

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

In re:

Kilgore Cable TV Company CSR-4474-X

Request for Declaratory Ruling and
Waiver of Section 76.501(a) of the
Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: January 29, 1996; Released: February 7, 1996

By the Deputy Chief, Cable Services Bureau:

1. Kilgore Video, Inc. ("KVI"), the controlling general partner of Kilgore Cable TV Company (the "partnership"), a general partnership that owns and operates a cable television system serving Kilgore, Texas (the "system") has requested a declaratory ruling that its contractual right to purchase a further interest in KVI can be exercised consistent with the provisions of Section 613(a)(1) of the Cable Communications Policy Act of 1984 (the "Cable Act"). In the event that their purchase is found to be consistent with Section 613(a)(1), KVI also seeks a waiver of 47 C.F.R. §76.501(a), the Commission's broadcast-cable cross-ownership prohibition, for its purchase of an additional interest in KVI. In regard to the above, KVI maintains that its longstanding option to purchase the interest of its partner, Donrey of Texas, Inc. ("Donrey"), in KVI is an enforceable agreement within the meaning of Section 613(a)(1) of the Cable Communications Policy Act of 1984 (the "Cable Act") and that a waiver of Section 76.501(a) of the Commission's cross-ownership rules would be appropriate to carry out the proposed transaction. The request is unopposed.

2. KVI requests a waiver of the Commission's cable television-broadcast station cross-ownership rules because its cable operations are under common control with the

licensee of station KTAL-TV, Shreveport, Louisiana which places a predicted Grade B contour over Kilgore even though the station is located 65 miles from Kilgore and is in a different television market.¹ Section 76.501(a), the pertinent rule provision, reads as follows:

No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour, computed in accordance with §73.684 of part 73 of this chapter, overlaps in whole or in part the service area of such system (i.e. the area within which the system is serving subscribers).

Section 613 of the Cable Act, which was modeled after Section 76.501(a), is the statutory basis for the cable television-broadcast station cross-ownership ban.² However, the statute permits combinations and interests held on or before July 1, 1984.³ Nevertheless, an increase in an existing ownership interest has been held to create a new cross-ownership interest that requires prior Commission approval.⁴ According to petitioner, the present controlling interest it holds in the cable system, 50 percent ownership plus the right to operate the system, is a "non-egregious" cross-ownership interest which is permitted because it existed as of July 1, 1970.⁵ KVI, therefore, must seek approval to acquire any additional ownership interest above the 50% it now owns.

3. According to KVI,⁶ it has controlled the cable television system in Kilgore since inception of service in the 1960s and has an enforceable agreement dating back almost 30 years to obtain the remainder of the system from Donrey of Texas, Inc. Under a contract dated January 1, 1977, which was drawn to effectuate the 1965 agreement between the parties, both partners have an absolute right to acquire the interest of the other partner. Donrey now wishes to sell its interest in the system to KVI.

4. In support of its waiver request, KVI argues that an increase in its ownership interest would have no effect on competition in the Kilgore video marketplace. First, KVI exercises sole and complete control over the operation of the system now, and permitting it to own the remainder of the system would not adversely affect competition. Second,

¹ KTAL is part of the Texarkana-Shreveport television market. The city of Kilgore, Texas, on the other hand, is part of the Tyler-Longview-Jacksonville television market which is served by three local television stations none of which have any ownership affiliation with KVI. These stations are KETK, Tyler, TX (Ch. 56, NBC); KFXK, Longview, TX (Ch. 51, FOX); and KLTV, Tyler, TX (Ch. 7, ABC). According to KVI, each of these stations places a predicted Grade A contour over the city of Kilgore, Texas.

² Section 613(a)(1) states that:

It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system.

See 47 U.S.C. § 533(a)(1).

³ Section 613(g) provides that:

This section shall not apply to prohibit any combination of any interests held by any person on July 1, 1984, to the extent of the interests so held as of that date, if the holding of such interests was not inconsistent with any applicable Federal or State law or regulations in effect on that date.

See 47 U.S.C. § 533(g).

The legislative history of Section 613(g) makes it clear that cross-ownership interests permissibly may be increased under certain circumstances ("For purposes of subsection 613(g), the holding of an interest in a cable system or cable systems includes any enforceable agreement signed as of July 1, 1984, to obtain an interest in such system or systems.") See H.R. Rep. No. 98-934, 98th Cong., 2d Sess. 58 (1984).

⁴ See, e.g., *Kansas State Network, Inc.*, 67 FCC2d 737, 740 (1978); *Georgia Cablevision Corp.*, 65 FCC 2d 506, 511 (1977).

⁵ See 47 C.F.R. § 76.501(c).

⁶ KVI's parent company, WEHCO Video, Inc., operates a network of cable systems serving 17 communities in the region.

common ownership of a Shreveport television station and a Kilgore cable system would have no impact on the Kilgore market as the 4,000 subscribers served by the system constitute just over one percent of the total net weekly circulation of KTAL. Third, the system and the station are located in entirely different television markets. Fourth, the Kilgore system carries an NBC affiliate that competes with KTAL. Finally, the system and the station operate under entirely separate management.

5. Two separate steps are involved in determining whether KVI may increase its prior interest in KVI. The Commission must determine that KVI's option satisfies the statutory requirement set forth in Section 613(g), i.e. that the proposed increase in ownership is based on an enforceable agreement signed as of July 1, 1984. The Commission must also determine thereafter whether an increase in that interest would be appropriate under Section 501(a)(1) waiver standards based upon the factual pattern present. The policy goals of Section 76.501(a) are to increase competition in the economic marketplace and in the marketplace of ideas.⁷ In cases where enforcement of the ban on cross-ownership does not promote these goals, a waiver of the rules will be entertained.⁸

6. We find that the agreement at issue meets the both statutory test set forth in Section 613(g) of the Cable Act and the applicable waiver standards under Section 76.501 of the Commission's rules. First, the proposed increase in ownership is based on a contract signed in 1977, seven years before the statutory cut-off date. The option granted to KVI under the partnership agreement gives it an unconditional and absolute right to acquire the Donrey interest. Thus, we find that the contract is a valid enforceable agreement entered into prior to July 1, 1984.

7. With regard to the second step, we find that the record supports the grant of the requested waiver of Section 501(a)(1)⁹ and that the proposed cross-ownership interest is not inconsistent with the intent of the applicable regulations. KVI's purchase of Donrey's interest in the system would not negatively affect economic competition or the diversity of voices in the Kilgore video marketplace. The record presents sufficient evidence demonstrating that the cable system and the television station operate in separate markets with a minimal degree of population overlap. Moreover, the cable system is presently managed by KVI and the system and the broadcast station have separate and distinct managements in place. The presence of the three local must-carry television stations on the Kilgore cable system, including NBC affiliate KETK which is KTAL's natural competitor, is an additional factor in favor of granting the waiver. Furthermore, we note that KVI's interest would not be readily marketable due to the nature of the interest and the small number of subscribers involved. In this case, permitting KVI to increase its ownership interest is essentially *pro forma* as it already exerts *de facto* control over the cable system.

8. ACCORDINGLY IT IS ORDERED that, the captioned request filed by Kilgore Video, Inc. on November 21, 1994, IS GRANTED.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁷ See *Western Communications, Inc.*, 58 RR 2d 136, 138 (1985).

⁸ See *Second Report and Order*, Docket 18397, 23 FCC 2d 816, 821 (1970), *recon. denied*, 39 FCC 2d 377 (1973).

⁹ The Commission has previously concluded in *Western Com-*

munications, Inc., *supra*, n.7, that an increase in an existing interest through a waiver process is not inconsistent with the statutory codification of the cross-ownership rule.