

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Nexstar Broadcasting, Inc.,)
and Comcorp of Texas License Corp, Assignors)
)
and)
)
Marshall Broadcasting Group, Inc., Assignee)
)
Application for Assignment of Licenses of)
Television Station KPEJ-TV, Odessa, Texas and)
Television Station KMSS-TV, Shreveport,)
Louisiana)
)
Nexstar Broadcasting, Inc. and)
Quad Cities Television Acquisition Licensing LLC,)
Assignors)
)
And)
)
Marshall Broadcasting Group, Inc., Assignee)
)
Application for Assignment of License of)
Television Station KLJB, Davenport, Iowa)
)
)
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File No. BALCDT-20140605ADO

RECEIVED - FCC
JUN 18 2014
Federal Communications Commission
Bureau / Office

File No. BALCDT-20140605ADW

To: Chief, Media Bureau

**COMMENTS
OF
THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.**

The National Association of Black Owned Broadcasters, Inc. ("NABOB"), by its attorney, hereby submits its Comments in support of a grant of the above-captioned applications for assignment of license from Nexstar Broadcasting, Inc. and Comcorp of Texas License Corp, Assignors (jointly referred to as "Nexstar"), for stations KPEJ-TV, Odessa, Texas and KMSS-

TV, Shreveport, Louisiana; and Nexstar Broadcasting, Inc. and Quad Cities Television Acquisition Licensing LLC (jointly referred to as “Nexstar”) for station KLJB, Davenport, Iowa to Marshall Broadcasting Group, Inc. (“Marshall”). The applications present important issues for the Commission to address regarding waivers of its newly established attribution policy for television Joint Sales Agreements (“JSAs”), and NABOB therefore submits these Comments to assist the Commission in developing its policies with respect to such waivers.

I. The Commission’s JSA Attribution Rule and Waiver Standard

In the *Further Notice of Proposed Rulemaking and Report and Order in the 2014 Quadrennial Regulatory Review of its Ownership Rules*¹ (“Quadrennial Review R&O”), the Commission ruled that it “will count television stations brokered under a same-market television JSA that encompasses more than 15 percent of the weekly advertising time for the brokered station toward the brokering station’s permissible ownership totals, just as we long have done with respect to radio stations.”² The Commission noted however that it would consider requests for waiver of the JSA rule:

Finally, we note that parties that believe that the application of our attribution rules to their particular circumstances would not serve the public interest always have the ability to seek a waiver. The Commission has an obligation to take a hard look at whether enforcement of a rule in a particular case serves the rule’s purpose or instead frustrates the public interest. Thus, for example, a party seeking waiver of the attribution rule could attempt to demonstrate that a particular television JSA in context — including any related agreements or interests — does not provide the brokering entity with the opportunity, ability, and incentive to exert significant influence over the programming or operations of the brokered station.³

¹ *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*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, FCC 14-28, released April 15, 2014 (“Quadrennial Review R&O”).

² Quadrennial Review R&O, par. 340.

³ Quadrennial Review R&O, par. 364 (footnotes omitted).

The Commission then provided guidance on the factors it would consider in any such waiver request:

In considering a request for waiver of attribution, we will take into account the totality of the circumstances in order to assess whether strict compliance with the rule is inconsistent with the public interest. For example, to make such a showing, an applicant may provide the JSA together with any other agreements, documents, facts, or information concerning the operation and management of a brokered station that demonstrate that the underlying public interest considerations supporting the Commission's decision to attribute JSAs, as discussed herein, are not present in the particular case. The relevant factors may include, without limitation: (i) specific facts that show a lack of incentive or ability for the broker station to influence the brokered station's programming or operations, and (ii) specific facts that demonstrate that the brokered station has the incentive and ability to maintain independent operations and programming decisions that are not influenced by the broker station and the incentive and ability to exclude the broker station from exerting influence over programming and operations.⁴

The Commission added:

A waiver request for a JSA that is limited in scope (*i.e.*, percentage of the station's advertising sales) and duration so as to minimize or eliminate any influence on operations or programming is more likely to be successful than an open-ended request. Similarly, as we point out in the FNPRM, if a licensee believes that application of the local television ownership rule in a particular situation would adversely affect competition, diversity, or localism, it may seek a waiver of that rule. The Commission will carefully review and consider any such request on an expedited basis. We recognize that broadcast transactions are time sensitive and that Commission action on assignment and transfer applications, including any associated waiver requests, must be taken promptly without unnecessary delay. We direct the Bureau to prioritize review of any applications for waiver necessitated by attribution of JSAs and to complete their review within 90 days of the record closing on such waiver petitions provided there are no circumstances requiring additional time for review.⁵

⁴ *Id.*

⁵ *Id.*

II. NABOB Supports Grant of the Requested Waivers

The Nexstar and Marshall applications explain that Nexstar plans to broker all of Marshall's advertising time for all three stations, and the parties have provided a form of their proposed JSA agreement. Nexstar and Marshall have requested a waiver of the Commission's attribution rule for their JSAs. NABOB has supported the Commission's decision to attribute television JSAs and has proposed that waivers should be considered on a case-by-case basis.⁶ In supporting the waiver process, NABOB noted that the purpose of granting waivers of the attribution rule should be to allow the brokered station an opportunity to develop under the JSA to the point where the brokered station could eventually become a free-standing independent station.⁷

In supporting the grant of the instant applications, NABOB does so with the hope that Nexstar and Marshall are entering into the JSA agreements with a plan for the stations to eventually become free-standing independent station operations. In that regard, NABOB is pleased to see that the instant applications have no options for Nexstar to acquire the stations. In addition, Marshall, and not Nexstar, will be acquiring all of the tangible assets of the stations. These factors distinguish the instant JSA transactions from many that NABOB has found deficient in the past. In addition, the proposed licensee, Marshall Broadcast Group, Inc., is owned by Pluria Marshall, Jr., an experienced radio station licensee and the owner of several

⁶ See, e.g., Quadrennial Review R&O, par. 364, note 1122, citing a letter from NABOB in which we proposed a case-by-case review of JSAs, and in which we suggested a waiver might be granted for a five-year period and that the brokered station should provide annual reports to the Commission about its progress toward operational independence.

⁷ In proposing that a station should eventually become "free-standing and independent" NABOB is not suggesting that the broker and brokered stations can have no interaction. Rather, NABOB submits that, where there is a JSA, the brokered station should reach a point where the broker sells less than 15% of the advertising time of the station.

newspaper companies. For these reasons NABOB supports grant of the applications.

III. The Commission Should Establish Guidelines in This Proceeding for Future Waiver Requests

If granted, these waivers will be the first granted by the Commission under its new attribution rule. For that reason, NABOB believes that, if the Commission grants the requested waivers, the Commission must examine the instant applications closely and set forth in writing the basis upon which the Commission grants such waivers, so that other prospective applicants will know and meet the standard applied in this transaction. For that reason, NABOB requests that the Commission develop a record on the critical question that it should ask in this transactions and any transaction that may follow: Is this transaction designed to produce a free-standing, independent broadcast operation at the conclusion of the JSA agreement? In answering that central question in this transaction and future transactions the Commission should seek information from the applicants which answers the following additional questions:

1. If the brokering station is selling all of the advertising time of the brokered station, do the parties have a plan in place for the brokered station to develop its own sales force during the term of the JSA?
2. If the brokered station is also entering into a Shared Services Agreement ("SSA") with the brokering station, how will payments to the brokering station affect the ability of the brokered station to develop as a free-standing, independent station? Do the parties have a plan in place for the brokered station to develop independent operations for some, if not all, shared services, particularly programming services?
3. If the brokering station is guaranteeing a bank loan for the purchase of the stations by the brokered station, what are the terms of any guarantee agreement between the brokered

and brokering stations?

4. What happens if the brokered station defaults on its SSA payments or its bank loan payments?

NABOB notes that Marshall and Nexstar have provided a waiver request which shows a number of positive aspects of the proposed transaction. However, their waiver request does not fully answer the above questions in this transaction. Therefore, NABOB requests that the Commission seek the answers to the above questions from Marshall and Nexstar, so that the Commission can issue a decision in this proceeding that will provide guidance to potential future waiver applicants. In addition, because the answers to these questions should provide for a plan that will evolve over time, NABOB submits that the Commission should require the parties to provide periodic reports on their success in implementing their plan over time. NABOB suggests annual reports.⁸

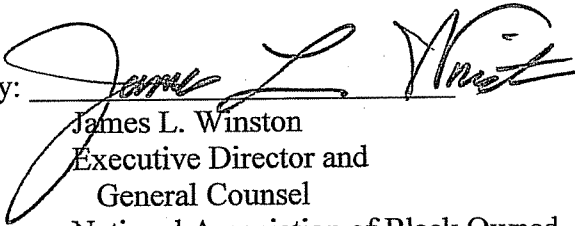
IV. Conclusion

Marshall and Nexstar are to be commended for filing the instant applications, which demonstrate the potential for the Commission's new attribution rule to create opportunities for group broadcasters and minority entrepreneurs to incubate new television station ownership, which fosters the Commission's goals of diversity, localism and competition. NABOB requests that, after completing the review requested herein, and imposing the reporting requirements proposed, the Commission grant the requested waivers and the instant applications:

⁸ In this regard, it should be noted that the JSA and SSA proposed here are each for an eight year term. NABOB had previously suggested a five year limit for such agreements. *See*, Quadrennial Review R&O, par. 364, note 1122. If the Commission grants the applications with the eight year agreements, the annual reporting requirement becomes much more important and necessary.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF BLACK
OWNED BROADCASTERS, INC.**

By: 

James L. Winston
Executive Director and
General Counsel
National Association of Black Owned
Broadcasters, Inc.
1201 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
(202) 463-8970
jwinston@nabob.org

June 18, 2014