

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Consent to Assign Certain Licenses from Gray) Lead LMS File Nos. 0000238010,
Television Licensee, LLC to Marquee Broadcasting) 0000238009, and 0000238018
West, Inc. and Assignment of Construction Permit)
from Marquee Broadcasting West, Inc. to Gray)
Television Licensee, LLC)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 18, 2024

Released: June 18, 2024

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it unopposed applications (Applications)¹ for assignment of certain licenses from Gray Television Licensee, LLC (Gray) to Marquee Broadcasting West, Inc. (Marquee) (jointly, the Applicants) and, in exchange, to assign an unbuilt construction permit from Marquee to Gray. In the Applications, among other proposed station acquisitions, Marquee proposes to own a station with two top-four network affiliations in the Cheyenne-Scottsbluff Nielsen Designated Market Area (Cheyenne-Scottsbluff DMA).² The Local Television Ownership Rule generally prohibits top-four combinations in a market (Top-Four Prohibition), including the transfer or assignment of ownership of multiple top-four affiliated program streams serving a single DMA. Yet the Commission will consider, on a case-by-case basis, whether the public interest would be served by permitting the arrangement to continue, including any unique circumstances of the market and potential effects related to service disruption to viewers.³ We have reviewed the Applicants’ case-by-case showing and find that it

¹ See LMS Lead File Nos. 0000238010, 0000238009, and 0000238018 (filed Feb. 1, 2024 and amended Apr. 11, 2024).

² In the Cheyenne-Scottsbluff DMA, Gray presently owns KGWN-TV (Facility ID No. 63166) (KGWN), which currently has two top-four rated network affiliations, including CBS on its primary stream and NBC on its secondary stream. See Application, Comprehensive Exhibit (Comprehensive Exhibit), at n.4 and Application, Amendment to Assignment Application (Amendment), at 1.

³ See 47 CFR § 73.3555(b) and Note 11; see 2018 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 No. 18-349, Report and Order, FCC 23-117, para. 104, n.335 (Dec. 26, 2023) (2018 Quadrennial Order); id. at para. 88, n.294 (explaining that a “case-by-case approach allows for the Commission to address the challenges faced by small and other uniquely situated markets”); id. at para. 108, n.348 (stating that “[i]n small markets, the Commission may look favorably upon a request for consideration where, if Note 11 were to be applied, the result would be fewer programming streams in the market than there were before (e.g., an assignment or transfer of control of a grandfathered combination where coming into compliance with Note 11 would result in the loss of an existing top four stream from the market”) (emphasis added); see also 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 et al., MB Docket Nos. 14-50 et al., Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9836-39, paras. 78-82 (2017) (adopting case-by-case examination of the

(continued....)

would be in the public interest to permit Marquee to own KGWN in the Cheyenne-Scottsbluff DMA with both top-four network affiliations intact, consistent with the standard articulated in the *2018 Quadrennial Order*. Accordingly, we conclude that application of the Top-Four Prohibition is not warranted in this case and grant the Applications.⁴

II. BACKGROUND

A. The Transactions

2. Pursuant to an Asset Purchase Agreement dated January 30, 2024, Gray seeks to acquire the construction permit for KCBU(TV), Price, Utah (KCBU) from Marquee. In addition, pursuant to another Asset Purchase Agreement dated January 30, 2024, Marquee seeks to acquire the licenses of television stations KCWY-DT, Casper, Wyoming (KCWY) in the Casper-Riverton DMA; KGWN-TV, Cheyenne, Wyoming (KGWN) and KSTF(TV), Scottsbluff, Nebraska (KSTF) in the Cheyenne-Scottsbluff DMA; and KNEP(TV), Sidney, Nebraska (KNEP) in the Denver DMA; and the related low-power stations from Gray.⁵ The Applicants assert that the digital noise-limited service contours (NLSCs) of KGWN and KSTF in the Cheyenne-Scottsbluff market do not overlap.⁶ However, if the proposed assignment were granted, Marquee would own KGWN, which currently has two top-four rated network affiliations on its programming streams in the Cheyenne-Scottsbluff DMA.

3. The Local Television Ownership Rule allows an entity to own two television stations licensed in the same DMA if: (1) the digital NLSCs of the stations (as determined by Section 73.619(c) of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the Sunday to Saturday, 7 a.m. to 1 a.m. daypart audience share ratings averaged over a 12-month period immediately preceding the date of the application, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service. For any station broadcasting multiple programming streams, the audience share of all free-to-consumer non-simulcast multicast programming airing on streams owned, operated, or controlled by a single station must be aggregated to determine the station's audience share and ranking in a DMA (to the extent that such streams are ranked by Nielsen or a comparable professional, accepted audience ratings service).⁷ In the *2018 Quadrennial Review Order*, the Commission expanded the anti-circumvention measure in the Top-Four Prohibition to prohibit, among other things, the transfer or assignment of ownership of multiple top-four rated program streams serving a single DMA.⁸ Entities may seek case-by-case examination of the proposed transaction and seek

Top-Four Prohibition) (*2010/2014 Quadrennial Review Order on Reconsideration*). The Commission has previously acted upon such showings under 47 CFR § 73.3555(b)(2). See *Applications for Transfer of Control of Tribune Media Co. to Nexstar Media Group, Inc.*, MB Docket No. 19-30, Memorandum Opinion and Order, FCC 19-89, at 19-26, paras. 33-52 (Sept. 16, 2019) (*Nexstar-Tribune Order*) (approving two top-four requests); see also *Applications for Consent to Transfer Control of Certain License Subsidiaries of Raycom Media, Inc. to Gray Television, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 12349 (MB 2018) (approving two top-four requests).

⁴ See 47 CFR § 73.3564(b).

⁵ The complete station list is provided in the Appendix.

⁶ See Application at Comprehensive Exhibit, at 1.

⁷ See 47 CFR § 73.3555(b).

⁸ *2018 Quadrennial Order* at para. 104, n.335 (“All future transactions will be required to comply with the Commission's rules then in effect. Such grandfathered arrangements will not be transferable or assignable. Instead, proposed sales involving such grandfathered station arrangements in existence as of this Order's release date will be subject to Commission review upon application to transfer or assign the license or licenses of the station or stations

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Commission approval for the transfer or assignment of the grandfathered arrangement. This entails “weigh[ing] potential harms and benefits of permitting the arrangement to continue, including any unique circumstances of the market and potential effects related to service disruption to viewers.”⁹

4. In their case-by-case showing, the Applicants note that Gray currently provides over-the-air service throughout the Cheyenne-Scottsbluff DMA through KGWN, which primarily serves Cheyenne, Wyoming, and semi-satellite stations KSTF and KNEP, which serve the Scottsbluff, Nebraska, area. According to the Applicants, these stations provide 17 hours of local news per week, as well as CBS and NBC network programming.¹⁰ The Applicants assert that Gray cannot sustain the current level of local service to Cheyenne-Scottsbluff viewers for the long term, and that Marquee can maintain and improve KGWN’s local service only if the CBS and NBC affiliations remain intact.¹¹ The Applicants note that the Cheyenne-Scottsbluff DMA, with a total of 61,010 television households spread thinly over 5,665 square miles and ranking 196th of 210 DMAs in the country, is a “geographically large, but sparsely populated, market covering portions of Wyoming and Nebraska.”¹² Specifically, the Applicants note that the viewers in the Cheyenne-Scottsbluff DMA are located in three population centers—Cheyenne, Scottsbluff, and Laramie—which are not near each other, and not within the radius of a single full-power television station.¹³ Applicants provide that there are only four full-power television stations in the market, two of which are owned by Gray.¹⁴ The Applicants state that Coastal Television LLC (Coastal) owns KLWY(TV) (KLWY), which operates as the DMA’s FOX affiliate, but is a semi-satellite of Coastal’s Casper, Wyoming Station KFNB-TV.¹⁵ Coastal also operates a low power station owned by Vision Alaska Television Holdings, as an ABC affiliate, but the Applicants assert that the only reason the Cheyenne-Scottsbluff DMA has ABC and FOX network affiliates is because Coastal can run them from a neighboring market.¹⁶ The other full-power station in the market is KQCK(TV), which is owned by Christian TV Network and broadcasts non-top-four affiliated programming.¹⁷ Therefore, according to the Applicants, network-affiliation with four independent stations is not an option as Gray and Coastal both provide multiple network-affiliated streams in the market.¹⁸

5. Moreover, Applicants assert that not only does the Cheyenne-Scottsbluff DMA not support four independent stations, but it also does not even support one stand-alone NBC affiliated station.¹⁹ The Applicants submit a statement from media broker Greg Guy, Founder of Tideline Partners, who observes that the “existing allocation of affiliations in the [Cheyenne-Scottsbluff] market demonstrates exactly why the sparse population spread over rural Wyoming and Nebraska cannot support

involved.”). The rules adopted in the *2018 Quadrennial Order* took effect on March 18, 2024. *See Media Bureau Announces Effective Date of Quadrennial Review Report and Order*, Public Notice, DA 24-144 (MB Feb. 16, 2024). As a result, we evaluate the Applications under the Commission’s rules currently in effect.

⁹ *See supra* n.3.

¹⁰ *See* Application at Amendment, at 1.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 4 and Attachment 1, at 10.

four independent television station operators of the ‘Big 4’ affiliations.”²⁰ He states that none of the “in-market stations is a more viable option for the NBC affiliation than KGWN-TV” as that station has the existing infrastructure to broadcast the over-the-air signal across the major population centers in the market.²¹ Mr. Guy further submits that none of the other in-market broadcasters are a viable option for the NBC affiliation without “substantial losses” to the local community.²² Specifically, Mr. Guy explains that KLWY is already affiliated with FOX and provides services for an ABC affiliate, other in-market options do not have the local production facilities needed to continue to air locally-produced programming or “sufficient local staff” to sell the local advertising for those newscasts, and the other stations could not serve the entire DMA.²³ Moreover, Mr. Guy suggests that a stand-alone NBC affiliate in Cheyenne is unlikely to be commercially successful, and if Gray were operating the NBC affiliate as a station-alone station, it would qualify as a “failing” station under the Commission’s precedent.²⁴

6. The Applicants conclude in their case-by-case showing that if KGWN could not be assigned with the two affiliations intact, the most likely result is that viewers in the Cheyenne-Scottsbluff DMA will lose over-the-air access to NBC programming, local news service, or both.²⁵ As a result, the Applicants assert that the public would not be better served if the two network affiliations are held by separate owners.²⁶

B. Standard of Review

7. Section 310(d) of the Act provides that no station license shall be transferred or assigned unless the Commission, on application, determines that the public interest, convenience, and necessity will be served thereby. In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act,²⁷ other applicable statutes, and the Commission’s rules.²⁸ If the transaction would not violate a statute or rule, the Commission next considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.²⁹ If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, section 309(e) of the Act requires that the applications be designated for hearing.³⁰

III. DISCUSSION

²⁰ *Id.* at Attachment 1, at 10.

²¹ *Id.* at 11.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Application at Amendment, at 4.

²⁶ *See id.*

²⁷ Section 310(d) requires that the Commission consider an application as if the proposed assignee/transferee were applying for the license directly. 47 U.S.C. § 310(d); *see also SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 (2005) (*SBC-AT&T Order*).

²⁸ *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18300, para. 16.

²⁹ *Id.*

³⁰ 47 U.S.C. § 309(e); *see also General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd 473, 483, para. 15, n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 211 (2002).

8. As stated above, the Commission’s Local Television Ownership Rule prohibits, among other things, the transfer or assignment of ownership of multiple top-four rated program streams serving a single DMA.³¹ Upon request, however, we consider case-by-case showings that application of the Top-Four Prohibition is not in the public interest due to specific circumstances in a local market or with respect to a specific transaction.³² Under this flexible approach, the Commission requires an applicant seeking approval to own a station with two top-four network affiliations to demonstrate that “the benefits of the proposed transaction would outweigh the harms.”³³ When considering the proposed transfer or assignment of ownership of a station with two top-four network affiliations intact, the Commission has outlined several categories of information it would consider, including “unique circumstances of the market and potential effects related to service disruption to viewers” and particularly, in small markets, consideration of whether the result of applying the Top-Four Prohibition would be fewer programming streams in the market than there were before.³⁴ Based on information provided by the Applicants in support of their request for case-by-case consideration, including information demonstrating the unique market characteristics of the Cheyenne-Scottsbluff DMA, we conclude that the potential public interest benefits of permitting Marquee to own the station with the two top-four network affiliations intact outweigh the potential harms. Therefore, application of the Top-Four Prohibition is not warranted in this instance.

9. The record demonstrates that permitting Marquee to acquire KGWN with both top-four network affiliations intact makes it more likely that Marquee would preserve the service that Gray currently provides in the Cheyenne-Scottsbluff DMA, which would serve the public interest. KGWN, as the CBS and NBC affiliate in the market, provides the only locally produced television news programming in the market, and in 2023 and early 2024, Gray aired 17 hours of local news each week across the two network streams. The evidence in the record demonstrates that splitting up the top-four network affiliations currently on KGWN would likely lead to a reduction in network programming or local news in the Cheyenne-Scottsbluff DMA, which would not serve the public interest.

10. We conclude that the public interest harms of Marquee’s proposed ownership of KGWN with the two top-four affiliations intact are outweighed by the unrebutted record evidence of the public interest benefits of this transaction. After consideration of the information submitted by the Applicants, and in the absence of evidence to the contrary, we find that unique characteristics of the Cheyenne-Scottsbluff DMA and the station at issue support relief from the Top-Four Prohibition. We make several observations about the unique structure of the Cheyenne-Scottsbluff local television market that we find relevant to our assessment. First, as a market with a relatively small population and large geographic area, Cheyenne-Scottsbluff is costly for a broadcaster to serve. Second, in addition to maintaining more than one full-power station, a broadcaster in the market needs multiple facilities to cover the dispersed population centers in the Cheyenne-Scottsbluff DMA. Given these geographic and population characteristics, we conclude that Cheyenne-Scottsbluff DMA likely would not support four independent network-affiliated stations. The evidence in the record also demonstrates that the market likely would not support one stand-alone NBC affiliated station. Notably, there does not appear to be any commercial station in the Cheyenne-Scottsbluff DMA that would viably take one of KGWN’s top-four network affiliations and provide the same (or better) level of service to the community even if we determined that

³¹ See *supra* n.3.

³² *Id.* § 73.3555(b)(2).

³³ 2010/2014 *Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9838-39, para. 82.

³⁴ 2018 *Quadrennial Order* at nn. 335 and 348.

the public interest would be better served with separately owned stations holding the two network affiliations.³⁵

11. We therefore find that permitting Marquee to acquire KGWN with its two top-four network affiliations intact, along with the other television stations in the Applications, and permitting the assignment of the unbuilt construction permit from Marquee to Gray is in the public interest and would ensure the preservation of local news service and network-affiliated program distribution in the local markets.

IV. CONCLUSION

12. For the reasons described above, we find that the potential public interest benefits of Marquee's proposed ownership of KGWN with the two top-four affiliations intact outweigh the potential harms, and thus application of the Top-Four Prohibition would not be in the public interest in this case. In doing so, we emphasize that our decision herein is based on the specific facts and the record compiled in this proceeding.

13. After reviewing the record, we conclude that grant of the Applications will comply with section 310(d) of the Act. We conclude that the Applicants are fully qualified and that grant of the Applications will serve the public interest, convenience, and necessity.

V. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that the Applicants' request that Marquee be permitted to own a station with two top-four network affiliations in the same market under section 73.3555(b)(2) of the Commission's rules, 47 CFR § 73.3555(b)(2), **IS GRANTED**.

15. **IT IS FURTHER ORDERED** that, pursuant to section 73.3564(b) of the Commission's rules, 47 CFR § 73.3564(b), the above-captioned assignment applications (Lead LMS File Nos. 0000238010, 0000238009, and 0000238018) **ARE GRANTED**.

16. These actions are taken pursuant to Sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and Sections 4(i) and (j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

³⁵ Application at Amendment, at 3-4.

APPENDIX³⁶

Call Sign/Community of License	Fac. ID
KCBZ-LD, Casper, WY	185416
KGWN-TV, Cheyenne, WY	63166
K30GV-D, Shoshoni, WY	125349
K19FX-D, Laramie, WY	63183
KNEP, Sidney, NE	17683
K28HL-D, Riverton, WY	56592
KSTF, Scottsbluff, NE	63182
KCWY-DT, Casper, WY	68713
K16JI-D, Casper, WY	185414

³⁶ In the Applications, Marquee seeks to assign the unbuilt construction permit for KCBU(TV), Price, Utah (Facility ID No. 776213) to Gray.