



Federal Communications Commission
Washington, D.C. 20554

August 28, 2012

High Maintenance Broadcasting, LLC
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KUQI Licensee, LLC
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Time Warner Cable Inc.
c/o Matthew A. Brill, Esq.
Latham & Watkins LLP
555 Eleventh St., NW
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Re: KUQI(DT), Corpus Christi, TX, ID No. 82910,
File No. BALCDT-20120315ADD.

Dear Counsel:

This letter is in reference to the above-captioned application to assign the license of digital television station KUQI(DT), Corpus Christi, Texas, from High Maintenance Broadcasting, LLC (High Maintenance) to KUQI Licensee, LLC (KUQI Licensee). Time Warner Cable Inc. (TWC) filed an informal objection to the application on June 21, 2012, more than two months after the 30-day public notice period required by statute¹ and Commission rules² had passed. High Maintenance and KUQI Licensee subsequently filed a joint opposition. For the reasons stated below, we deny the informal objection and grant the application.

Background. The application discloses that, at closing, KUQI Licensee and KIII Services Company, LLC (KIII Services), an affiliate of KIII License Company, the licensee of digital television station KIII(DT), Corpus Christi, Texas, will enter into a series of agreements concerning KUQI, including a Shared Services Agreement (SSA).³ The SSA contemplates that KIII Services "may assist"

¹ 47 U.S.C. § 309(d)(1).

² 47 C.F.R. § 73.3584(a).

³ Related agreements between KUQI Licensee and KIII Services, all of which were filed with the application, include an Agreement for the Sale of Commercial Time, an Option Agreement, and a Studio and Office Lease Agreement.

KUQI Licensee with the negotiation of retransmission consent agreements and, in payment for such assistance, receive a fee equal to 30 percent of any monies paid to KUQI Licensee by a multichannel video programming distributor.⁴

TWC objects that this provision is “brazenly” and “blatantly” anticompetitive, even considering the “increasing prevalence of SSAs and the competitive harms they pose.”⁵ It urges the Commission to deny the application or require the abandonment of the SSA as a condition of approval. High Maintenance and KUQU Licensee respond that the informal objection is “devoid of any ‘evidence’ to prop up its assertions beyond groundless speculation about ‘outrageous demands’ and ‘exorbitant prices.’”

Discussion. The Commission applies a two-step analysis to an informal objection under the public interest standard. First, it must determine whether the pleading contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁶ This first step “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established.”⁷ If the pleading meets this first step, the Commission then must determine whether “on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice,” the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest.⁸

TWC fails to meet its statutory burden. It provides no factual support for its allegations of “collusion” and “price-fixing,” but instead reiterates its “long expressed concern” about “the use of SSAs and other sharing arrangements” in the television broadcast market, while citing comments filed in pending Commission rulemaking proceedings. We reaffirm that those rulemaking proceedings are the proper forum for consideration of the issues raised by TWC and others concerning the retransmission consent process.⁹

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

⁴ See Shared Services Agreement, Sections 4(g), 4(h)(i)(B).

⁵ TWC further insinuates that something is amiss with the SSA provision because of the involvement of Station KIII, which, under a previous – and completely unrelated – licensee, was investigated and sued by the Department of Justice for anticompetitive conduct. Informal Objection, at 3 (*citing* Complaint, *United States v. Texas Television, Inc.*, Civil No. C-96-64 (S.D. Tex. Filed Feb. 2, 1996)). This implication of guilt on the part of the current licensee is disingenuous.

⁶ 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*).

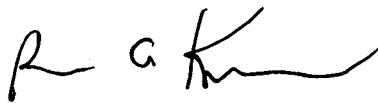
⁷ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

⁸ *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

⁹ See *ACME Television Licenses of Ohio, LLC*, 26 FCC Rcd 5198 (M.B. 2011); *Free State Communications*, 26 FCC Rcd 10310 (M.B. 2011).

ACCORDINGLY, IT IS ORDERED That the informal objection filed by Time Warner Cable Inc. is DENIED. IT IS FURTHER ORDERED That the application for the assignment of license of KUQI(DT), Corpus Christi, Texas, from High Maintenance Broadcasting, LLC, to KUQI Licensee, LLC, (File No. BALCDT-20120315ADD) IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A Kreisman', written in a cursive style.

Barbara A. Kreisman
Chief, Video Division
Media Bureau