



Federal Communications Commission
Washington, D.C. 20554

October 1, 2008

DA 08-2211

In Reply Refer to:

1800B3-BSH

Released: October 1, 2008

Robert J. Kern, President
TLP Communications, Inc.
516 Stedman Street
Ketchikan, AK 99901

John Joseph McVeigh, Esq.
16230 Falls Road, P.O. Box 128
Butler, MD 21023-0128

John Wells King, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W.
Washington, D.C. 20007-3501

In re: **KINY(AM), Juneau, Alaska**
Facility ID No. 823
File No. BAL-20080606AEY

KSUP(FM), Juneau, Alaska
Facility ID No. 820
File No. BALH-20080606AEZ

K278AC, Kake, Alaska
Facility ID No. 824
File No. BALFT-20080606AFA

K279AF, Haines & Skagway, Alaska
Facility ID No. 82616
File No. BALFT-20080606AFB

K280DX, Angoon, Alaska
Facility ID No. 821
File No. BALFT-20080606AFC

K280ED, Hoonah, Alaska
Facility ID No. 777
File No. BALFT-20080606AFD

K284AM, Skagway, Alaska
Facility ID No. 137761
File No. BALFT-20080606AFE

K300AB, Juneau, Alaska
Facility ID No. 822
File No. BALFT-20080606AFF

**Application for Assignment of
Licenses
Informal Objection**

Dear Mr. Kern and Counsel:

We have before us the above-referenced application (the “Assignment Application”) seeking approval for the proposed assignment of licenses of Station KINY(AM), Juneau, Alaska; Station KSUP(FM), Juneau, Alaska; and associated Translator Stations K278AC, Kake, Alaska; K279AF, Haines and Skagway, Alaska; K280DX, Angoon, Alaska; K280ED, Hoonah, Alaska; K284AM, Skagway, Alaska; and K300AB, Juneau, Alaska (collectively, the “Stations”), from Alaska-Juneau Communications, Inc. (“AJCI”) to Juneau Alaska Communications, LLC (“JAC”). On July 17, 2008, TLP Communications, Inc. (“TLP”) filed an Informal Objection to the Assignment Application.¹ For the reasons stated below, we deny the Informal Objection and grant the Assignment Application.

Background. On July 21, 2008, the staff granted the Assignment Application. The grant was placed on Public Notice on July 24, 2008.² Subsequently, the staff received TLP’s Informal Objection, which had been filed on July 17, 2008, and rescinded the grant on August 13, 2008. The rescission action was placed on Public Notice on August 18, 2008.³

Discussion. In the Informal Objection, TLP first alleges that grant of the Assignment Application would result in JAC having a “monopoly” on the ownership of radio stations in Juneau, which “cannot be good for the people of Juneau or Southeast Alaska.”⁴ The remainder of the Informal Objection concerns matters relating to other broadcast stations in which JAC has an ownership interest, but are not included in the instant Assignment Application. In particular, TLP states that it had filed an objection to the renewal of Stations KGTW(FM), Ketchikan, Alaska, and KTKN(AM), Ketchikan, Alaska, alleging that JAC had incorrectly certified that there had been no violations during the renewal term and incorrectly certified as to the operational status of two translator stations. TLP also alleges that Station KTKN(AM) improperly broadcast lottery information. Finally, the Informal Objection states that “it is my understanding” that Station KTKN(AM) has not properly discharged its Emergency Alert System (“EAS”) responsibilities, and that unidentified “informed sources” have made similar accusations concerning Station KIFW(AM), Sitka, Alaska.⁵

Multiple Ownership. Neither Station KINY(AM) nor KSUP(FM) is in an Arbitron Metro Survey Area. To determine whether a proposed transaction complies with the local radio ownership rule where

¹ On August 29, 2008, AJCI filed an Opposition and JAC filed a Response to Informal Objection.

² See *Broadcast Applications*, Public Notice, Report No. 46785 (MB Jul. 24, 2008).

³ See *Broadcast Applications*, Public Notice, Report No. 26802 (MB Aug. 18, 2008).

⁴ Informal Objection at 3.

⁵ *Id.* at 2.

the transaction involves a geographic area that is not part of a radio market as defined by Arbitron, the Commission has explained that it will continue to apply its contour overlap methodology, with certain modifications, while it seeks comment on alternative methodologies for defining non-Arbitron markets.⁶ Under the interim contour overlap methodology, the relevant radio markets in this transaction are defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned by JAC. The number of stations in those markets is calculated by counting the stations to be commonly owned, as well as all full-power AM and FM stations located within 92 kilometers of the common overlap area whose principal community contours overlap any portion of the relevant contours.

Applying the interim contour overlap methodology, staff review confirms that the proposed transaction would be in compliance with the numerical limits of the local radio ownership rule. In the subject market, JAC would own two FM stations⁷ and two AM stations.⁸ Staff analysis establishes that there are eight radio stations in this market. Under Section 73.3555(a)(1)(iv) of the Commission's rules,⁹ in a radio market with 14 or fewer full-power, commercial and noncommercial educational radio stations, a person may have a cognizable interest in licenses for AM or FM radio broadcast stations for not more than five commercial stations in total, and not more than three commercial stations in the same service (AM or FM), provided however, that no single entity may have a cognizable interest in more than 50 percent of the full-power, commercial and noncommercial radio stations in such market, unless the combination of stations comprises not more than one AM and one FM station. Accordingly, within the subject market, JAC's post-transaction ownership is fully compliant with the ownership limits permitted under Section 73.3555(a)(1)(iv) of the rules.

Renewal Application Allegations. The allegations raised by TLP against JAC's renewal application for Station KGTW(FM) and Station KTKN(AM) were considered by the Commission staff and addressed in a decision letter ("Renewal Decision") issued on September 26, 2008.¹⁰ The Renewal Decision: (1) denied TLP's objection to the renewal application; (2) admonished JAC for false certifications made in its renewal application that were found to be unintentional; (3) determined that there was no need for further inquiry and concluded that there was no evidence of serious violations of the Communications Act of 1934, as amended, or the Commission's rules; and (4) granted the renewal application. We find, accordingly, that TLP's repetition of these allegations in this application proceeding does not raise a substantial and material question of fact concerning JAC's qualifications to be licensee of the Stations.

Lottery Broadcast Allegation. The Informal Objection notes that TLP had previously filed a complaint with the Commission concerning Station KTKN(AM)'s alleged improper broadcast of lottery information. As acknowledged in the Informal Objection, the Commission's Enforcement Bureau

⁶ See 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13870-73 (2003).

⁷ These stations are KSUP(FM) and KTKU(FM), Juneau, Alaska.

⁸ These stations are KINY(AM) and KJNO(AM), Juneau, Alaska.

⁹ 47 C.F.R. § 73.3555(a)(1)(iv).

¹⁰ See Robert J. Kern, Letter, DA 08-2156 (MB Sept. 26, 2008).

initiated an inquiry, investigated the matter, and then “wrote me later saying that the non-profit had a state gaming permit and the station was not in violation of FCC gaming and lottery regulations.”¹¹ We find, accordingly, that this matter is now final and the allegation does not raise a substantial and material question of fact concerning JAC’s qualifications to be licensee of the Stations.

EAS Allegations. In response to TLP’s unsupported allegations concerning EAS operations at Station KTKN(AM) and Station KIFW(AM), JAC provides the sworn Declaration of Richard Burns, its Group CEO, as well as supporting documentation¹² demonstrating that both stations have fulfilled their EAS obligations. We find, accordingly, that TLP’s allegations on this issue do not raise a substantial and material question of fact concerning JAC’s qualifications to be licensee of the Stations.

Conclusion/Actions. Based on the above, we find that TLP has not raised a substantial and material question of fact warranting further inquiry and that none of the allegations demonstrate that grant of the Assignment Application would be inconsistent with the public interest. We further find that JAC is qualified to hold the Station KINY(AM) and Station KSUP(FM) licenses, as well as the six associated Translator Station licenses, and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Informal Objection filed by TLP Communications, Inc. IS DENIED, and that the application for approval to assign the licenses for Station KINY(AM), Juneau, Alaska (File No. BAL-20080606AEY); Station KSUP(FM), Juneau, Alaska (File No. BALH-20080606AEZ); and Translator Stations K278AC, Kake, Alaska (File No. BALFT-20080606AFA); K279AF, Haines and Skagway, Alaska (File No. BALFT-20080606AFB); K280DX, Angoon, Alaska (File No. BALFT-20080606AFC); K280ED, Hoonah, Alaska (File No. BALFT-20080606AFD); K284AM, Skagway, Alaska (File No. BALFT-20080606AFE); and K300AB, Juneau, Alaska (File No. BALFT-20080606AFF) from Alaska-Juneau Communications, Inc. to Juneau Alaska Communications, LLC IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹¹ Informal Objection at 2.

¹² See JAC’s Response to Informal Objection.