Federal Communications Commission
Washington, D.C. 20554

November 5, 2009

MTB Bridgeport-NY Licensee LLC
c/o Howard A. Topel, Esq.
Leventhal Senter & Lerman, PLLC
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809

Re: WSAH-DT, Bridgeport, Connecticut
File No. BPCDT-20080620ALT
Facility ID No. 70493

Dear Licensee:

This is with respect to the above-referenced application for a minor change in the licensed facility of station WSAH-DT, Bridgeport, Connecticut, filed by MTB Bridgeport-NY Licensee LLC ("MTB Bridgeport").[1] WSAH-DT is currently licensed and operating on channel 42, its post-transition DTV channel, at a site in Seymour, Connecticut, approximately 10 miles north of Bridgeport. In the application, MTB Bridgeport proposes to move the station's transmitter site 62 miles to the Empire State Building in New York, New York, increase effective radiated power and change the station's antenna from non-directional to directional. The proposed move would result in the loss of service to approximately 2.2 million persons who currently receive an over-the-air signal from WSAH-DT.[2]

It is well-settled that the Commission does not favor reductions in television service. Proposals that would result in a loss of TV service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits.[3]

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[1] Nave Broadcasting, LLC and Ventana Television, Inc., the licensees of low power television stations in or near New York City, separately objected to grant of the above-referenced application, but subsequently withdrew their objections pursuant to settlement agreements with MTB Bridgeport. WHDH-TV, the licensee of WHDH-DT, Boston, Massachusetts, filed a letter supporting grant of the WSAH-DT application, stating that grant of the application would eliminate any interference between WSAH-DT and WHDH-DT's post-transition digital operation on channel 42.

[2] WSAH-DT's signal presently serves most of the state of Connecticut and MTB Bridgeport's proposal would eliminate service to the majority of its existing service area in Connecticut. The proposal would result in new service to Westchester County, New York City, western Long Island, and a number of counties in New Jersey that are part of the New York City metropolitan area.

[3] *See West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc. v. FCC*, 460 F. 2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964) (finding that "once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public generally will be benefited"); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); *Hall v. FCC*,

"[O]nce a station begins operations, it is obligated to maintain service to its viewing audience absent off-setting public benefits to discontinuing service."[4] The Commission recently reiterated, in connection with the full-power television industry's transition to digital television, that "[i]t is a priority of the Commission that all Americans continue to receive the television broadcast service that they are accustomed to receiving following the digital transition."[5] MTB Bridgeport acknowledged in its application, and in a supplemental filing on October 2, 2008, the Commission's traditional concern with granting applications that will result in loss of existing service, but asserts that special circumstances in this case warrants grant of its application.

MTB Bridgeport argues first that no real loss of service will occur because it has entered into a "Multicast Channel Agreement" with LIN Television Corporation, the parent of the licensee of WTNH-DT, New Haven, Connecticut, providing for the broadcast of WSAH-DT's programming on WTNH-DT.[6] We conclude, however, that a channel lease agreement does not offset the loss of licensed service which would occur if WSAH-DT moved to the Empire State Building. While the channel lease agreement has a sixteen-year term, the agreement may be terminated by the mutual written agreement of the parties or by either party upon twelve months advance written notice.[7] In addition, the agreement does not require that MTB Bridgeport use the leased channel capacity to rebroadcast WSAH-DT programming; it may also choose to use the channel capacity for "such other lawful purpose as MTB shall elect."[8] Moreover, in order to avoid an unauthorized transfer of *de facto* control, in violation of section 310(d) of the Communications Act,[9] the licensee of WTNH-DT must retain control of the station's programming policies, including the right to reject programming.[10]

MTB Bridgeport also asserts that the operation of WSAH-DT from the Empire State Building would result in enhanced programming in the region. MTB Bridgeport states that it intends to provide a minimum of six hours daily of Chinese language programming to the substantial and growing Chinese American population within New York City.[11] MTB Bridgeport further states that its proposal "will further increase program diversity in the New York City metropolitan area through additional programming directed to Hispanic and/or other ethnic communities, as well as programming for the

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237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

[4] *KNTV License, Inc.*, 19 FCC Rcd 15479, n.11 (MB 2004).

[5] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, Notice of Proposed Rulemaking*, 23 FCC Rcd 18534, 18535 (2008).

[6] MTB Bridgeport states that WTNH-DT's 41 dBu contour completely encompasses WSAH-DT present 38 dBu contour. October 2, 2008 Supplement at 5.

[7] *Id.* at Exhibit 1, Section 7.

[8] *Id.* at Section 1(a).

[9] 47 U.S.C. § 310(d).

[10] *See Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981); *WGPR, Inc.*, 10 FCC Rcd 8140 (1995). In this regard, the agreement specifically provides that the licensee of WTNH-DT retains the absolute right to reject any programming that it deems in its sole discretion to be contrary to the public interest and to preempt programming in order to broadcast a program deemed by the licensee to be of greater national, regional or local interest. October 2, 2008 Supplement, Exhibit 1, Section 4.

[11] MTB states that the U.S. Census Bureau estimates that there are 434,617 Chinese living in New York City, and cites to a 2004 Census Profile by the Asian American Federation of New York Census Information Center indicating that more than 60% of Chinese Americans living in New York City have limited proficiency in English. Application, Exhibit 1 at 3. MTB also states that its proposal to bring new Chinese-language programming is supported by a number of organizations in New York City and provides letters of support from these organizations. *Id.* at Exhibit 1, Attachment 3.

majority English-speaking population in Bridgeport and within the station's service area."[12] In determining whether grant of an application would serve the public interest, convenience and necessity, however, "[t]he Commission does not scrutinize or regulate programming formats, nor does it take programming formats into consideration in making its licensing decisions."[13] In addition, there is no indication that other television broadcast services are inadequate to meet the needs of the Chinese and other foreign language speaking viewers in the New York metropolitan area.[14]

MTB also asserts in the application that grant will improve ownership diversity by increasing the overall population served by WSAH-DT from approximately 6 million people to more than 18 million people. MTB Bridgeport is controlled by Multicultural Television Broadcasting, LLC ("MTBL"), a minority and women owned broadcaster controlled by Arthur and Yvonne Liu.[15] MTB Bridgeport explains that minority small-business owners, such as the Lius, experience difficulties in acquiring broadcast properties in large metropolitan areas, and "all to frequently are relegated to operating stations in smaller, outlying communities that often are unable to serve these more populated metropolitan areas due to signal deficiencies and intervening terrain."[16] MTB Bridgeport continues that by filing its application to move to the Empire State Building, it now seeks "the equality denied to minorities, women and the disadvantaged throughout the television industry's history" and the ability "to compete in its television market on a more level playing field."[17]

In its October 2, 2008 supplement, MTB Bridgeport further asserts that absent a grant of the application, "the Lius will be forced to divest MTBL's television stations . . .."[18] MTB-Bridgeport explained that in April 2007, MTBL acquired WSAH(TV); KCNS(TV), San Francisco, California; WMFP(TV), Lawrence, Massachusetts; WOAC(TV), Canton, Ohio; and WRAY-TV, Wilson, North Carolina from Scripps Howard Broadcasting Co. for $170 million, financed in part through loans of over $100 million from financial institutions. Due to the downturn in the economy, the stations were unable to comply with the covenants or service the interest payments due under the loan agreements, and were negotiating with the lenders in order to avoid a receivership action against the Lius and MTBL. According to MTB-Bridgeport, "the increased equity value of WSAH-DT operating from the Empire State Building would, standing alone (and in combination with the other stations), be sufficient to enable the Lius to refinance the current debt."[19] Commission records show that shortly after MTB Bridgeport made its supplemental filing, MTBL and its television subsidiaries entered into forbearance agreements with their lenders which required MTBL to transfer KCNS(TV), WMFP(TV), WOAC(TV) and WRAY-TV to an irrevocable trust with the lenders as beneficiaries, and that transfer has been completed.[20] With respect to WSAH-DT, the forbearance agreement provides that the station be transferred to the trust in the event the Commission does not grant the application to move to the Empire State Building; in the event

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[12] *Id.* at Exhibit 1, p. 4.

[13] *Mayor Maurice A. Brown*, 24 FCC Rcd 7632, 7634 (AD 2009); *see also Oro Spanish Broadcasting, Inc.*, 6 FCC Rcd 4411, 4412 (1991).

[14] WMBC-TV, Newton, New Jersey airs Chinese language programming within New York City. With respect to Spanish language viewers, WXTV-DT, Paterson, New Jersey (UNI), WFUT-DT, Newark, New Jersey (TLF) and WNJU-DT, Linden, New Jersey (TEL) all air significant amounts of Spanish language programming.

[15] *See* Application at Exhibit 1; FCC File No. BALCT-20061117AEC. The Lius also control companies which are the licensees of approximately 40 radio stations. *Id.*

[16] Application, Exhibit 1 at 2.

[17] *Id.*

[18] October 2, 2008 Supplement at 17.

[19] *Id.*

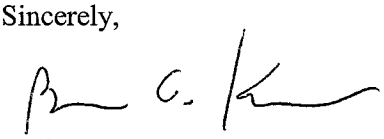
[20] *See* File Nos. BTCCT-20081104AEN/AEP/AER/AES, granted January 14, 2009. The stated purpose of the trust is to sell the ownership interests or assets of the stations and apply the sales proceeds to pay the loans.

the Commission were to grant the application, MBT-Bridgeport is required to engage a broker to market the station until such time as the station is sold.

While we are sympathic to the financial difficulties faced by MBT-Bridgeport, MTBL and the Lius, those difficulties do not justify the effective reallocation of WSAH-DT to New York City and withdrawal of licensed television service to over 2.2 million persons. Stations are allotted to communities, not Nielsen Designated Market Areas, and the fact that WSAH-DT is assigned to the New York City DMA for ratings purposes provides no legal or equitable basis for moving the Bridgeport, Connecticut station 62 miles to a site occupied by stations allotted to New York City or close-in suburbs. Moreover, the Commission "does not guarantee a licensee economic success, nor will it abrogate all of its rules and policies so that a licensee may, at will, move to a market that might be more profitable than the one it originally, voluntarily, applied to serve."[21]

In view of the foregoing, the above-referenced application filed by MTB Bridgeport-NY Licensee LLC for a construction permit for station WSAH-DT is HEREBY DENIED.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Charles R. Naftalin, Esq.
Amy S. Mushahwar, Esq.
Lee J. Peltzman, Esq.

[21] *MS Communications, Inc.*, 22 FCC RCD 2167, 2168 (VD 2007). In those instances when the Commission does take financial hardship into consideration, such as failing station waivers of the Commission's television duopoly rules and authorizing satellite stations, the Commission still requires that the same area be served. *Id.*