



Federal Communications Commission
Washington, D.C. 20554

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Re: Petition to Deny Various Applications for Assignment of
License from Emmis Television License, LLC¹

Dear Counsel:

This is in regard to the applications to assign the licenses or transfer control of several television stations currently controlled by Emmis Broadcasting License, LLC (Emmis) to SJL Acquisition

¹ A list of the applications covered by this letter is attached as Exhibit A.

LLC (SJL). A petition to deny the applications was filed by Broadcast Company of the Americas, LLC (BCA). Emmis filed an opposition to the petition and BCA filed a reply. In addition, as part of the assignment applications, SJL requests authorization to continue operating station KSNC(TV) as a satellite of KSNW(TV), and to operate stations KHAW-TV and KAIITV as satellites of KHON-TV pursuant to Note 5 of Section 73.3555 of the Commission's Rules. For the reasons stated below, we deny the petition, grant the requests for continuing satellite operation and grant the applications.

In its petition, BCA reiterates the claims that it made in a previous petition to deny filed against the Emmis applications to assign various licenses to Journal Broadcast Corporation (Journal) and LIN Television Corporation (LIN).² In fact, BCA's petition to deny consists primarily of copies of its previous petition to deny and its reply which are "incorporated by reference" into the petition at issue here. That previous petition dealt with a conflict between Emmis and BCA regarding BCA's attempts to obtain authorization to provide programming over Mexican stations pursuant to Section 325 of the Communications Act.³ In its previous Petition to Deny, BCA contended that Emmis and another entity, Lazer Broadcasting Corporation (Lazer),⁴ abused Commission processes in a proceeding involving Section 325 applications filed by BCA to provide programming over the Class B and Class C1 facilities of station XHBCE-FM, Ensenada, Baja North California, Mexico. BCA alleged "willful misrepresentation, lack of candor and abuse of the Commission's process" by Emmis in opposing BCA's application which renders Emmis unqualified to be a Commission licensee. Therefore, BCA argued that the assignment applications that were the subject of its petition should be dismissed. In its petition in this proceeding, BCA, relying on its previous petition to deny, argues that the applications that are the subject of this letter should be dismissed.

² See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Emmis Television, et al. dated November 29, 2005, DA 05-3094. Attached as Exhibit B.

³ Section 325(c) of the Communications Act states:

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefore.

Section 325 applications are handled by the Commission's International Bureau. This letter does not represent a ruling or comment on the merits of BCA's Section 325 applications.

⁴ Lazer is not a party to this proceeding.

BCA has raised no new issues of fact and presented no new arguments to support its position that Emmis is unqualified to be a Commission licensee. Therefore, consistent with our previous decision regarding the allegations raised by BCA, we will deny its petition.⁵

In regard to the request for continuing satellite authority, Emmis currently operates station KSNC(TV), Great Bend, Kansas as a satellite of station KSNW(TV), Wichita, Kansas. Emmis also operates KHAW-TV, Hilo, Hawaii, and KAIH-TV, Wailuku, Hawaii, as satellites of KHON-TV, Honolulu, Hawaii. Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*,⁶ an applicant is entitled to a presumption that the proposed satellite operation is in the public interest if it meets three criteria: (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.⁷ Applications meeting these criteria, when un rebutted, will be viewed favorably by the Commission. If an applicant cannot qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.⁸

With regard to the first criterion, SJL has submitted Engineering Statements that demonstrate there is no City Grade overlap between KSNC(TV) and KSNW(TV) and that there is no City Grade overlap between KHAW-TV or KAIH-TV and KHON-TV. Therefore, both sets of stations meet the first criterion.

With regard to the second criterion, an area is deemed underserved if, under the "transmission test," there are two or fewer full-service stations licensed to the satellite's community of license.⁹ KSNC(TV) is the only television station licensed to Great Bend, Kansas, meeting the second criterion.

An area may also be deemed underserved if, under the "reception test," 25% or more of the area within the satellite's Grade B contour, but outside the parent's Grade B contour, receives four or fewer television services, not counting the proposed satellite. For purposes of the "reception test," television service includes educational, satellite, low power and translator stations and their service is deemed to be received in the relevant area if the station's Grade B contour (or protected contour in the case of a low power or translator station) covers that area. SJL has submitted an Engineering Statement demonstrating the 58.4% of the area within station KHAW-

⁵ A complete discussion of the allegations and arguments made by BCA in the previous proceeding and incorporated by reference into this proceeding is contained in our previous decision, attached as Exhibit B.

⁶ *Television Satellite Stations*, 6 FCC Rcd 4212 (1991), *subsequent citations omitted*.

⁷ *Id.* at 4213-14.

⁸ *Id.*

⁹ *Id.* at 4215.

TV's Grade B contour, but outside KHON-TV's Grade B contour, is served by four or fewer services. KHAW-TV, therefore, meets the second criterion.

The Engineering Statement also shows that 10.3% of the area within KAI-TV's Grade B contour, but outside of KHON-TV's Grade B contour, is served by four or fewer television stations. Although, KAI-TV does not meet the second criterion for presumptive authority to operate as a satellite, SJL argues that there are other factors that support the grant. For example, SJL argues that virtually all of the stations serving KAI-TV's service area, principally Maui county, operate as satellite or translator stations. SJL states that because of the distance between Maui and Oahu, where most full power stations in the DMA are based, and because of terrain features of the Hawaiian Islands, it is virtually impossible for a station in Oahu to serve Maui without using a satellite operation. The unique distance and terrain features in the Hawaiian Islands, combined with the fact that most of the stations in the service area operate as satellites, constitute persuasive evidence that continued satellite operation may be warranted for KAI-TV.

With regard to the third criterion, SJL notes that all of the stations have a long history of satellite operation. The Wichita-Hutchinson DMA, in which the KSNC(TV) operates, has been ranked number 66 by Nielsen and covers 65 counties over the western two-thirds of the state of Kansas, with some communities, including Garden City, over 200 miles from Wichita. This large and geographically dispersed market is served by 20 full-power television stations, the majority of which act as satellites. Within this market, KSNC(TV) only reaches an estimated 50,000 households on average, representing less than 11% of the total in the DMA. KSNC(TV)'s signal does not reach the major population centers of Wichita or Hutchinson. SJL has submitted a statement by Frank J. Higney, Vice President of Kalil & Co., a media brokerage firm, who argues that the station lacks either an adequate population or a sufficient economic base to support a full-service, stand-alone operation. Mr. Higney also states that, given the economic realities of the market, the station would not be able to affiliate with a major broadcast network and that the revenue pool in the communities served would not be sufficient to support a stand-alone operation.

In regard to the Hawaiian stations, SJL has submitted another statement by Mr. Higney, in which he states that the Honolulu DMA, where the stations operate, is ranked number 77 and contains 27 full-power stations, of which 25 are commercial broadcasters. Of those 27 stations, 15 are licensed to Oahu. The remaining stations, including KHAW-TV and KAI-TV, serve the outer islands and are satellites of the Honolulu stations. He goes on to state that KAI-TV, Wailuku, only serves about 20,000 of the DMA's households and KHAW-TV, Hilo, serves fewer than 14,000 households. In each case, that means that the station serves less than 5% of the households in the DMA. Mr. Higney states that no network affiliations are available in the market and, therefore, each of the stations would be trying to compete for advertising dollars and programming as a small stand-alone station, serving an extremely limited population, against the network affiliates and their satellites, which serve the entire DMA. Under this scenario, Mr. Higney does not believe the stations would be economically viable.

Based on these representations, we agree with SJL that it has met the requirements for a favorable presumption under the three-prong satellite standard for KSNC(TV) and KSNW(TV) and for KHAW-TV and KHON-TV. We also believe that SJL has presented compelling evidence to support *ad hoc* approval of continued satellite operation of KAI-TV. Finally, we find that SJL has demonstrated that the continued satellite operations of all three of the stations at issue would be in the public interest.

Having found the parties fully qualified, we conclude that grant of the subject applications would serve the public interest. ACCORDINGLY, IT IS ORDERED THAT the petition to deny filed by Broadcast Company of the Americas, LLC IS DENIED. FURTHERMORE, the applications to transfer control of Emmis Television License Corporation of Topeka and Emmis Television License Corporation of Wichita from Emmis Operating Company to SJL Acquisition LLC are GRANTED. FURTHERMORE, the application to assign the licenses of KHON-TV, KHAW-TV, KAI-TV and KOIN(TV) from Emmis Television License, LLC to SJL Acquisition LLC IS GRANTED. FURTHERMORE, the application to assign WHHL(FM) from Emmis Radio License, LLC to Radio One Licenses, LLC IS GRANTED. FINALLY, the requests for continued satellite operation of KSNC(TV), KHAW-TV and KAI-TV are approved.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau