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Re: Applications for Consent to Transfer Control
WHAS-TV, Louisville, KY, Fac. ID No. 32327
KGW, Portland OR, Fac. ID No. 34874
KMSB, Tucson, AZ, Fac. ID. No. 44052
File Nos. BTCCDT-20150629ABA, 20150629ABF,
20150629ABC

Dear Counsel:

By this letter we grant the above-captioned uncontested application for the transfer of control of three licensees ultimately owned and controlled by Jack Sander ("Sander") to subsidiaries of TEGNA, Inc. ("TEGNA"). In connection with the sale, we grant a nine-month temporary waiver of the local television ownership rule¹ to allow TEGNA sufficient time to eliminate a joint sales agreements ("JSA") in the Tucson, Arizona market.

Background. In 2013, the Bureau approved the acquisition by TEGNA, formerly known as Gannett Co., Inc. and a holder of newspaper interests and television licenses, of Belo Corp. ("Belo"), which held television station licenses in several markets.² The local television ownership rule and/or the newspaper-broadcast cross-ownership rule ("NBCO Rule")³ prohibited Gannett at that time from

¹ See 47 C.F.R. 73.3555(b).

² *Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 16867 (MB 2013) ("Gannett/Belo Order").

³ 47 C.F.R. § 73.3555(d). The NBCO Rule prohibits common ownership of a television station and a daily newspaper if the Grade A contour of the station encompasses the entire community in which the newspaper is published. Since the digital transition, stations no longer have a Grade A contour. In these circumstances, absent

acquiring licenses from Belo in five markets where Gannett owned daily newspapers.⁴ The *Gannett/Belo Order* approved the assignment of certain Belo television licenses to subsidiaries of Sander Media, LLC (“Sander”) and/or Tucker Operating Co., LLC (“Tucker”), respectively, in these markets, and also approved option agreements and sharing arrangements with regard to the Sander and Tucker licensees.⁵

On June 29, 2015, TEGNA (the new name for Gannett) spun off the company’s publishing and certain other assets to a newly-formed company, New Gannett, so that TEGNA’s shareholders now own shares in two separate, independent companies. TEGNA, as a result of the spin-off, no longer has an attributable interest in the publishing assets in any of the overlap markets at issue in the former Gannett’s original acquisition of Belo. In this transaction, TEGNA seeks to acquire Sander stations in three of the five markets where the former Gannett also held newspaper interests: Portland, OR, Louisville, KY, and Tucson, AZ. To effectuate the transaction, TEGNA has exercised its options to acquire from Sander three licensees to be owned by three separate indirect subsidiaries of TEGNA: (1) Sander Operating Co. I LLC d/b/a WHAS Television, license of WHAS-TV, Louisville, Kentucky, to be owned by Belo Kentucky, Inc.; (2) Sander Operating Co. III LLC d/b/a KGW Television, licensee of KGW, Portland, Oregon; and (3) Sander Operating Co. V LLC d/b/a, licensee of KMSB, Tucson, Arizona. TEGNA does not seek to re-acquire any stations from Tucker.

Whereas in the former Gannett’s acquisition of Belo, there were sharing arrangements in five markets, the only sharing arrangements after consummation of the proposed transaction involve KMSB and KTTU in the Tucson market. Specifically, prior to the Gannett/Belo acquisition, Belo owned KMSB and KTTU as a duopoly.⁶ KMSB currently sells the advertising time of KTTU pursuant to a joint sales agreement (“JSA”).⁷ Because this JSA is now attributable to TEGNA under the standard set forth in *the 2014 Quadrennial Review Order*,⁸ TEGNA will be out of compliance with the local television ownership

substantial evidence of relevant change in the service area of the station whose analog contour conflicted with the NBCO rule, we will presume continued conflict with the rule for that station in digital mode.

⁴ *Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 16867, 16869 (MB 2013) (“*Gannett/Belo*”).

⁵ *Gannett/Belo Order* at 16867.

⁶ *Gannett/Belo MO&O* at 16870.

⁷ *Id.* at 4; File No. BTCCDT-20150629ABC, Exh. 20, “Multiple Ownership and Temporary Waiver Requests,” at 3 (“TEGNA Waiver Request”).

⁸ On June 18, 2014, the *2014 Quadrennial Review Order* became effective, attributing joint sales agreements between broadcast television stations in the same market that cover more than 15 percent of the station’s weekly advertising time. *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*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 4371, 4527 (2014) (“*2014 Quadrennial Review Order*”). The Commission provided a two-year transition period starting from the effective date of the rule for parties to amend or terminate any JSAs that would result in a violation of the local television ownership rule. *Id.* at 4542. Subsequently, Congress enacted legislation extending the two-year compliance period by six months to December 19, 2016. *STELA Reauthorization Act of 2014*, Pub. L. No. 113-200, § 104, 128 Stat. 2059, 2063 (2014).

rule in the Tucson markets and has, therefore, requested a temporary, nine-month waiver to allow an orderly transition and termination of the existing arrangement.⁹

In addition, TEGNA currently provides support services to each of KMSB and KTTU pursuant to Transition Service Agreements (“TSAs”) approved in the *Gannett/Belo Order*. Upon TEGNA’s acquisition of KMSB, the TSA for KMSB will terminate. As the Applicants explain, TEGNA has a pre-existing option to acquire KTTU and guaranteed Tucker’s borrowing in connection with its acquisition of KTTU, but the duopoly rule prevents TEGNA from acquiring KTTU.¹⁰ TEGNA will hold no new contingent financial interests in KTTU. KOLD, LLC, a subsidiary of Raycom Media, Inc. (“Raycom”) also has had a shared services agreement (“SSA”) with KMSB and KTTU since 2011, that includes industry-standard back-office support and the production of news programming not to exceed 15% of KMSB’s weekly broadcast hours.¹¹ Pursuant to the instant transaction, Raycom has not provided any guarantees for TEGNA’s financing nor has any contingent or financial interests in KMSB.¹²

Discussion. Section 310(d) of the Communications Act of 1934 (“the Act”) provides that no station license shall be transferred or assigned until the Commission, upon 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,¹³ other applicable statutes, and the Commission’s rules.¹⁴ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁵ The Commission then employs a balancing process, weighing any potential public interest harms of the

⁹ TEGNA Waiver Request; File No. BTCCDT-20150629ABC, Exh. 20A, “Amendment to Temporary Waiver Requests.”

¹⁰ *Id.* at 4 n.4.

¹¹ *Id.* at 3.

¹² *Id.* Under the SSA, Raycom has a preexisting right of first refusal with respect to KMSB that becomes effective in November 2016.

¹³ 47 U.S.C. § 310(d). See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 (2005) (“SBC-AT& T Order”); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 (2005) (“Verizon-MCI Order”); *Applications of Nextel Communications, Inc. and Sprint Corporation*, 20 FCC Rcd 13967, 13976 (2005) (“Sprint-Nextel Order”).

¹⁴ See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43; *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, 19 FCC Rcd 2570, 2580-81(2004); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp.*, Hearing Designation Order, 17 FCC Rcd 20559, 20574 (2002) (“*EchoStar-DIRECTV HDO*”).

¹⁵ See *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18443; *Sprint-Nextel Order*, 20 FCC Rcd at 13976.

proposed transaction against any potential public interest benefits.¹⁶ The applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, would serve the public interest.¹⁷ 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.¹⁸ Based on the record before us, we find that grant of the above-captioned applications to be in the public interest, as required by Section 310(d) of the Act.

Under the Commission's local television ownership rule,¹⁹ two television stations licensed in the same DMA that have Grade B overlap²⁰ may be commonly owned if: (1) at least one of the stations is not ranked among the top four stations in the DMA; and (2) at least eight independently owned and operating, full power commercial and non-commercial educational television stations would remain in the DMA after the merger.²¹ As noted above, the *2014 Quadrennial Review Order* made certain JSAs, namely those that involve the sale of more than 15 percent of another in-market station's weekly advertising time, attributable.²² However, in the same order the Commission gave those with attributable JSAs two years from the effective date of the new rule (June 19, 2014) to either amend, terminate or otherwise come into compliance with Commission's local television ownership rule.²³ Subsequently, Congress enacted legislation extending the two-year compliance period by six months to December 19, 2016.²⁴

Courts and the Commission have long held that a general rule, deemed valid because its overall objectives are in the public interest, may not serve the public interest if extended to any applicant where

¹⁶ See *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18443; *Sprint-Nextel Order*, 20 FCC Rcd at 13976; *News Corp.-Hughes Order*, 19 FCC Rcd at 483; *Comcast-AT&T Order*, 17 FCC Rcd at 23255.

¹⁷ See *SBC-AT&T Order*, 20 FCC Rcd at 18300; *Verizon-MCI Order*, 20 FCC Rcd at 18443; *Comcast-AT&T Order*, 17 FCC Rcd at 23255; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574.

¹⁸ 47 U.S.C. § 309(e); see also *News Corp.-Hughes Order*, 19 FCC Rcd at 483 n.49; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20574.

¹⁹ 47 C.F.R. § 73.3555(b)(2).

²⁰ Following the digital transition the Commission has treated a station's digital noise-limited contour as the "functional equivalent" of a station's analog Grade B contour for purposes of the local television ownership rule. *Riverside Media*, Letter, 26 FCC Rcd 16038, 16060, n. 2 (2011) (citations omitted). In the *2014 Quadrennial Review Order*, the Commission tentatively concluded the digital noise-limited contour should replace the analog Grade B contour in determining whether the local TV ownership rule is implicated. *2014 Quadrennial Review Order*, 29 FCC Rcd at 4385.

²¹ 47 C.F.R. § 73.3555(b)(2).

²² *2014 Quadrennial Review Order*, 29 FCC Rcd at 4538.

²³ *Id.* at 4542; *Media Bureau Announces the Effective Date of the Television Joint Sales Agreement Attribution Rule*, Public Notice, 29 FCC Rcd 7346 (MB 2014) ("JSA Public Notice") (announcing the effective date of the Commission's new JSA attribution rule and establishing June 19, 2016 as the end of the two-year compliance period).

²⁴ STELA Reauthorization Act of 2014, Pub. L. No. 113-200, § 104, 128 Stat. 2059, 2063 (2014).

doing so will not “undermine the policy served by the rule.”²⁵ We note that Commission precedent has generally held that, in order to facilitate large multi-station transactions, a temporary waiver of its ownership rules is appropriate so long as such waiver does not undermine the underlying goals of the Commission’s ownership rules: competition, localism, and diversity.²⁶ Direct application of that precedent is not determinative here given the size of the transaction and the number of waivers that are necessary, relative to the total number of stations being sold. However, based on the specific facts and nature of the transaction before us, we find that temporary waiver would not only not undermine any of these goals, but would actually be pro-competitive. Therefore, consistent with the recent grant of a similar waiver request,²⁷ we believe strict application of the rule to deny a short period of temporary noncompliance in this case would not serve the purpose of the local television ownership rule.

In reaching this determination, we again specifically rely upon the parties’ commitment to voluntarily terminate the JSA within nine months of consummation, well in advance of the statutory deadline that would have applied to the existing JSA had this transaction not been entered into.²⁸ As indicated above, Sander was under no obligation to amend, much less terminate, the JSA that TEGNA is assuming as part of this transaction prior to December 19, 2016. As the Commission found in the *2014 Quadrennial Review Order*, television “JSAs provide incentives for joint operation that are similar to those created by common ownership.”²⁹ The decision to provide transitional relief did not affect the ultimate determination regarding the attributable status of television JSAs in excess of 15 percent of weekly advertising time. Thus, assuring that a JSA comes into compliance with the standard described in the *2014 Quadrennial Review Order* as quickly as possible provides a positive public interest benefit.

Conclusion. Having reviewed the application, pleadings, and other facts before us, we conclude that grant of the Applications as requested will comply with the Commission’s rules and section 310(d) of the Act. We conclude that all the Applicants are fully qualified and that grant will serve the public interest, convenience, and necessity.

ACCORDINGLY, IT IS ORDERED, the request for a temporary waiver of the local television ownership rule, 47 C.F.R. §73.3555(b) for nine months from the date of consummation, IS GRANTED.

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1151 (D.C.Cir.1969).

²⁶ *Stockholders of CBS, Inc*, 11 FCC Rcd 3733, 3754 (1995).

²⁷ *Quincy Newspapers, Inc*, Letter Order, DA 15-1026 (Vid. Div. MB rel. Sep. 15, 2015).

²⁸ See *Shareholders of Media General, Inc., and LIN Media, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 14798 (Vid. Div. MB 2014) (citing divestiture commitments as evidence that harm to competition resulting from temporary waiver of multiple ownership rules will be minimal).

²⁹ *2014 Quadrennial Review Order*, 29 FCC Rcd at 4534.

IT IS FURTHER ORDERED, That the above-referenced applications for consent to assign the licenses of WHAS-TV, Louisville, Kentucky, KGW, Portland Oregon, KMSB, Tucson, Arizona, File Nos. BTCCDT-20150629ABA, 20150629ABF, 20150629ABC ARE GRANTED, conditioned upon termination of the joint sales agreement in the Tucson market within nine months of consummation, as set forth in the amended applications and as specifically certified to in the amended applications.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau