Federal Communications Commission
Washington, D.C. 20554

DA 12-390
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Re: WCWN(TV), Schenectady, NY, ID No. 73264,
File No. BALCDT-20111108AMP, *et al.*

Dear Counsel:

This is in regard to the applications to assign the licenses of eight full power commercial television stations and related auxiliary and other facilities controlled by the Freedom Communications Broadcast Trust ("Freedom") to entities ultimately controlled by Sinclair Broadcast Group, Inc. ("Sinclair").[1] The applications are unopposed. Sinclair does not currently have an attributable interest in any television stations or other media entities located in any of the Nielsen Designated Market Areas ("DMAs") in which the Freedom stations are located. However, two of the stations that are being acquired, WCWN(TV)[2] and WRGB(TV),[3] are both located in the Albany-Schenectady-Troy, New York DMA ("Albany DMA"). The stations currently operate pursuant to a "failing station" waiver.[4] Like all ownership waivers, that waiver must be re-evaluated in the context of a long-form application.[5] Therefore, the applicants have requested a waiver of Section 73.3555(b)(2)[6] of the Commission's Rules, the local television multiple ownership rule or duopoly rule under the failing station waiver standard. For the reasons stated below, we grant the waiver and grant the application.

[1] A list of the stations being assigned is attached to this letter.

[2] ID No. 73264, File No. BALCDT-20111108AMP.

[3] ID No. 73942, File No. BALCDT-20111108AMW.

[4] *WCWN, LLC*, 21 FCC Rcd 13,522 (2006).

[5] *K. Rupert Murdoch,* 21 FCC Rcd 11,499, 11,500 (2006).

[6] 47 C.F.R. § 73.3555(b)(2).

Under Section 73.3555(b)(2) of the Commission's Rules,[7] two full-power television stations licensed in the same DMA whose Grade B contours overlap[8] may be commonly owned if: (1) at least one of the two stations is not ranked among the top four stations in the DMA; and (2) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA after the merger. Although WCWN(TV) is not among the top-four ranked stations in the market, the Albany DMA would not have eight independently owned-and-operating full power television stations after the proposed assignment. As discussed above, although this is the status quo due to the existing waiver permitting the joint ownership of WCWN(TV) and WRGB(TV), this waiver, like all ownership waivers, must be re-evaluated in the context of a long-form application.[9] Therefore, the applicants have requested a waiver of the rule under Note 7(2) to Section 73.3555, the failing station standard.[10]

The Commission's *Local Ownership Order*,[11] set forth the criteria for a waiver of the television duopoly rule for a "failing station," defined as one which has been struggling for an "extended period of time both in terms of its audience share and financial performance."[12] These criteria are:

1. One of the merging stations has a low all-day audience share, (*i.e.* 4 percent of lower);

2. The financial condition of one of the merging stations is poor. For example, that the station has had a negative cash flow for the previous three years;[13]

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; and selling the station to an out-of-market buyer would result in an artificially depressed price.[14]

If the applicant satisfies each criterion, a waiver of the rules will be presumed to be in the public interest.

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[7] 47 C.F.R. § 73.3555(b)(2).

[8] Although the rule refers to Grade B contours, DTV stations do not have Grade B contours and the Commission has treated noise-limited contours as their functional equivalent. *See, e.g. Estes Broadcasting, Inc.*, Letter, 25 FCC Rcd 7596 (2010).

[9] *K. Rupert Murdoch,* 21 FCC Rcd at 11,500 (2006).

[10] 47 C.F.R. § 73.3555 Note 7.

[11] 14 FCC Rcd 12903.

[12] *Id.* at 12939.

[13] *Id.*

[14] *Id.*

As part of their waiver request, the applicants have demonstrated that WCWN continues to have a very low audience share and has not had an all-day audience share equal to or greater than 4% in the last three years.

With respect to its financial condition, the applicants have submitted financial data to demonstrate negative cash flow and operating losses at the station for the three years preceding the filing of the application. In September 2009, Freedom filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code and presented a plan of reorganization the following March. The company, therefore, has been working under a serious financial strain for an extended period of time. Staff analysis of the financial data in the record, considering all of the charges as they are treated according to GAAP, indicates that WCWN(TV) contributes to the company's debt[15] and that its negative amounts of cash flow from investing and financing is equal to its cash flow from operations. It essentially has no money at all to continue its operations on its own. Therefore, WCWN(TV) is and has been in a sustained critical financial posture consistent with the third criterion.

In its filings, Sinclair has made representations that, following the acquisition, WCWN(TV) will continue to broadcast a significant amount of locally produced issues-responsive programming including daily news and weather. The parties argue that a new owner attempting to operate WCWN(TV) as a stand-alone station would incur substantial and possibly prohibitive costs in creating a start-up news department.

In regard to the fourth prong of the waiver standard, the parties have submitted the sworn declaration of John Momtazee, an experienced broadcast station media broker with the firm of Moelis & Company. ("Moelis") The application states that beginning in October 2010, Moelis approached 58 buyers regarding the purchase of Freedom in whole or in part, including 25 buyers for Freedom's television broadcast stations, 23 of which did not have stations in the Albany DMA. Moelis received four initial statements of interest for the entire broadcast division in December 2010. The process was highly publicized and Moelis received 11 unsolicited inquiries about Freedom's television stations, but none about WCWN(TV) individually. In June 2011, the *Wall Street Journal* reported that Freedom had been in discussion with MediaNews for purchase of the entire company and that talks had broken down. In August 2011, the *Wall Street Journal* further reported that Freedom and MediaNews were pursuing separate talks regarding the newspaper division only. In spite of all the surrounding publicity regarding Freedom's sales attempts, Mr. Momtazee states that no buyer expressed interest in the purchase of WCWM(TV). He states that it is his opinion, based on the station's financial history, the history of the attempts to sell Freedom, the significant expenditures required to operate the station on a stand-alone basis, the current economic and competitive environment, and his own experience, that it is unlikely that an out-of-market buyer would be interested in purchasing WCWN(TV) on a stand-alone basis.

We will grant the parties' request for a waiver of the local television duopoly rule, and we will grant the assignment application. The applicants have submitted detailed information regarding the station's bleak financial situation. The station's negative cash flow and operating losses for the past three years are consistent with the criterion the Commission has set for determining that a station is "failing." In addition, WCWN(TV) has failed to meet a 4% audience share for the last three years. In these circumstances, it is unsurprising that an out-of-market buyer cannot be found. We believe that the continued joint operation of the two stations will not only help WCWN(TV) overcome its existing

[15] As discussed, the stations are currently operated pursuant to a multiple ownership waiver. Therefore, the Staff analyzed financial materials that showed data for the combined entity and then broke out charges related to the operations of each of the stations.

shortcomings, but that it will provide a tangible benefit to the community through the continuation of local news and public affairs programming on the station.

Consistent with the *Local Ownership Order*, we find that the combined operation of WRGB(TV) and WCWN(TV) will pose minimal harm to our diversity and competition goals because, absent the waiver, WCWN(TV)'s financial situation hampers its ability to be a viable voice in its market. Under these circumstances, allowing WCWN(TV) to be operated by a stronger station in the market will result in a continued improvement in facilities and programming, an outcome which clearly benefits the public interest.

In light of the above discussion, we find that the applicants are fully qualified, and conclude that the grant of the above assignment application and the applications listed in the attachment would serve the public interest.

ACCORDINGLY, IT IS ORDERED That the request for a waiver of Section 73.3555 of the Commission's Rules pursuant to Note 7(2), the "failing station" standard, to permit the co-ownership of WCWN(TV), Schenectady, New York and WRGB(TV), Schenectady, New York IS GRANTED. IT IS FURTHER ORDERED That the applications for the assignment of the licenses of the eight full power commercial television facilities on the attached exhibit and the related auxiliary and other facilities from entities controlled by the Freedom Communications Broadcast Trust to entities ultimately controlled by Sinclair Broadcast Group, Inc. ARE GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

ATTACHMENT

STATION	COMMUNITY	ID.	FILE NO.
WPEC(TV)	West Palm Beach, FL	52527	BALCDT-20111108AMK
WWMT(TV)	Kalamzoo, MI	74195	BALCDT-20111108AMO
WLAJ(TV)	Lansing, MI	36533	BALCDT-20111108AMN
WCWN(TV)	Schenectady, NY	73264	BALCDT-20111108AMP
WRGB(TV)	Schenectady, NY	73942	BALCDT-20111108AMW
KTVL(TV)	Medford, OR	22570	BALCDT-20111108AMZ
WTVC(TV)	Chattanooga, TN	22590	BALCDT-20111108ANO
KFDM(TV)	Beaumont, TX	22589	BALCDT-20111108ANQ