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

In re: Applications of

Henry Broadcasting Co.
(Assignor)

and File No. BALH-950601GL

Tribune Sacramento Radio, Inc.
(Assignee)

For Assignment of License of
KVOD(FM), Denver, Colorado

Tribune Sacramento Radio, Inc.
(Assignor)
and File Nos. BAL-950601EA/BALH-950601EB

Henry Broadcasting Co.
(Assignee)

For Assignment of Licenses of
KCTC(AM)/KYMX(FM), Sacramento,
California

MEMORANDUM OPINION AND ORDER

Adopted: October 31, 1995; Released: November 3, 1995

By the Commission; Commissioner Barrett issuing a statement.

1. The Commission has before it: (1) the above-captioned application for assignment of the license of station KVOD(FM), Denver, Colorado, from Henry Broadcasting Company ("Henry") to Tribune Sacramento Radio, Inc. ("Tribune") which contains a request for waiver of 47 C.F.R. §73.3555(c), the Commission's one-to-a-market rule; and (2) the above-captioned applications for assignment of the licenses of stations KCTC(AM) and KYMX(FM), Sacramento, from Tribune to Henry.[1] Tribune is presently the parent company of the licensees of stations KWGN-TV and KOSI(FM), Denver, as well as KEZW(AM), Aurora, Colorado. Grant of the instant KVOD(FM) application requires waiver of the one-to-a-market rule because the 1mV/m signal contour of KVOD(FM) encompasses Denver, the city of license of Tribune's television station KWGN-TV. *In re Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules ("Second Report and Order")*, 4 FCC Rcd 1741 (1989), *recon. granted in part and denied in part ("Second Report and Order Recon.")*, 4 FCC Rcd 6489 (1989). Tribune's waiver request is unopposed. As set forth below, we will grant the waiver request and the assignment application.[2]

2. The instant transaction is part of an Exchange Agreement between Tribune and Henry, pursuant to which Tribune will exchange its stations KCTC(AM) and KYMX(FM), Sacramento, California for Henry's KVOD(FM). Henry will also pay $3,500,000 to Tribune for various KCTC(AM) assets and assume that station's existing liabilities. The applications (file nos. BAL-950601EA/BALH-950601EB) for approval of the KCTC(AM)/KYMX(FM) assignment have been reviewed by the staff and fully comply with applicable statutes, rules, and policies. They will also be granted herein.

THE ONE-TO-A-MARKET WAIVER

3. Tribune bases its waiver request on the one-to-a-market waiver standards adopted in the *Second Report and Order*. Under these criteria, the Commission presumptively favors waiver requests involving: (1) station combinations serving the top 25 markets where there are at least 30 separately owned, operated, and controlled broadcast licensees after the proposed combination; and (2) "failed" stations (stations that have not been operating for a substantial period of time or that are involved in bankruptcy proceedings). Other waiver requests are evaluated on a more rigorous case-by-case basis. 47 C.F.R §73.3555, note 7. Tribune's waiver request meets the top 25 market/30 voice standard because the Denver, Colorado media market is the country's nineteenth largest and will contain 60 radio and television outlets encompassing 42 separate broadcast "voices" following Tribune's proposed acquisition of KVOD(FM). It nevertheless must be reviewed under the case-by-case standard because, as noted, the proposed assignment also requires a showing under the local radio ownership rules.[3] Under this standard, the Commission

[1] Section 73.3555(c) of the Commission's rules prohibits the common ownership of radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a commonly owned television station, or, conversely, if the Grade A contour of a television station encompasses the entire community of license of a commonly owned AM or FM station. *See* 47 C.F.R. §73.3555(c).

[2] Because the principal community contours of KVOD(FM) and KOSI(FM) overlap, Tribune must also meet the requirements of the local radio ownership rule found in Section 73.3555(a) of the Commission's rules. *See* 47 C.F.R. §73.3555(a)(1). Tribune demonstrates that there are more than 15 radio stations whose contours overlap the contours of the proposed commonly owned stations. Because over 50 percent of the principal community contour overlap of same-service stations KVOD(FM) and KOSI(FM) (using either KVOD's licensed facilities or those specified in a recently approved modification application) occurs within the Denver radio metro market, as defined by Arbitron, Inc., Tribune supplies audience share data from the most recent Arbitron survey available for that market at the time the instant application was filed. *See* 47 C.F.R. §73.3555(a)(3)(iii). Those data show that the combined audience share of KVOD(FM), KOSI(FM), and KEZW(AM) in the metro market is 11.6%, below the 25 percent audience share limit set forth in the rule. Accordingly, the proposed combination of radio stations satisfies the local radio ownership provisions of our rules.

[3] *See In re Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6394 n.40 (1992); *see also Moosey Communications, Inc.*, 8 FCC Rcd 5247 (1993) (consideration of one-to-a-market waivers under the case-by-case standard still appropriate where new

makes a public interest determination based upon the following criteria: (1) the potential public service benefits of joint operation of the facilities such as the economies of scale, cost savings and programming and service benefits; (2) the types of facilities involved; (3) the number of media outlets owned by the applicant in the relevant market; (4) the financial difficulties of the stations involved; and (5) the nature of the relevant market in light of the level of competition and diversity after the joint operation is implemented. *See Second Report and Order,* 4 FCC Rcd at 1753-54.

4. *Benefits of Joint Operation.* Tribune contends that the ownership and operation of KVOD(FM), KOSI(FM), KEZW(AM), and KWGN-TV will result in annual cost savings of up to $310,000. Tribune plans to operate KVOD(FM) jointly with KEZW(AM) and KOSI(FM). Joint operation of these stations will permit consolidation of staff, management and administrative functions and will allow Tribune to benefit from volume discounts in the purchasing of other services. Specifically, Tribune estimates that of the total savings, $150,000 will come from joint management, $30,000-$50,000 will come from sharing administrative personnel in departments such as accounting and finance, traffic, and personnel, and $20,000-$30,000 will result from the actual elimination of duplicative job functions. It further estimates that it will realize savings of $7,000-$9,000 per year for volume discounts and by adding KVOD(FM) to its existing contract with a computer service to sell advertising time. Additionally, under the joint arrangement, KVOD(FM) will be added to Tribune's contract with Associated Press at a small incremental cost and use that service, along with KOSI(FM)'s news director, to enhance the news broadcast on KVOD. Tribune indicates that KVOD currently does not have a news director and relies on a very low cost news service. Tribune states that joint operation will enable it to save the cost of providing this news service upgrade on a stand-alone basis to KVOD, which it estmates to be $30,000-$40,000 per year.

5. With respect to benefits arising from its proposed ownership of KVOD(FM) and KWGN-TV, Tribune states that although it intends to operate KVOD(FM) and KWGN-TV separately, the affiliation with KWGN-TV will enable KVOD(FM) to benefit from access to KWGN-TV's extensive newsgathering operations. This will provide an annual savings of $20,000-$25,000 in the costs of daily "newsbreaks," which will be provided by KWGN-TV's news team, as well as enhance KVOD(FM)'s ability to provide news and information service to the public. Additionally, the association with KWGN-TV will enable KVOD(FM) to benefit from the television station's extensive knowledge of and experience in the Denver labor market, particularly its access to recruitment sources, as well as from its extensive knowledge of and efforts in community relations and public affairs. The sharing of such "specialized knowledge," states Tribune, has been recognized as a significant efficiency from joint operation of a radio and television station in the same market, citing *Guy Gannett Publishing Company,* 7 FCC Rcd 1787, 1789 (1992). Finally, the combination of KWGN-TV, KOSI(FM), KEZW(AM), and KVOD(FM) will produce a combined savings of approximately $5,000 in reduced supply costs and a concomitant savings in promotional costs. The latter will enable Tribune to engage in better promotional campaigns to increase KVOD(FM)'s audience share.

6. Tribune asserts that the combined ownership of KVOD(FM), KEZW(AM), KOSI(FM), and KWGN-TV would result in significant public interest benefits. These include enhanced news gathering for KVOD(FM) as a result of its utilization of the existing KOSI(FM) and KWGN-TV news staff and existing contractual arrangements. In addition, KVOD(FM) will upgrade its delivery of traffic and weather information by tying into KOSI(FM)'s resources, including Denver's only free weather information line, which is updated hourly and receives up to 5 million calls a year. Furthermore, combined operation will enhance KVOD(FM)'s community service budget. Tribune states that it will invest a portion of the savings from combined operation into a weekly hour of public affairs programming on KVOD(FM), which currently airs no local public affairs programming. Additionally, Tribune indicates that it has a proven record of public service in the Denver area. It catalogs a number of public service and children's projects and programs which it sponsored or supported through KOSI(FM), KEZW and KWGN-TV and indicates that it will expand such projects and programs through KVOD(FM).[4] Finally, Tribune states that the cost savings from common ownership will enable it to upgrade KVOD(FM)'s technical facilities, as under the terms of the Exchange Agreement, Tribune has assumed full financial and engineering responsibility for constructing the upgraded KVOD(FM) facilities. Tribune estimates the cost of upgrading KVOD(FM)'s facilities to be approximately $500,000. It also states that, while Henry filed the upgrade application, it was unwilling to invest that money given the station's mediocre performance in the market over the past five years. Tribune states that the combination of KVOD(FM) with KOSI(FM) and KEZW(AM) will achieve the economies of scale necessary to permit it to justify an immediate investment to upgrade KVOD(FM)'s signal.

7. *Other Media Outlets/Type of Facilities.* Tribune does not own any broadcast stations or other media interests in the Denver, Colorado market other than KWGN-TV, KOSI(FM), and KEZW(AM). KWGN-TV is an independent VHF facility operating on Channel 2 with 100 kW effective radiated power ("ERP") and an antenna height of 1047 feet above average terrain ("HAAT"). KOSI(FM) is a Class C FM station operating on Channel 266 (101.1 MHz) with 100 kW ERP and an antenna height of 495 meters HAAT. KEZW(AM) operates full-time on 1430 KHZ with a power of 5,000 watts using a nighttime directional antenna. KVOD(FM) is a Class C1 FM station operating on Channel 258 (99.5 MHz) with an ERP of 100 kW and an HAAT of 85 meters. However, Henry filed an application (BPH-940914IH) to upgrade KVOD(FM) to a full Class C station (specifying facilities of 100 kW ERP at 555 meters HAAT) and to relocate its transmitter site. This application was granted on July 19, 1995. Tribune states that KVOD(FM)'s current 60 dBu (1mV/m) signal covers 7,130 square kilometers and reaches a population of 1,837,075

radio-TV combinations are created, pending the possible revision of the one-to-a-market rule in the outstanding TV ownership proceeding in MM Docket 91-221).

[4] Tribune contrasts the current KVOD(FM) community service/promotions budget of $30,000 with the KOSI(FM)'s $500,000 -$700,000 annual spending on community and public affairs events.

people. The upgraded signal would cover 23,655 square kilometers and will reach a population of approximately 2,017,404 people.

8. *Economic Status.* Tribune concedes that KVOD does not meet the definition of a distressed station. However, it notes that the Commission has previously indicated that "[n]ot all of the factors mentioned [in the *Second Report and Order*] will be relevant in every case." *Secret Communications Limited Partnership,* 10 FCC Rcd 6874, 6878 n.6 (1995); *South Central Communications Corp.*, 5 FCC Rcd 6697, 6698 (1990). Tribune states that the Commission has considered predictions of future station viability based on a station's share of advertising revenue, citing *Burt H. Oliphant,* 10 FCC Rcd 2708, 2709 n.13 (1995), and argues that, notwithstanding the multiplicity of voices in Denver, the market "is dominated by three large group owners who together control 12 radio stations in the market" and account for nearly 61% of the audience share and over 64% of the total radio advertising revenue[5] spent in the Denver market in 1994. Tribune claims that its ownership of KVOD(FM), KEZW(AM) and KOSI(FM) will give it an opportunity to compete more effectively with the three dominant group owners in the Denver market as well as improve KVOD(FM)'s competitive position. Specifically, Tribune states that KVOD(FM)'s audience share has been between 1.8% and 2.4% over the past several years, declining from 2.4% to 2.2% in 1994. Similarly, in 1994, KVOD(FM)'s revenue was allegedly only 3% higher than its revenues in 1989, while the total advertising revenue in the market showed a 25% increase over that period. Tribune claims that its proposed ownership of KVOD "will help reverse this trend," as KVOD's sales functions will be directed by KOSI(FM)'s experienced sales staff.

9. *Competition and Diversity in the Market.* The final factor relevant to a determination of whether a one-to-a-market waiver is warranted addresses the nature of the relevant market in light of the Commission's concerns about diversity and competition. Pertinent indicia include the number of broadcast "voices" in the market and the presence of cable and non-broadcast media. With respect to the number of broadcast stations, the Commission has held in the context of one-to-a-market waivers that it will consider "the relevant TV metro market for radio stations and the relevant ADI (Area of Dominant Influence) TV market for TV stations." *Second Report and Order,* 4 FCC Rcd at 1760, n.101. Tribune states that Denver is ranked as the nineteenth largest ADI in the United States. It further represents that, following the proposed assignment, there will be 60 radio and television outlets in the market owned by 42 separate "voices." Additionally, Tribune indicates that two daily newspapers serve the Denver market and that cable penetration is 58%.

DISCUSSION

10. In evaluating a request for waiver of the one-to-a-market rule, the Commission's goal is "to permit the public to benefit from such efficiencies of operation as may be achieved through the use of common facilities and staff, consistent with the maintenance of diversity and vigorous competition within the market areas involved." *Second Report and Order Reco n.,* 4 FCC Rcd at 6491. We conclude that, on balance, Tribune's showing is consistent with the public interest and would not have an adverse effect on diversity and competition in the Denver, Colorado market. Tribune has shown that common ownership and joint operation of KVOD(FM), KEZW(AM), KOSI(FM), and KWGN-TV will create efficiencies resulting in significant cost savings and the potential for enhanced programming and service benefits, especially with respect to the station being acquired, KVOD(FM). Specifically, KVOD(FM)'s technical facilities will be promptly upgraded, and its news and public affairs programming will be both increased and enhanced.

11. Moreover, Tribune demonstrates that the proposed combination will not create any undue concentration of ownership or control of the broadcast media in the Denver market, which comprises the country's nineteenth-largest ADI. Our analysis shows that, following the proposed acquisition of KVOD(FM), the market will be served by 43 radio stations (22 AM and 21 FM) and 15 television stations (7 VFH and 8 UHF). Those 58 broadcast outlets will be operated by 43 separate entities.[6] Other "voices" in the market include two daily newspapers and two cable television systems, which have a combined penetration rate of 58 percent. Tribune will own no media interests in the market other than KVOD(FM), KEZW(AM), KOSI(FM), and KWGN-TV. Although the stations involved in the transaction are not experiencing financial difficulties, as Tribune notes, the Commission has stated that all five factors in the case-by-case analysis may not be relevant in every case. *See Second Report and Order Recon.* 4 FCC Rcd at 6491. Additionally, although the television and radio facilities to be commonly owned are not insubstantial, especially given KVOD(FM)'s authorization to upgrade to full Class C facilities, they do not present a risk of dominating the market. We find that, on balance, the proposed combination does not present issues of market concentration inconsistent with the public interest given the highly competitive environment in the Denver market. Thus, we are persuaded that the public benefits of common ownership and joint operation of KVOD(FM), KEZW(AM), KOSI(FM), and KWGN-TV outweigh any negative effect on diversity and competition in the Denver market that the combination might engender and that a waiver of the one-to-a-market rule is therefore warranted.

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[5] Tribune's figures indicate the following: Jacor Broadcasting of Colorado, Inc., licensee of stations KBPI(FM), KOA(AM), KRFX(FM), and KTLK(AM), maintained an average audience share (adults 25-54) of 23.6% for the Winter 1995 rating period, as well as controlling an estimated 35% of the market's advertising revenue; Jefferson-Pilot Communications Co., licensee of stations KKFN(AM), KYGO(FM), KWMX(FM), and KYGO(AM), maintained an average audience share of 13.3% and controlled 17% of the advertising revenue; and Noble Broadcasting of Colorado, Inc./Noble Broadcasting of Seattle, Inc., licensees of Stations KBCO AM/FM and KHOW(AM)/KHIH(FM), respectively, maintained an average audience share of 12.5% and controlled 12% of the advertising revenue.

[6] As indicated previously, Tribune alleges that following the proposed assignment, Denver will be served by 60 separate radio and television outlets owned by 42 separate entities. Our calculation, based upon the information submitted in Appendix 3-2 of its application, is that the market will be served by 58 stations and 43 separate "voices" (15 television stations owned by 14 separate entities, including two "satellite" stations, and 43 radio stations owned by 29 separate entities).

12. Accordingly, IT IS ORDERED, That Tribune's request for a waiver of the Commission's one-to-a-market rule, 47 C.F.R. §73.3555(c), IS HEREBY GRANTED. Additionally, having found the parties thereto otherwise qualified, the application (File No. BALH-950601GL) for assignment of the license of station KVOD(FM), Denver, Colorado, from Henry Broadcasting Company to Tribune Sacramento Radio, Inc., and the applications (File Nos. BAL-950601EA/BALH-950601EB) for assignment of the licenses of stations KCTC(AM) and KYMX(FM), from Tribune Sacramento Radio, Inc. to Henry Broadcasting Company ARE HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary