

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of )  
)  
**MULTIMEDIA, INC.** )  
(Transferor) )  
)  
and ) File Nos. BTC-950731KE  
) BTCH-950731KF  
) BTCCT-950731KG-KK  
) BTCTTV-950731KL-KN  
)  
)  
**GANNETT CO., INC.** )  
(Transferee) )  
)  
For Consent to the Transfer of Control )  
of Licenses of Broadcast Stations: )  
WMAZ(AM), Macon, Georgia )  
WAYS(FM), Macon, Georgia )  
KSDK-TV, St. Louis, Missouri )  
WBIR-TV, Knoxville, Tennessee )  
WMAZ-TV, Macon, Georgia )  
WLWT(TV), Cincinnati, Ohio )  
WKYC-TV, Cleveland, Ohio )  
W04BC, Gatlinburg, Tennessee )  
W04BM, Lafollette, Tennessee )  
W07AM, Fork Mt., Tennessee )  
)  
and )  
)  
For Consent to the Transfer of Control of )  
Cable Television Relay Service Licenses: )  
WGZ-270, Valparaiso, Indiana ) File Nos. CAR-45952-09  
WCG-345, Rocky Mount, North Carolina ) CAR-45953-09  
WHZ-387, Hutchinson, Kansas ) CAR-45964-09  
WBM-736, Newton, Kansas ) CAR-45964-09  
WAG-620, Warr Acres, Oklahoma ) CAR-45965-09

## MEMORANDUM OPINION AND ORDER

Adopted: November 29, 1995

Released: November 30, 1995

By the Commission:

1. The Commission has before it for consideration applications for consent to the transfer of control of Multimedia, Inc. (Multimedia), licensee of the above-captioned stations, to Gannett Co., Inc. (Gannett). Currently, through its subsidiaries, Gannett is the licensee of the following ten television stations: KARE(TV), Minneapolis, Minnesota; KUSA-TV, Denver, Colorado; KOCO-TV, Oklahoma City, Oklahoma; KPNX(TV), Mesa, Arizona; WUSA(TV), Washington, District of Columbia; KVUE-TV, Austin, Texas; WXIA-TV, Atlanta, Georgia; WFMY-TV, Greensboro, North Carolina; WTLV(TV), Jacksonville, Florida; KTHV-TV, Little Rock, Arkansas. Gannett also owns and operates eleven radio stations and 83 daily newspapers, including The Cincinnati Enquirer, which is published in Cincinnati, Ohio. A petition to deny the transfer of control was filed by the International Brotherhood of Teamsters (IBT), and Gannett has responded.<sup>1</sup>

2. Multimedia and Gannett, along with Gannett's wholly-owned subsidiary, Multimedia Talk Channel, Inc. (MTCI), have entered into an Agreement and Plan of Merger (Agreement). Pursuant to the Agreement, MTCI will merge with Multimedia and, upon consummation of the Agreement, MTCI will cease to exist. Each share of MTCI's then issued and outstanding common stock will be converted into one share of common stock of Multimedia, which will continue as a wholly-owned subsidiary of Gannett.

3. After the proposed merger, Gannett's ownership of certain broadcast and other media interests would conflict with various provisions of the Commission's broadcast and cable television multiple and cross-ownership rules. As a result, Gannett has requested temporary 18-month waivers of the rules in order to facilitate the broader merger and to orderly divest its conflicting interests in a manner consistent with the public interest.

4. As detailed below, the Commission has established specific criteria for permanent waiver of its one-to-a-market rule and its television duopoly rule. In addition, although no similarly detailed guidelines for the newspaper-broadcast cross-ownership rule, the cable-

---

<sup>1</sup> Several letters opposing the proposed transfer of control of Multimedia to Gannett, none of which were timely filed, were submitted by individuals and various labor organizations. Each of these letters raise the same issues raised within the petition to deny filed by IBT. Therefore, we will consider these letters to be addressed within our review of the IBT petition to deny.

broadcast television cross-ownership rule and the twelve-station ownership rule have been adopted, the Commission instead weighs the competing public interest concerns on a case-by-case basis in order to insure that the fundamental objectives of diversity and economic competition are not compromised.

5. With regard to the assessment of a request for a temporary waiver of our rules, the Commission relies on the same factors contained in permanent waiver standards. However, because the duration of each waiver is determined based on the facts presented in each case, different weight may be accorded those factors and the factors themselves may be analyzed in the context that the proposed combination is of limited duration rather than permanent. As we have stated previously, "where mergers or transfers of multiple stations are involved, in general we believe that the benefits derived from such transactions support grant of a reasonable waiver period to effectuate the merger and permit time to come into compliance with our rules." Stockholders of Westinghouse, Inc., FCC 95-469, 23 (released November 22, 1995). Accordingly, in a case like the one before us, where the conflicts are incidental to a much larger merger that we find is in the public interest, we believe facilitating such a multiple-station transaction by temporary waiver of our multiple ownership rules will "promote commerce, encourage investment in the broadcast industry, and allow for the free transferability of broadcast licenses." Stockholders of Westinghouse, Inc., FCC 95-469 at 23.

6. In the past, in situations involving multi-media transactions such as the merger now before us, we have stated that a "forced" sale could "unnecessarily restrict" the value of the stations to be divested and could "artificially limit" the range of potential buyers to only those with immediate access to the capital needed for such purchases, thereby precluding acquisition by local groups or minority-owned or -controlled entities. Midwest Communications, 7 FCC Rcd 159, 160 (1991). In recognition of these concerns, we have afforded the parties a temporary period of time within which to dispose of the conflicting interests. There is no indication that prevailing market conditions are such that requiring disposal of a broadcast station in twelve months would result in a "forced" sale. As a general rule, a temporary waiver of twelve months from the date of consummation of a merger or other multiple-station transaction provides ample time to locate potential purchasers and to negotiate purchase agreements for the stations to be divested. Gannett has not proffered any factors that would support a departure from this general rule.

### TEMPORARY DUOPOLY WAIVER

7. We first address Gannett's request for waiver of the duopoly rule. Because the predicted Grade B contour of WXIA-TV, Channel 11 (NBC), Atlanta, Georgia, overlaps with the predicted Grade B contour of WMAZ-TV, Channel 13 (CBS), Macon, Georgia, Gannett's acquisition of WMAZ-TV would violate the Commission's duopoly rule, Section 73.3555(b), which proscribes common ownership of television stations whose Grade B contours overlap. Accordingly, Gannett has requested a temporary 18-month waiver of that rule to divest WMAZ-TV, Macon, Georgia.

8. The ultimate objective of the Commission's duopoly, as well as other multiple ownership rules, is to promote maximum diversification of program and service viewpoints and to prevent an undue concentration of economic power contrary to the public interest. Multiple Ownership Rules, 22 FCC 2d 306, 307 (1970), recon. granted in part, 28 FCC 2d 662 (1971). In adopting the duopoly rule's fixed standard of a prohibited overlap of Grade B service contours, the Commission sought to provide a greater degree of certainty than under its prior rule, which prohibited the common ownership of television stations serving "substantially the same service area." Multiple Ownership of Standard, FM and Television Broadcast Stations, 45 FCC 1476, n. 1, recon. granted in part, 3 RR 2d 1554 (1964). However, the Commission maintained a policy of "flexibility," noting that the rule could be waived in cases where its application would be "inappropriate." Id. at 1479, n. 12. Accordingly, the Commission has granted waivers of the duopoly rule where signal overlap is de minimis, see, e.g., Hubbard Broadcasting, Inc., 2 FCC Rcd 7374 (1987), or where the public interest benefits to be gained from waiving the rule would be greater than any detrimental effects resulting from the overlap. See, e.g., Capital Cities Communications, Inc., 59 RR 2d 451, 465 (1985). The Commission will evaluate requests for duopoly waiver based on several factors, including: (1) the size of the overlap area and the population within that geographic area; (2) the separateness of the markets within which the two stations are located; (3) the diversity of voices available to the population residing within the area of overlap; (4) the independence of the stations' operations; (5) the resulting concentration of economic power; and (6) any public interest benefits attained from the proposed combination. See, e.g., Iowa State University Broadcasting Corp., 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). We have evaluated Gannett's waiver request under this standard and conclude that a temporary waiver of our duopoly rule is merited.

9. With regard to the degree of overlap of the Grade B contours, the applicant has submitted an engineering showing which indicates that the predicted overlap encompasses 5,500 square kilometers and 139,130 people. This represents 21% of the service area and 21% of the population within the Grade B contour of WMAZ-TV and 18% of the service area and 4% of the population within the Grade B contour of WXIA-TV. Although not de minimis, the overlap is not so large as to require a finding that the stations "serve substantially the same area."

10. Turning to the separateness of the markets and the diversity of voices within the overlap area, Gannett maintains that the stations are in separate markets and that the overlap area is well served by numerous other television stations from both markets. WXIA-TV is licensed to Atlanta, which is the tenth largest Designated Market Area ("DMA"). In contrast, WMAZ-TV is licensed to Macon, which is the 124th largest DMA and is located approximately 75 miles southeast of Atlanta.<sup>2</sup> With regard to the diversity of voices within

---

<sup>2</sup> In our past waiver cases, the applicants have submitted market statistics using Arbitron's Area of Dominant Influence ("ADI"). However, we will accept Gannett's showing

the overlap area, Gannett's engineering exhibit indicates that there are 15 television stations providing Grade B service to that area.<sup>3</sup> Additionally, Gannett contends that during the waiver period the stations' operations will remain independent and will continue to have separate programming, sales and traffic departments. Despite the overlap, the circumstances here indicate that WXIA-TV and WMAZ-TV indeed serve separate and distinct markets. Further, our concerns with the potential decrease in competition and diversity are mitigated by the substantial number of other television services received in the overlap area.

11. Finally, Gannett claims that requiring immediate divestiture of WMAZ-TV would place an economic hardship on the parties with no meaningful public benefit. Such an immediate disposition, according to Gannett, could preclude a purchase by qualified local or minority groups, who may not have immediate access to capital. Knoxville Channel 8 Limited Partnership, 4 FCC Rcd 4760 (1989). As we have recognized in prior waiver cases, by permitting a reasonable time to find qualified buyers, including those groups referred to above, we encourage diversity in the ownership of the mass media. Metromedia Radio and Television, Inc., 102 FCC 2d 1334, 1351 (1985); Twentieth Holdings Corporation, 1 FCC Rcd 1201 (1986).

12. Accordingly, on the basis of the showings and representations before us, we find no threat to diversity or undue concentration of economic power created by the proposed temporary common ownership. We conclude, therefore, that grant of a temporary waiver of Section 73.3555(b) of our rules will be consistent with the public interest. Consistent with our general rule, however, Gannett will be afforded a twelve-month period, rather than the 18 months initially requested, within which to divest WMAZ-TV. In the event Gannett is unable to divest WMAZ-TV within the twelve-month waiver period granted here, we shall entertain a request for a short extension of time where Gannett has identified and entered into a sales agreement with a minority purchaser that requires additional time to obtain needed financing. Such requests should be sufficiently documented.

#### TEMPORARY WAIVER OF THE ONE-TO-A-MARKET RULE

13. Within the market of Macon, Georgia, Multimedia owns and operates not only television station WMAZ-TV, Channel 13 (CBS), but also radio stations WMAZ(AM) and WAYS(FM), pursuant to its grandfathered status under our multiple ownership rules.

---

using A.C. Nielsen's DMA statistics since Arbitron no longer updates its ADI lists. See Media/Communications Partners Limited Partnership, 10 FCC Rcd 8116, 8116, n. 3 (1995).

<sup>3</sup> The following television stations provide Grade B service to the proposed overlap area: WMGT(TV), WGXA(TV), WGNM(TV), Macon, Georgia; WHSG(TV), Monroe, Georgia; WSB-TV, WVEU(TV), WAGA-TV, WATL(TV), WGNX(TV), WTBS(TV), Atlanta, Georgia; WNGM-TV, Athens, Georgia; and WXTX(TV), WLTZ(TV), WRBL(TV), WTVM(TV), Columbus, Georgia.

However, grandfathered status under our multiple ownership rules terminates upon Commission approval of a transfer of control. See 47 C.F.R. §73.3555, Note 4. Consequently, the proposed transfer of control to Gannett will be inconsistent with the one-to-a-market rule. Accordingly, Gannett seeks a temporary 18-month waiver of Section 73.3555(c). Within that waiver period, Gannett proposes to dispose of radio stations WMAZ(AM) and WAYS(FM), in addition to television station WMAZ-TV, as stated above.

14. In 1989, the Commission established standards for reviewing requests for waiver of the one-to-a-market rule. It adopted a policy under which it looks favorably upon waiver requests involving: (1) station combinations in the top 25 markets where 30 or more independent broadcast voices remain after the proposed transaction; and (2) combinations involving "failed stations." See Amendment of Section 73.3555, Second Report and Order, 4 FCC Rcd 1741, reconsidered in part, 4 FCC Rcd 6489 (1989). Broadcast stations that have not been operated for a substantial period of time, defined as a minimum of four months, or that are involved in bankruptcy proceedings are considered "failed" within the meaning of the "failed station" criterion. See 47 C.F.R. §73.3555, Note 7. Those waiver requests not satisfying either standard will be evaluated on a case-by-case basis to determine if the proposed combination serves the public interest. Our case-by-case review is based on five factors, including: (1) the potential public service benefits; (2) the types of facilities involved; (3) the number of media outlets already owned by the applicant in the relevant market; (4) any financial difficulties involving the station(s); and (5) issues pertaining to the level of diversity and competition within the affected market. See Second Report and Order, 4 FCC Rcd at 1753-54.

15. Gannett has submitted a showing using the case-by-case criteria. First, Gannett maintains that it will continue to benefit from the same cost efficiencies realized by Multimedia, and derived from the ongoing utilization of joint station operations, such as the stations' shared studio location, STL tower and the placement of the FM antenna on the TV tower. Multimedia also estimates that the joint operations have saved administrative costs, such as personnel salaries, shared contracts and joint use of office machines. Multimedia estimates that the savings in annual expenditures come to approximately \$200,000. Gannett anticipates that allowing the cost savings gained by such cooperative operations will lead directly to programming and public service benefits. In addition, through the continued common ownership, Gannett looks forward to taking advantage of joint promotional efforts with regard to community events and activities.

16. Next, with regard to the types of facilities, Gannett states that WMAZ(AM) operates on 940 KHz with 50 kW effective radiated power (ERP), and competes with four other AM stations which have ERP's ranging from 1 kW to 5 kW. Station WAYS(FM) operates on Channel 256 with 100 kW ERP and a height above average terrain (HAAT) of 202 meters, which facilities, Gannett maintains, are equivalent to those of the five other FM stations licensed to Macon or nearby communities. Finally, WMAZ-TV is a VHF facility operating on Channel 13 with 316 kW ERP. The three competing local UHF stations operate

with an ERP from 1,050 kW to 1,290 kW, and have antenna facilities ranging from 231 meters HAAT to 247 meters HAAT.

17. Turning to the other media in the market, other than WMAZ-TV, WMAZ(AM) and WAYS(FM), Gannett will own no other media outlets in the Macon, Georgia market. Nor does Gannett represent that the stations have any financial difficulties, rendering the fourth factor inapplicable.

18. Finally, in order to show the nature of the market in light of the Commission's concerns regarding diversity and competition, Gannett has provided a showing of the diverse media that would exist after the proposed merger. Although Macon is not a top 25 market, Gannett contends that the levels of diversity and competition in the market will not be compromised. The Macon market is served by 19 broadcast outlets, consisting of four television stations and 15 radio stations, and a daily newspaper. Of the 19 broadcast outlets, thirteen are separately owned, operated and controlled. Further, Gannett asserts that Cox Cable provides cable service in the Macon area to over 70,000 subscribers, giving rise to a cable television penetration of 66%.

19. Gannett concludes by stating that it will divest of WMAZ-TV within the waiver period, and that negotiations for the sale of the radio stations are currently being conducted by Multimedia. However, should those negotiations fail to result in a sale, the temporary waiver requested herein will be needed to provide a fair amount of time to sell the television and radio stations at a price reasonably reflecting their true market value.

20. Based upon the circumstances before us, we do not believe that a temporary continuation of this grandfathered combination will appreciably adversely affect media diversity or competition in the Macon, Georgia market. As provided above, Gannett demonstrates that there are several broadcast outlets in the market, a daily newspaper and 66 percent cable penetration. Further, this multiple ownership combination has existed for many years without undue adverse effects on media diversity or competition. We recognize that none of the stations involved in this waiver request has experienced any financial difficulties. We also recognize that, with the exception of WAYS(FM), the stations involved in this case are not comparable to or less dominant than the other stations in the Macon market. However, as we stated in our Second Report and Order, "not all factors mentioned will be relevant in every case." *Id.* at 6491. Gannett has stated its present intent to dispose of WMAZ(AM) and WAYS(FM), as well as WMAZ-TV. Indeed, negotiations regarding the sale of the radio stations are currently in progress. Maintaining the status quo in the Macon market will enable Gannett to dispose of both the radio and television stations in an orderly manner that will add to further ownership diversity in that area and promote the public interest, as well as facilitate a multi-station merger transaction. Again, Gannett will be afforded a twelve-month period to dispose of these stations.

## TELEVISION-NEWSPAPER CROSS-OWNERSHIP RULE

21. Gannett owns The Cincinnati Enquirer, which is published within the Grade A contour of WLWT(TV), Channel 5 (NBC), Cincinnati, Ohio, currently owned by Multimedia. Consequently, the proposed transfer of control to Gannett will violate the Commission's television-newspaper cross-ownership rule, which prohibits common ownership of a daily newspaper and a television station in the same market. See 47 C.F.R. 73.3555(d)(3).<sup>4</sup> In order to come into compliance with Section 73.3555(d)(3) of the Commission's rules, Gannett has requested an 18-month period in which to dispose of television station WLWT(TV).

22. According to Gannett, in the past the Commission has allowed a temporary period in cases similar to this one, where the prohibited television-newspaper cross-ownership occurs because of a media acquisition. Twentieth Holdings Corp., 1 FCC Rcd 1201 (1986); Health & Medicine Policy Research Group v. FCC, 807 F.2d 1038 (D.C. Cir. 1986). Gannett contends that the market will continue to be served by a diversity of viewpoints because the Cincinnati market, the 30th largest DMA, has five commercial television stations, 22 commercial radio stations, a cable television reach of 59% of Cincinnati-area television households and a plethora of independently owned media.<sup>5</sup> Moreover, The Cincinnati Enquirer is one of two daily newspapers published in the market. Further, because the existing Gannett newspaper and broadcast divisions are operated on an autonomous basis, Gannett contends that the subject newspaper and television station would retain separate programming, sales and traffic departments.

23. Finally, as stated in its requests for temporary duopoly waiver and temporary one-to-market waiver, Gannett states that it has requested an 18-month temporary period in order to avoid a distress sale and to provide an opportunity to market the station to a broad range of prospective buyers.

---

<sup>4</sup> Our evaluation of the waiver request here is consistent with Commission precedent and with the Congressional mandate that we refrain from the use of appropriated funds "to repeal, to retroactively apply changes in, or to begin or continue a reexamination of the rules and the policies established to administer" the television-newspaper cross-ownership rule. 47 U.S.C. §156, n.1. (1995). See also Stauffer Communications, Inc., 10 FCC Rcd 5165 (1995).

<sup>5</sup> The following broadcast outlets serve the Cincinnati, Ohio market: WAKW(FM), WAOZ(AM), WCIN(AM), WCKY(AM), WGUC(FM), WJVS(FM), WKRQ(FM), WLW(FM)/WEBN(FM), WRRM(FM), WSAI(FM)/WPPT(FM), WTSJ(AM), WUBE(AM)/WUBE-FM, WVXU(FM), WWNK(FM), WCPO-TV, WKRC-TV, WLWT(TV), WCET(TV), Cincinnati, Ohio; WXIX-TV, Cincinnati-Newport, Kentucky; WOFX(FM), Fairfield, Ohio; WIZF(FM), Erlanger, Kentucky; WGRR(FM), WYGY(FM), Hamilton, Ohio. The daily newspapers serving the Cincinnati market are The Cincinnati Enquirer and The Cincinnati Post.

24. Based on the representations provided above, we conclude that a temporary period within which to come into compliance with Section 73.3555 (d)(3) of our rules is consistent with the public interest and Commission precedent. See, e.g., Twentieth Holdings Corp., 1 FCC Rcd. at 1201. In light of the multiplicity of media outlets serving the Cincinnati market, we see no reason to believe that an undue concentration of the media would occur during this temporary period. We also do not believe that the purposes of diversity would be served by forcing an immediate sale of the station because of the risk of eliminating potential buyers without immediate access to the necessary capital. As we have noted, however, we believe that a twelve-month period affords sufficient time for the orderly disposition of the station and provides a reasonable time for a broad range of qualified buyers to take advantage of the opportunity to own a broadcast station. Further, Gannett has committed to operate the station and the newspaper on an autonomous basis during this temporary waiver period.

#### **TEMPORARY WAIVER OF THE TWELVE-STATION OWNERSHIP RULE**

25. Currently, Gannett owns ten television stations and Multimedia controls five television stations. The proposed transfer of control will result in Gannett owning 15 television stations in violation of Section 73.3555(e)(1)(iii) of our rules, which prohibits ownership of more than 12 television stations.<sup>6</sup> Therefore, Gannett has requested a temporary 18-month waiver of our rules in order to divest itself of three of the 15 stations, WMAZ-TV, WLWT(TV) and KOCO-TV.<sup>7</sup> In support of the requested waiver, Gannett notes that the Commission has granted waivers of its 12-station radio and television ownership rules in the past. Specifically, Gannett points to TVX Broadcast Group, Inc. 2 FCC Rcd 1534 (1987), where a six-month temporary waiver was granted in order to divest of an unbuilt television station where negotiations for sale of the construction permit had already commenced, and Midwest Communications, Inc., 7 FCC Rcd 159 (1991), where an 18-month waiver was granted in order to divest of one FM station.

26. In further support of its waiver request, Gannett notes that in its Further Notice of Proposed Rule Making in MM Docket No. 91-221 and 87-8, supra, the Commission proposed

---

<sup>6</sup> Section 73.3555(e)(2)(ii) also generally prohibits a national audience reach greater than 25%. Here, the 15 television stations have a combined national audience reach of 14.1%.

<sup>7</sup> Gannett will be the licensee of the following 15 broadcast television stations: WMAZ-TV (CBS), Macon, Georgia; KOCO-TV (ABC), Oklahoma City, Oklahoma; WXIA-TV (NBC), Atlanta, Georgia; KARE(TV) (NBC), Minneapolis, Minnesota; KUSA-TV (ABC), Denver, Colorado; KPNX(TV) (NBC), Mesa, Arizona; WUSA(TV) (CBS), Washington, District of Columbia; KVUE-TV (ABC), Austin, Texas; WFMY-TV (CBS), Greensboro, North Carolina; WTLV(TV) (NBC), Jacksonville, Florida; KTHV-TV (CBS), Little Rock, Arkansas; KSDK-TV (NBC), St. Louis, Missouri; WBIR-TV (NBC), Knoxville, Tennessee; WLWT(TV) (NBC), Cincinnati, Ohio; WKYC-TV (NBC), Cleveland, Ohio.

raising the national ownership limits. Gannett cites to portions of the Commission's NPRM which it believes stand for the proposition that a liberalization of the national ownership limits would be no threat to competition and diversity. Gannett also argues that, pursuant to the NPRM, the Commission has found the issue of total households reached to be far more compelling than the number of stations owned. Although it concedes that the NPRM merely represents a proposed rule change, Gannett states that it is entitled to rely on the "Commission's current thinking in the competitive and diversity analyses that support the rulemaking."

27. When conducting an examination of a national ownership waiver, we place the burden on the applicant to show that its proposal is in the public interest and that a waiver would not adversely affect the goals of diversity and economic competition underlying the multiple ownership rules. See e.g. Stockholders of Westinghouse, Inc., FCC 95-469 42 (released November 22, 1995). While we do not find the facts in TVX Broadcast Group, Inc. and Midwest Communications, Inc. to be comparable to the circumstances now before us, we do believe that a limited waiver in this case will have no undue adverse impact on the public interest. We recognize that Gannett has pledged to divest itself of three of the 15 television stations. On the facts of this case, where the national ownership limit is exceeded by three stations and the national audience reach is 14.1%, we find the goals of the multiple ownership rules would not be compromised by a temporary waiver. Clearly the potential audience available to Gannett is not so large as to trigger our concerns with regard to any undue economic concentration or control during a temporary waiver period, especially when seven other group owners currently reach more households nationally than would be served temporarily by Gannett.<sup>8</sup> Finally, Gannett is not entitled to rely on our Further Notice of Proposed Rulemaking, which represents proposed policy and not existing law. An applicant before the Commission is not entitled to the benefit of a policy not yet adopted. Beaufort County Broadcasting Co. v. FCC, 787 F.2d 645, 649 n.2 (D.C. Cir. 1986) For the reasons stated earlier, we believe that a twelve-month waiver period should provide Gannett with adequate time to come into compliance with the 12-station standard in an orderly manner. Allowing an orderly disposition of the stations will avoid a "forced sale" and provide the opportunity for a broader range of potential buyers, thus serving the fundamental policies of the rule and will facilitate this multi-station transaction. Accordingly, we will grant a temporary twelve-month waiver.

---

<sup>8</sup> Gannett notes that the July 10, 1995 edition of Broadcasting & Cable lists the following seven group owners with larger national audience reaches: (1) Capital Cities/ABC, 24.5%; (2) Fox, 22.4%; (3) NBC, 21.7%; (4) Tribune, 20.4%; (5) CBS, 19%; (6) Silver King, 18.3%; and (7) Chris Craft/United Television, 17.9%.

## CABLE-BROADCAST TELEVISION CROSS-OWNERSHIP

28. Within the Grade B contour of Gannett television station KOCO-TV, Channel 5 (ABC), Oklahoma City, Oklahoma, Multimedia owns cable systems which serve approximately 105,000 subscribers. Through the proposed transfer of control, Gannett will assume control of these cable systems. Section 76.501(a) of our rules prohibits common ownership or control of a television broadcast station and a cable television system within the broadcast station's predicted Grade B contour. By enacting Section 613(a) of the Communications Act, Congress codified a statutory prohibition consistent with the existing rule. See 47 U.S.C. 533 (a) (1). More specifically, both Section 613(a) of the Act and Section 76.501(a) of our rules prohibit cross-ownership of collocated cable television and television broadcast stations. Accordingly, Gannett requests an 18-month temporary period in which to divest KOCO-TV and to come into compliance with the cable-broadcast cross-ownership rule.

29. According to Gannett, a temporary waiver of the Commission's ban on cable and broadcast television common ownership, in order to permit consummation of the Multimedia acquisition, would be consistent with Commission precedent. Teleprompter Corp., 84 FCC 2d 955 (1981); Golden West Associates, L.P., 59 RR 2d 125 (1985) Gannett also maintains that the abundance of diverse voices in the Oklahoma City area mitigates any "theoretical" increase in concentration of the media resulting from the proposed temporary common ownership of KOCO-TV and the Multimedia cable systems. In support of that claim, Gannett has submitted a showing which indicates that Oklahoma City has seven other commercial television stations, two educational television stations, 20 radio stations and a daily newspaper. Moreover, it notes that the cable subscribers have access to "numerous other programming services from national program providers such as CNN and CNBC, as well as local over-the-air channels." Additionally, the cable operations and the television station will continue to be managed separately during the waiver period. Finally, Gannett again points out the drawbacks of a forced sale and the negative impact of such a requirement on prospective buyers without immediate access to capital.

30. As we have stated in the past, the Commission lacks the authority to grant a permanent waiver of Section 613(a) of the Communications Act. However, the Commission may allow the parties a temporary period to come into compliance with Section 613(a) in order to "accommodate the exigencies of the marketplace." See Cablevision VI, Inc., 5 FCC Rcd 7166 (1990); Golden West Associates L.P., 59 RR 2d at 125. In so doing, we are able to facilitate the applicant's request for time within the statutory framework, as long as that request causes no undue harm to the public interest.

31. Based on the assertions made herein and the totality of the circumstances surrounding the proposed cross-ownership, we believe providing the parties a twelve-month temporary time period in which to come in to compliance with Section 613(a) of the Act would be in the public interest. The subject Oklahoma media properties are but a small portion of a substantial sale involving various television stations and radio broadcast media.

We see no public interest benefit in requiring loss of service of an operating cable system or a broadcast television station until a buyer is found. Further, given the availability of alternative media serving the Oklahoma City market, our traditional concerns with regard to diversity are greatly alleviated. Thus, we believe a twelve-month temporary period will be sufficient to permit an orderly disposition of KOCO-TV within the confines of our public interest standard.

### THE IBT PETITION

32. Pursuant to Section 73.3584 of our rules, any petitions to deny an application for transfer of control must be filed no later than 30 days from the date of public notice of the acceptance for filing of the application. Accordingly, because the application for transfer of control of Multimedia to Gannett was placed on public notice August 4, 1995, all petitions to deny the application were required to be filed by September 5, 1995. IBT filed a petition to deny the instant application on September 19, 1995, approximately two weeks after the 30-day public notice period expired. IBT also included with its petition to deny a motion to accept the untimely petition, pursuant to Section 73.3584 of the Commission's rules. In support of that motion, IBT asserts that the timely filing of its petition was "impossible" because certain "material" factors supporting the pleading "recently came to light." Those factors consist of (a) a reported announcement of a Department of Justice investigation of alleged antitrust violations by Gannett, and (b) a National Labor Relations Board complaint and notice of hearing against the Detroit Newspaper Agency, which is partially controlled by Gannett. With regard to these non-FCC legal matters, the Commission does not recognize such pending proceedings as material to its review of an applicant's qualifications. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1204-05, reconsidered, 1 FCC Rcd 421 (1986). Thus, IBT has failed to provide a compelling showing of unusual circumstances necessary to grant its request to consider the pleading as a formal petition to deny. Nonetheless, we have elected to consider the pleading as an informal objection, as requested by IBT, according to Section 73.3587 of our rules.

33. IBT argues that the transfer of control should be denied based on two primary allegations: (1) Gannett will acquire an unprecedented concentration of ownership; and (2) Gannett does not meet the requisite character qualifications for a broadcast licensee. Based on these allegations, IBT requests that the Commission either deny the application or designate the application for hearing.

34. **Multiple ownership.** IBT contends that neither the Commission's rules, the Commission's cases, nor the Communications Act of 1934, provide support for a grant of the waivers requested in the proposed transfer of control. First, IBT contends that, contrary to Gannett's claims, there is no clear precedent for a waiver of the 12-station limit. IBT argues that the Further Notice of Proposed Rulemaking cited by Gannett fails to support the waiver request because it does not represent existing law. In addition, of the mere two cases cited in support of this waiver, TVX Broadcast Group, Inc. consisted of only a six-month temporary

waiver. Of the proposed media combinations, IBT views the television-daily newspaper cross ownership to be the most critical. Although Gannett acknowledges ownership of the USA Today and The Cincinnati Enquirer, IBT alleges that Gannett jointly owns The Cincinnati Post with E.W. Scripps Company, pursuant to a joint operating agreement. Thus, according to IBT, Gannett would control all of the daily newspapers in Cincinnati. Based on the above allegations, along with the additional requested multiple-ownership waivers, IBT believes the proposed transfer of control would unfairly allow Gannett a significant, unprecedented share of the broadcast, print and cable media market. Accordingly, IBT urges the Commission to deny the applications or, at a minimum, to schedule a hearing to determine whether the public interest would be served by the proposed transaction.

35. As we have stated in the past, the Commission is not adverse to waiving the multiple ownership rules in certain cases where the underlying goals of diversity and economic competition are not compromised. Turning to the allegations relating to the 12-station limit, as discussed above, we agree that our Further Notice of Proposed Rulemaking does not represent existing law. Again we note that an applicant before the Commission is not entitled to the benefit of a policy not yet adopted. Beaufort County Broadcasting Co. v. FCC, 787 F.2d 645, 649 n.2 (D.C. Cir. 1986). However, Gannett has committed to divest three of the 15 television stations. Given that commitment and the extent of the stations' national audience reach, we do not believe that the goals of our multiple ownership rule would be compromised during the temporary twelve-month period being afforded Gannett. With regard to IBT's allegation that Gannett owns The Cincinnati Post, we do not find this to be the case. As explained by Gannett in its opposition, E.W. Scripps Company publishes The Cincinnati Post, and is party to a Newspaper Joint Operating Agreement (JOA) with the Gannett subsidiary which publishes The Cincinnati Enquirer. Gannett has submitted information which shows that pursuant to the terms of the JOA, The Cincinnati Enquirer and The Cincinnati Post are independently controlled and edited, and each owner is solely accountable for its newspaper's content. Consequently, no unreported multiple ownership issue exists.<sup>9</sup> We recognize the magnitude of the waivers requested by the applicants in this case. However, as detailed above in our analysis of each of the requested waivers, we find their temporary nature and the level of diversity in the affected markets to be consistent with Commission precedent. Accordingly, after careful evaluation of the proposed transfer of control, we believe the applicants have provided sufficient information to warrant the requested waivers of our multiple ownership rules.

36. **Character Qualifications.** IBT contends that Gannett does not meet the requisite character qualifications for a broadcast licensee based on four pending non-FCC related proceedings. Although IBT acknowledges that three of the complaints have not been adjudicated, it asserts that given the unprecedented number and nature of the proceedings, two

---

<sup>9</sup> With regard to the USA Today, the newspaper-broadcast cross-ownership rules are not designed to affect an owner of a national newspaper. See Letter to Gannett Co., Inc. 102 FCC 2d 1263 (1986).

of which are being adjudicated by other government agencies, the Commission must consider the possible violations to be egregious and must hold a hearing to determine whether Gannett is a qualified applicant. In response, Gannett claims that none of the four matters raised by IBT has been adjudicated to the adverse determination required by the Commission. It maintains that the one alleged adverse finding was actually a settlement in which the individual named in an insider-trading suit neither denied nor admitted the allegations. According to Gannett, the alleged violations are neither "unprecedented" or "egregious," and none of these matters warrant consideration by the Commission at this time.

37. With regard to an applicant's character qualifications, the Commission views with concern non-FCC misbehavior that is predictive of "whether an applicant . . . lacks the character traits of truthfulness and reliability that we have found relevant to the qualifications to operate a broadcast station in accordance with the requirements of the Communications Act and of our rules and policies." Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1195 (1986). In examining such non-FCC misconduct, our policy is "to refrain from taking any action. . . prior to adjudication by another agency or court." *Id.* at 1204-1205. Accordingly, the three pending non-FCC matters indicated in IBT's petition will not be considered by the Commission at this time, because no adverse finding against Gannett has been determined. The Commission also refrains from considering consent decrees for the purposes of assessing an applicant's character. *Id.* at 1205. Consequently, the settlement agreement included by IBT as an adjudicated matter is also outside the Commission's area of concern. We acknowledge, as we have in the past, that we will take cognizance of an applicant who engages in "nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation" *Id.* at 1205, n.60. However, the alleged transgressions are not of the nature that would prompt our immediate concern prior to the resolution of the pending administrative and judicial proceedings. In sum, having considered the materials before us, we find that the informal objection filed in this proceeding does not raise a substantial and material question of fact that would require a hearing.

## CONCLUSION

38. Having determined that the applicants are qualified in all respects, we find that grant of the applications for transfer of control of the licenses held by Multimedia to Gannett will serve the public interest, convenience and necessity.

39. Accordingly, **IT IS ORDERED**, That The International Brotherhood of Teamsters' motion to file its petition to deny out of time **IS DENIED**, the petition to deny filed by the International Brotherhood of Teamsters **IS DISMISSED**, and when considered as an informal objection **IS DENIED**.

40. **IT IS FURTHER ORDERED**, That the requests of Gannett for temporary waivers of the one-to-a-market rule, 47 C.F.R. §73.3555(c); the duopoly rule, 47 C.F.R. §73.3555(b); the television-newspaper cross-ownership rule, 47 C.F.R. § 73.3555(d)(3); the

12-station limitation rule; 47 C.F.R. §73.3555(e)(iii); and the request for time to come into compliance with the cable-broadcast television cross-ownership prohibition, 47 C.F.R. §76.501, **ARE GRANTED TO THE EXTENT INDICATED HEREIN.**

41. **IT IS FURTHER ORDERED,** That the applications for consent to transfer control of the aforementioned radio, television and cable television relay station licenses held by Multimedia, Inc. to Gannett Communications, Inc. **ARE GRANTED,** subject to the condition that, within twelve months from the consummation of this transaction, Gannett files applications with the Commission or takes such other action as necessary to bring it into full compliance with Sections 73.3555 and 76.501 of the Commission's Rules.

42. **IT IS FURTHER ORDERED,** That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary