

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

In the Matter of	)	
	)	
Application of	)	File No. BALCT -20090211ABY
Selenka Communications, LLC, (Assignor)	)	Facility ID No. 81503
and	)	
WAOW-WYOW Television, Inc, (Assignee)	)	
	)	
For Consent to Assign the License of Station	)	
WBIJ(TV), Crandon, Wisconsin	)	
	)	
Request for Satellite Waiver	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: January 13, 2010**

**Released: January 14, 2010**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration the above-captioned, unopposed application seeking consent to assign the license of station WBIJ(TV), channel 12 (FamilyNet), Crandon, Wisconsin (“WBIJ(TV)”), from Selenka Communications, LLC (“Selenka Communications”) to WAOW-WYOW Television, Inc. (“WAOW-WYOW Television”). WAOW-WYOW Television is the licensee of WAOW(TV), channel 9 (ABC), Wausau, Wisconsin (“WAOW(TV)”).<sup>1</sup> WBIJ(TV) and WAOW(TV) have noise-limited overlap and are located within the Wausau-Rhineland, Wisconsin Designated Market Area (“Wausau DMA”). To permit common ownership of WBIJ(TV) and WAOW(TV), WAOW-WYOW Television proposes to operate WBIJ(TV), which is currently a full-service station, as a satellite of WAOW(TV), and requests grant of its assignment application pursuant to Note 5 of Section 73.3555 of the Commission's rules, which exempts satellite stations from the duopoly prohibition.

**II. BACKGROUND**

2. In *Television Satellite Stations*, the Commission adopted “a presumption that TV satellite operations are in the public interest if individual applicants can satisfy certain public interest criteria.”<sup>2</sup> The presumptive satellite exemption to the duopoly rule is therefore met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.<sup>3</sup> If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc*

<sup>1</sup> WAOW-WYOW Television currently operates station WYOW(TV), Eagle River, Wisconsin as a satellite of WAOW(TV).

<sup>2</sup> *Television Satellite Stations Review of Policy and Rules*, MM Docket No. 87-8, Report and Order, 6 FCC Rcd 4212, 4213 (1991) (“*Television Satellite Stations*”) (subsequent history omitted).

<sup>3</sup> *Id.* at 4213-14.

basis and grant the application if there are compelling circumstances that warrant approval.<sup>4</sup>

### III. DISCUSSION

3. As to the first criterion, WAOW-WYOW Television submits an engineering study, which demonstrates that there was no analog City Grade contour overlap between WBIJ(TV) and WAOW(TV). However, the digital transition has occurred and analog City Grade contours no longer exist. Instead, full-power television stations have Principle Community contours that serve much larger areas than their former analog City Grade contours. As a result, the digital Principle Community contour is not an equivalent standard to use in determining whether a proposed satellite station qualifies for the presumptive satellite exemption to the duopoly rule.

4. With respect to the second criterion, WAOW-WYOW Television demonstrates, using the Commission's transmission test, that the respective area is underserved. The "transmission" test deems an area underserved if there are two or fewer full-service television stations licensed to a proposed satellite's community of license.<sup>5</sup> WBIJ(TV) is the only full-power television station licensed to Crandon, Wisconsin.

5. Regarding the third criterion, an applicant must show that there is no alternative operator ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.<sup>6</sup> In support of its satellite waiver request, WAOW-WYOW Television submits a declaration from Brian N. Byrnes, the President of Paramount Media Advisors, Inc. ("Paramount"), a media brokerage company, which demonstrates that there are no alternative operators ready and able to purchase and operate the proposed satellite as a full-service station. In this regard, Byrnes states that Selenka Communications retained Paramount in November 2006, and Paramount marketed WBIJ(TV) to approximately 25 buyers. Despite Paramount's marketing efforts, Byrnes explains that only one prospective buyer, an out-of-market broadcaster, expressed interest in purchasing WBIJ(TV). Following the site inspection of WBIJ(TV), however, Byrnes states that the potential buyer informed Paramount that "in their judgment the additional costs involved in making WBIJ(TV) a viable part of the Wausau-Rhineland, Wisconsin market as a stand-alone station would not result in a successful investment."

6. Furthermore, in Byrnes opinion, Paramount could not market WBIJ(TV) to an out-of-market buyer for three reasons. First, Byrnes opines that "buyers usually look for revenue ranking to match or exceed the television home's size ranking," and that in this case the Wausau DMA is ranked 134<sup>th</sup> in size, yet is ranked 141<sup>st</sup> in television revenue. Next, he asserts that all five of the major broadcast networks already have current affiliations in the Wausau DMA. Finally, Byrnes explains that WBIJ(TV) requires a considerable investment to implement its digital television facility. Based on the information presented, we are satisfied that WAOW-WYOW television has demonstrated the unfeasibility of finding an out-of-market purchaser willing to operate the station on a stand-alone basis.

7. While the instant request does not satisfy the Commission's presumptive satellite standard,<sup>7</sup> this proposal can be evaluated under an *ad hoc* analysis taking into account other compelling circumstances. As explained by the applicants, Mr. Dennis Selenka, the sole member and manager of Selenka Communications, suffered a debilitating stroke in July of 2008 and subsequently passed away on September 20, 2008. On February 10, 2009, the Commission granted an application for involuntary transfer of control of Selenka Communications to Joanne L. Selenka, personal representative of Mr.

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<sup>4</sup> *Id.* at 4212.

<sup>5</sup> *Id.* at 4215.

<sup>6</sup> *Id.*

<sup>7</sup> *Supra* ¶ 3.

Selenka's estate and widow of Mr. Selenka.<sup>8</sup> Prior to his death, Mr. Selenka sought to sell the station, and since his death, his widow does not wish to continue to operate the station. WBIJ(TV) is currently silent and Selenka Communications does not have the funds necessary to complete construction of the station's DTV facilities.<sup>9</sup> The assignment of WBIJ(TV), Crandon, Wisconsin to WAOW-WYOW Television is Crandon's only hope to restore local service, as Selenka Communications currently has neither the funds nor interest to continue to operate the station.

#### IV. CONCLUSION

8. Based on our review of the information submitted, including the circumstances surrounding the death of Mr. Dennis Selenka and Selenka Communications' current financial inability to construct WBIJ(TV)'s DTV facilities, we find that the WAOW-WYOW Television has set forth information sufficient to warrant satellite operation for WBIJ(TV) under our *ad hoc* analysis. We, therefore, find that the operation of WBIJ(TV) as a satellite of WAOW(TV) would be in the public interest. In view of the foregoing, and having determined that the applicants are qualified in all respects, we find that a grant of the application to assign the license for station WBIJ(TV) from Selenka Communications, LLC to WAOW-WYOW Television, Inc. will serve the public interest, convenience, and necessity.

9. ACCORDINGLY, IT IS ORDERED, That the request of WAOW-WYOW Television, Inc. to operate station WBIJ(TV), Crandon, Wisconsin, pursuant to the satellite exemption to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

10. FURTHERMORE, IT IS ORDERED, That the above-captioned application to assign the license of station WBIJ(TV), Crandon, Wisconsin, from Selenka Communications, LLC to WAOW-WYOW Television, Inc., File No. BALCT-20090211ABY, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake  
Chief, Media Bureau

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<sup>8</sup> File No. BTCCT-20081022AAC.

<sup>9</sup> File No. BLSTA-20090616ABH, Exhibit 1.