 2007 KCI Appeal at 12-15.

6 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*, 29 FCC Rcd 4371 (2014); *see also STELA Reauthorization Act of 2014*, Pub. L. No. 113-200, § 104, 128 Stat. 2059, 2063 (2014). As noted above, upon Gray's acquisition of KYTV(TV), there no longer will be any joint sales relationship between KYTV(TV) and KSPR(TV).

7 *Id.*

8 Processing of Broadcast Television Applications Proposing Sharing Arrangement and Contingent Interests, *Public Notice*, 29 FCC Rcd 2647 (Med. Bur. 2014).

9 *2007 KCI Appeal* at 18-19. As noted above, upon Gray's acquisition of KYTV(TV), Gray will neither hold an option to purchase KSPR(TV) nor guarantee the Perkin loan.

10 *See, e.g.*, Shareholders of Media General, Inc., and LIN Media, LLC, *Memorandum Opinion and Order*, 29 FCC Rcd 14798 (Med. Bur. 2014); Merger of Journal Communications, Inc. and The E.W. Scripps Company, *Letter*, 29 FCC Rcd 14870 (Med. Bur. 2014); Granite Broadcasting, The Malara Broadcast Group, Quincy Newspapers, *Letter*, DA 15-1026 (Med. Bur. rel Sept. 15, 2015).

assignments and transfers,[11] and it should decline to do so here, in the context of an eight-year-old appeal of a long-closed transaction where the basic facts have completely changed.

As set forth herein, changes in the legal and factual landscape have rendered moot the *2007 KCI Appeal*. The Commission should dismiss it without delay.

Respectfully submitted,

Perkin Media, LLC

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October 19, 2015

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11 *High Maintenance Broadcasting, LLC*, FCC File No. BALCDT-20120315ADD, rel. Aug. 28, 2012; *ACME Television Licenses of Ohio, LLC*, 26 FCC Rcd 5198 (2011); *Free State Communications, LLC*, 26 FCC Rcd 10310 (2011); *ACME Television, Inc.*, 26 FCC Rcd 5189 (2011).

Attachment 1

October 16, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: KYTV, Springfield, Missouri
FCC File Number BALCDT - 20150917ACT

Dear Ms. Dortch:

On September 14, 2015, Schurz Communications, Inc. ("Schurz") reached an agreement with Gray Television Group, Inc. ("Gray") to sell all of its radio and television stations to Gray, including NBC affiliate KYTV in Springfield, Missouri. Three days later, the parties' licensee subsidiaries filed the requisite assignment applications with the FCC. By this letter, Gray amends its portion of those assignment applications to withdraw our request that the Commission afford Gray the same brief temporary waiver of its rules that the Commission has granted in other recent transactions that would have permitted us a reasonable period of time to unwind a pre-existing joint sales arrangement ("JSA").

As fully disclosed in numerous prior submissions by Schurz in several FCC proceedings, Schurz in 2006 helped to facilitate a new entrant, Perkin Media, LLC ("Perkin"), with its purchase of KSPR-TV in Springfield, Missouri. Among other things, at Perkin's closing the following year, Schurz provided a guarantee of Perkin's financing and in return obtained an option to acquire KSPR-TV and entered into a JSA for KSPR-TV. These arrangements proved widely successful for the local market as KSPR-TV has grown from a fourth-place station with no news into a strong competitor with an award-winning news product.

In applying to acquire the Schurz broadcast properties, Gray proposed a number of public interest benefits, including the immediate cessation of a JSA in Augusta, Georgia. The transaction also will bring about the end of a decades-long newspaper/broadcast cross-ownership arrangement in South Bend, Indiana, which incidentally will follow on Gray's termination of a similar grandfathered newspaper/ television cross-ownership situation in Cedar Rapids, Iowa. The Gray/Schurz assignment applications also proposed to finally resolve long-standing concerns about the inability of western Nebraska residents to obtain Nebraska news and the inability of northeastern Wyoming residents to watch Wyoming news. With regard to the Springfield market, we proposed to step into the shoes of Schurz by assuming the Schurz/Perkin option agreement and, for a limited period, the Schurz/Perkin JSA covering Perkin's KSPR-TV. We disclosed that Gray would not assume Schurz's guarantee of Perkin's indebtedness.

It had been our plan to unwind the Springfield JSA in a more orderly fashion after the closing yet before the statutory deadline for JSA attribution, just as other acquirers have been allowed to do. Having unwound no less than six existing and planned JSAs over several months last year, we know that unwinding the Springfield JSA at the same time as we unwind the Augusta JSA and as we close an extremely large transaction raises the risk of potentially inadvertent errors that might adversely effect station employees and station clients.

Unfortunately, a local competitor yesterday informed us that it might seek to challenge the Gray/Schurz assignment applications. The apparent basis for this potential challenge would be this competitor's now-moot pleading from 8 years ago and Gray's audacity to seek the same temporary JSA waiver for KSPR-TV that other, much larger companies have obtained from the Commission in the past year. This threat was leveled with the knowledge that other JSA waiver recipients did not pledge to unwind at least one other JSA immediately upon closing of their proposed transactions, as Gray has done here. It apparently also did not matter that Perkin's principal, Bill Perkin, is KSPR-TV's full-time General Manager who actively oversees his station on a daily basis, evidencing a level of ownership and control simply not present at many television stations today.

Gray and Schurz share a strong commitment to the communities we serve and the dedicated employees in all of our markets. Both of our companies' leadership believe it would be untenable to permit even the risk of a potential meritless pleading fostering uncertainty among the employees and delaying our ability to deliver on the public interest benefits outlined in the applications. Consequently, Gray hereby amends the pending Gray/Schurz assignment applications, including in particular the above-captioned application, as follows:

1. Gray no longer proposes to assume the existing JSA with Perkin covering KSPR-TV, which agreement will therefore terminate at the Gray/Schurz closing.

2. Gray withdraws its request for a waiver of the ownership rules to permit the continuation of the existing JSA with Perkin covering KSPR-TV.

3. Gray no longer proposes to assume the existing Option Agreement with Perkin covering KSPR-TV, which agreement will become an "Excluded Asset" under the Asset Purchase Agreement with Schurz.

We reiterate for the record that Gray will not assume the existing gaurantee of, nor will Gray on its own guarantee, Perkin's indebtedness.

With these revisions, we trust that any pleadings centering on the to-be-terminated Springfield JSA can be dismissed promptly without delaying the Commission's consideration of the Gray/Schurz assignment applications and their numerous public interest benefits. Please contact our respective counsel with any questions regarding this submission.

Respectfully submitted,

Kevin P. Latek
Senior Vice President, Gray Television, Inc.
Secretary, Gray Television Licensee, LLC

cc: Marci K. Burdick (Schurz Communications, Inc.)
Bill Perkin (Perkin Media, LLC)
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Certificate of Service

I, Dawn M. Sciarrino, certify that on this 19th day of October, 2015, I caused a copy of the foregoing Motion to Dismiss as Moot to be served on the following by hand delivery.

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