



Federal Communications Commission
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DA 16-73
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Reiten Television, Inc.
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1919 Pennsylvania Avenue, NW
Washington, DC 20006

Nexstar Broadcasting, Inc.
c/o Elizabeth Ryder
545 E John Carpenter Fwy, Suite 700
Irving, TX 75062

Re: Application for Consent to Assignment of Licenses and Request for Continued Satellite Authority
KXMA-TV, Dickinson, ND, Fac. ID No. 55684
KXMB-TV, Bismarck, ND, Fac. ID No. 55686
KXMC-TV, Minot, ND, Fac. ID No. 55685
KXMD-TV, Williston, ND, Fac. ID No. 55683
File No. BALCDT-20151002ABX

Dear Counsel:

By this letter we grant the above-captioned uncontested application for the assignment of four television licenses from Reiten Television, Inc. (“Reiten”) to Nexstar Broadcasting, Inc. (“Nexstar”). In connection with the sale, we grant Nexstar continued authority to operate stations KXMA, Dickinson, ND, KXMB, Bismarck, ND, and KXMD, Williston, ND, as satellites of KXMC, Minot, ND, pursuant to the satellite exemption to the local television ownership rule.¹ We further condition our grant upon termination at closing of the existing attributable JSA between Reiten and KBYM/KMAY, LLC.

In *Television Satellite Stations*, the Commission adopted “a presumption that TV satellite operations are in the public interest if individual applicants can satisfy certain public interest criteria.”² The presumptive satellite exemption to the duopoly rule is therefore met if the following three public interest criteria are satisfied: (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.³ If an

¹ 47 C.F.R. § 73.3555, Note 5.

² *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212, 4213 (1991) (subsequent history omitted) (“*Television Satellite Stations*”).

³ *Id.* at 4213-14.

applicant does not 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.⁴ No objections have been filed against the requested continued “satellite exemption.” KXMB and KXMD have operated as satellites of KXMC since each station’s inception in 1955 and 1969, respectively, and KXMA has operated as a satellite of KXMC since Reiten acquired it in 1984.⁵

With regard to the first criterion, we recognize that, following the digital transition, full-power television stations have a digital Principal Community contour that serves a much larger area than their former analog City Grade contour, and that the first criterion of the presumptive standard is no longer relevant in the digital environment.⁶ The continuing satellite waiver request confirms that all four stations broadcast solely in digital mode.⁷

With regard to the second criterion, Nexstar is unable to presumptively demonstrate that KXMA, KXMB, and KXMD are located in underserved areas. The “transmission” test deems an area underserved where there are two or fewer full-service television stations (including commercial, noncommercial, and satellite stations) licensed to a proposed satellite’s community of license.⁸ Three other television stations are licensed to the communities of Williston and Dickinson respectively, and five stations are licensed to the community of Bismarck.⁹ However, there are no full power stand-alone stations that serve either Williston or Dickinson. In Bismarck, each of the five stations either serves as the primary station for one or more satellites or itself operates as a satellite of another primary station in the DMA.¹⁰

With regard to the third criterion, there is no evidence that the licensee has attempted to sell KXMA, KXMB, or KXMD separately as full service stand-alone stations. However, in its waiver request, Nexstar included a letter from Mr. Frank Higney, Vice President of Kalil & Co., Inc., a nationally recognized brokerage and appraisal firm, stating that it is unlikely that an alternative operator would be willing and able to operate the stations as stand-alone facilities. In the letter, Mr. Higney points out several factors that his firm believes make the operation of KXMA, KXMB, and KXMD as stand-alone full-service stations impracticable: (1) the Minot-Bismarck-Dickinson (Williston DMA) is a vast one, covering 39 counties and 40,000 square miles throughout central and western North Dakota and parts of Montana, and each of the stations provides an over-the-air signal to less than half of the geographic area of the DMA; (2) each of the owners in the market cover the DMA via a full power parent with satellites because no single station can provide services to the full DMA; and (3) in Kalil’s marketing process for the stations, no potential buyers considered any of the stations for operation as possible stand-alone stations.¹¹ The letter also contends that without continued satellite service for these three stations, a significant number of households in the DMA would lose the over-the-air signal of the CBS affiliate in the DMA and would be deprived of a news outlet for local news and critical weather information.¹² Lastly, the waiver request points

⁴ *Id.* at 4214.

⁵ Continuing Satellite Waiver Request at 1.

⁶ *LIN License Co., LLC*, Letter Order, 27 FCC Rcd 12082, 12083 (MB Vid. Div. 2012).

⁷ Continuing Satellite Waiver Request at 2.

⁸ *Television Satellite Stations*, 6 FCC Rcd at 4215.

⁹ Continuing Satellite Waiver Request at 3.

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

out that loss of continuing satellite waivers for KXMA, KXMB, and KXMD would put KXMC at a significant disadvantage to its competitors in the DMA since each of the other major network affiliates plus the PBS station operate with one or more satellite stations to serve the DMA.

While the instant request does not satisfy the criteria of the Commission's presumptive satellite standard, we find that Nexstar has set forth information sufficient to warrant continued satellite status for KXMA, KXMB, and KXMD pursuant to our *ad hoc* analysis. Given these stations' long history as satellites of KXMC, the limited and spread out population of the DMA, and the fact that the other major network affiliates in the DMA also rely on satellites, it is unlikely that an alternative operator would be willing and able to operate these stations as stand-alone facilities. We see no evidence in the record that continuing the satellite exemption will harm competition in the market. Indeed, we find that doing so will benefit the public interest by promoting access to broadcast services which may otherwise not be feasible. For the reasons discussed above, we find that the continued operation of KXMA, KXMB, and KXMD as satellites of KXMC would be in the public interest.

Furthermore, having reviewed the application and other facts before us, we conclude that, not only will grant of the application comply with Commission rules, but that grant will serve the public interest, convenience, and necessity. In making this latter finding, we note that the transaction will result in the voluntary termination of an existing attributable JSA.

ACCORDINGLY, IT IS ORDERED, That the request for the continued operation of stations KXMA, Dickinson, ND, KXMB, Bismarck, ND, and KXMD, Williston, ND, as satellites of KXMC, Minot, ND, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, IS GRANTED.

IT IS FURTHER ORDERED, That the above-referenced application for consent to assign the licenses of KXMA, Dickinson, ND; KXMB, Bismarck, ND; KXMC, Minot, ND; and KXMD, Williston, ND (File No. BALCDT-20151002ABX) IS GRANTED, conditioned upon termination at closing of the existing attributable JSA between Reiten and KBMY/KMCY, LLC.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau