

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

In re Application of	)	
	)	
<b>COMMON STOCKHOLDERS OF</b>	)	
<b>ALLIED COMMUNICATIONS</b>	)	
<b>COMPANY, INC.</b>	)	
(Transferor)	)	
	)	
and	)	File No. BTCCT-971027IF
	)	
<b>BAHAKEL COMMUNICATIONS, LTD.</b>	)	
(Transferee)	)	
	)	
For Consent to the Transfer of Control of	)	
Delta Broadcasting, Inc., Licensee of Station	)	
WKFT(TV), Fayetteville, North Carolina	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 17, 1998**

**Released: February 19, 1998**

**By the Chief, Mass Media Bureau:**

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned unopposed application seeking consent to the transfer of control of Delta Broadcasting, Inc., licensee of station WKFT(TV) (IND), Channel 40, Fayetteville, North Carolina ("WKFT") and associated auxiliary stations, from Common Stockholders of Allied Communications Company, Inc. to Bahakel Communications, Ltd. ("Bahakel Ltd."). Bahakel Ltd. indirectly controls the licensee of station WCCB(TV) (FOX), Channel 18, Charlotte, North Carolina ("WCCB"). Because the Grade B contour of WKFT overlaps the Grade B contour of WCCB, Bahakel Ltd. requests a conditional waiver of the Commission's television duopoly rule (47 C.F.R. § 73.3555(b)) to allow common ownership of WKFT and WCCB, pursuant to the conditional waiver policy expressed by the Commission in connection with its pending review of the duopoly rule. *See Review of the Commission's Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making, 11 FCC Rcd 21655 (1996) ("Television Ownership Second Further Notice").*

2. *Duopoly Waiver Request.* In support of its waiver request, Bahakel Ltd. has submitted an engineering exhibit which shows that there is no Grade A contour overlap between WKFT and WCCB. According to Bahakel Ltd., the Grade B overlap area of WKFT and WCCB

encompasses 25,575 individuals and 1,581 square miles, comprising approximately 1.1% of the population and 4.6% of the land area within WKFT's Grade B contour, and 1.5% of the population and 7.5% of the land area within WCCB's Grade B contour.<sup>1</sup> Bahakel Ltd. contends that the extent of the overlap created by the proposed assignment falls well within the range that the Commission has permitted in previously approved waivers, citing, *inter alia*, *KX Acquisition Limited Partnership*, DA 97-2522 (MMB, released November 28, 1997) (granting conditional waiver where Grade B population overlap was 3.17% and 6.13%, and area overlap was 3.88% and 11.48%).

3. Bahakel Ltd. alleges that the stations serve separate and distinct markets, as WKFT is located in the Raleigh-Durham, North Carolina Designated Market Area ("DMA"), ranked 29th, whereas WCCB is located in the Charlotte, North Carolina DMA, ranked 28th. In addition, Bahakel Ltd. asserts that Fayetteville and Charlotte, the stations' respective communities of license, are separated by approximately 60 miles. Bahakel Ltd. also pledges that each station will continue to have its own separate local sales, programming and news staffs, and will "otherwise operate in a manner that reflects the two stations' current separate operating status" in the Charlotte and Raleigh-Durham DMAs.

4. Bahakel Ltd. contends that the overlap area will remain well-served by a diversity of media voices. According to the engineering report submitted by Bahakel Ltd., 16 other commercial television stations provide Grade B or better service to all or part of the overlap area. The report further indicates that 12 AM radio stations provide at least a 2.0 mV/m signal, and 25 commercial FM radio stations provide at least a 1 mV/m signal, over all or part of the overlap area. Bahakel Ltd. further indicates that there are nine full power, commercial television stations other than WKFT serving the Raleigh-Durham DMA and seven other than WCCB serving the Charlotte DMA, and that cable penetration is 62% in the Raleigh-Durham DMA and 67% in the Charlotte DMA. Bahakel Ltd. suggests that in light of the "multitude" of alternative television, radio and other media voices in each DMA, granting the requested conditional waiver will not result in competition detriments harming the public interest.

5. *Discussion.* In adopting the duopoly rule's fixed standard of prohibiting overlap of Grade B service contours, the Commission also acknowledged the need for "flexibility" in that rule's application, noting that waivers should be granted where rigid conformance to the rule is deemed inappropriate. *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations*, 45 FCC 1476, 1479 n.12 (1964), *recon. granted in part*, 3 RR 2d 1554 (1964). To that end, the Commission has developed a set of factors to be considered when evaluating an applicant's request for waiver of the duopoly rule, including the extent of the overlap, the number of media

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<sup>1</sup> An application to modify the licensed facilities of WCCB is pending (BPCT-960702KR). Our independent engineering analysis reveals that the future grant of this modification application would not create Grade A contour overlap with the authorized facilities of WKFT. In addition, while grant of such application would expand WCCB's Grade B contour, it actually would decrease the Grade B overlap area with WKFT due to a change in WCCB's transmitter site.

voices available in the overlap area, the distinctness of the respective markets, the independence of the stations' operations, and the concentration of economic power resulting from the combination. See *Iowa State University Broadcasting Corporation*, 9 FCC Rcd 481, 487-88 (1993), *aff'd sub nom. Iowans for WOI-TV, Inc. v. FCC*, 50 F.3d 1096 (D.C. Cir. 1995); *H&C Communications, Inc.*, 9 FCC Rcd 144, 146 (1993). After weighing the factors, the Commission considers any public interest benefits proposed by the applicant to determine whether, in light of the overlap, the benefits outweigh any detriment which may occur from grant of the waiver. See, e.g., *Iowa State University*, 9 FCC Rcd at 487-88. As with any waiver, it will only be granted if the Commission concludes that the waiver is in the public interest.

6. Currently, the Commission is reexamining its broadcast television ownership policies, including the duopoly rule. In January 1995, the Commission proposed a new analytical framework within which to evaluate its broadcast television ownership rules. See *Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524 (1995) ("*Television Ownership Further Notice*"). Subsequent to the release of the *Television Ownership Further Notice*, Congress directed the Commission to conduct a rulemaking proceeding to determine whether to retain, modify or eliminate existing limitations on the number of television stations that an entity may control within the same television market. See Section 202(c) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996) ("*Telecomm Act*"). In response to this Congressional directive in the Telecomm Act and to update the record, the Commission released the *Television Ownership Second Further Notice*. In that *Second Further Notice*, the Commission tentatively concluded to authorize common ownership of television stations that are in separate DMAs and whose Grade A contours do not overlap. *Television Ownership Second Further Notice*, 11 FCC Rcd at 21681.

7. The Commission stated in the *Television Ownership Second Further Notice* that it will be inclined, during the pendency of the television ownership proceeding, to grant temporary duopoly waivers involving stations in different DMAs with no overlapping Grade A contours, conditioned on coming into compliance with the outcome of the proceeding within six months of its conclusion. It also noted its tentative conclusion that the record in that proceeding "supports relaxation of the geographic scope of the duopoly rule from its current Grade B overlap standard to a standard based on DMAs supplemented with a Grade A overlap criterion." *Id.* The Commission further stated that "we do not believe granting waivers satisfying the proposed standard, and conditioning them on the outcome of this proceeding, will adversely affect our competition and diversity goals in the interim." *Id.* Additionally, the Commission gave the staff delegated authority to act on applications seeking waivers consistent with this interim policy.

8. Based on the Commission's interim ownership policy outlined in the *Television Ownership Second Further Notice* and the specific showings made by Bahakel Ltd. in this case, we believe that grant of a conditional waiver of the duopoly rule, subject to the outcome of the pending ownership proceeding, is justified. The temporary common ownership of WKFT and WCCB would be consistent with the interim policy set forth in the *Television Ownership Second Further Notice*, as the stations are in separate DMAs and there is no Grade A overlap between

WKFT and WCCB. Moreover, our examination of the record presented here reveals nothing suggesting that we should not follow the established interim policy in this case.<sup>2</sup> Accordingly, we conclude that grant of a temporary waiver, conditioned on the resolution of the pending broadcast television ownership rulemaking proceeding, will serve the public interest, convenience and necessity. Any requests to extend this conditional waiver should be filed at least 45 days prior to the end of the six-month period and would be closely scrutinized. Additionally, having found the applicants to be qualified in all respects, we conclude that grant of the application for transfer of control also would serve the public interest.

9. Accordingly, IT IS ORDERED, That the request for conditional waiver of the television duopoly rule, Section 73.3555(b) of the Commission's Rules, to permit the common control of television stations WKFT(TV), Fayetteville, North Carolina, and WCCB(TV), Charlotte, North Carolina, IS GRANTED, subject to the outcome of the Commission's pending broadcast ownership rulemaking in MM Docket Nos. 91-221 and 87-8. Should divestiture be required as a result of that proceeding, Bahakel Communications, Ltd. is directed to file, within six months from the release of the final order in MM Docket Nos. 91-221 and 87-8, an application for Commission consent to dispose of such station as would be necessary for it to come into compliance with the rules as provided in the final order.

10. IT IS FURTHER ORDERED, That the application for transfer of control of Delta Broadcasting, Inc., licensee of WKFT(TV), Fayetteville, North Carolina and associated auxiliary stations, from Common Stockholders of Allied Communications Company, Inc. to Bahakel Communications, Ltd. (BTCCT-971027IF) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

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<sup>2</sup> We note that the Grade B contour land area and population overlaps herein are within the range that the Commission has permitted in previously approved conditional waivers. *See, e.g., WHOA-TV, Inc.*, 11 FCC Rcd 20041 (1996) (granting conditional waiver where Grade B population overlap was 5.4% and 2.1%, and area overlap was 9.3% and 9.7%).