



June 26, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW-A325
Washington, DC 20554

Re: Modernization of Media Regulation Initiative
Public Notice – MB Docket No. 17-105

Dear Ladies and Gentlemen:

Gray Television, Inc. (“Gray”) appreciates the Commission’s initiation of a proceeding to review, modify and repeal media-related regulations that impose unnecessary burdens for little or no benefit and, as such, stand in the way of competition and innovation in the media marketplace.

In the spirit of that proceeding, Gray submits that the Commission can and should act immediately – without waiting for a lengthy rulemaking proceeding – to eliminate wasteful and time-consuming policies related to the transfer and assignment of licenses for demonstrably uncompetitive full-power satellite television stations.

Specifically, the Commission should direct the Media Bureau today to adopt new Processing Guidelines that eliminate the need for applicants to re-demonstrate, and for the Bureau to review and write a decision reaffirming, the uncompetitive nature of full-power television stations that previously have been designated as “satellite stations.” Thereafter, whether through this Docket or another Docket, the Commission should codify this common sense reform.

Background. In *Television Satellite Stations*, the Commission established an exception to its multiple ownership and main studio rules for television stations that it determines are unable to operate on a stand-alone basis, thereby allowing such stations to be operated by distant “parent stations” that themselves comply with the multiple ownership and main studio rules.¹ In this manner, the Commission has preserved free, over-the-air service to rural communities despite a demonstrated lack of advertising revenues to support ongoing operational costs. Gray owns 15 satellite stations, 12 of which Gray acquired in the past four years.

¹ *Television Satellite Stations Review of Policies and Rules*, Report and Order, 6 FCC Rcd. 4212, 4215 (1991)(subsequent history omitted). To obtain satellite status, an applicant must demonstrate compliance with a three-part standard or demonstrate otherwise compelling circumstances. The presumptive standard consists of three public interest criteria: (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. *Id.*

Among the many broadcast ownership rules, policies, and processing guidelines are provisions that require certain applicants to submit lengthy, costly, and unnecessary requests to continue satellite station waivers that the Commission previously granted simply because the owners are seeking approval of new ownership or revised control of the station. Renewing these waivers upon every assignment or transfer of a broadcast license serves no rational purpose.

Current Policy Creates Zero Benefits While Imposing Wholly Unnecessary Costs

First, the mere sale of a station operating under a satellite waiver does not mean that the underlying conditions warranting the waiver have improved. To the contrary, we are unable to find a single instance in which the Commission found that a sale or transfer revealed new facts warranting revocation of a satellite station waiver.

This result should come as no surprise. The Commission grants satellite waivers only after a thorough investigation of the facts and release of written findings based on specific evidence that the subject station faces local economic conditions that make it impossible for the station to operate independently. Requiring re-authorization of a satellite waiver makes sense only if the Commission assumes that there is a good chance conditions have improved such that the waiver is no longer necessary. There is no basis for this assumption because the local broadcast business faces more, not less, economic challenges today than any prior point in time. Moreover, the rural, sparsely populated areas served by satellite stations face their own unprecedented challenges.² Whether the Commission concluded that a particular station could not operate independently one year ago or twenty years ago, it is highly unlikely that local market conditions will have miraculously improved in the intervening time period, and the Commission's policies should reflect that reality.

Second, threatening to revoke satellite status upon a sale or transfer creates a substantial disincentive to invest in these struggling stations in rural and economically depressed areas. Public policy should not threaten to punish an owner that has succeeded in investing in these troubled areas and improving a station's economic prospects. Instead, public policy should encourage broadcasters to buy and invest in satellite stations and their local communities for the long-term.

Third, it is illogical for the Commission to continue to require applicants to hire brokers, lawyers, engineers and/or economists simply to continue these previously-granted waivers while the Commission freely allows the transfer of stations in identical situations without the cost and time burdens of seeking a new waiver. In particular, the Commission has authorized and granted numerous waivers of the main studio rule for television stations in underserved areas utilizing the exact same standards that warrant satellite waivers,³ but unlike satellite waivers, main studio waivers are transferrable to future owners. The only difference between stations with a satellite waiver and those with a main studio waiver is that the latter have contours that overlap with their parent stations, while main-studio-waiver stations do not have contour overlap. This is a distinction without a difference. If a station serves an area that cannot support an independently operated television station, it makes no difference to the local community whether the Commission has granted a main studio or a satellite waiver to the station. Yet, in the context of a transaction, an applicant faces costs and delays if the station has a satellite rather than a main studio waiver.

² Janet Adamy & Paul Overberg, *Rural America is the New 'Inner City,'* Wall St. J. (May 26, 2017), <https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008>.

³ See, e.g., *Shareholders of CBS Corp.*, 15 FCC Rcd 8230, 8244, ¶ 40 (2000) (granting a main studio waiver based on factors that otherwise would justify continued satellite authority under the *ad hoc* test).

Fourth, these waiver re-authorization requests impose delays and costs on the applicants, the parties and employees in a transaction, as well as the Commission. A transaction requiring the preparation, review, processing and writing of a decision granting renewal of a satellite waiver will take double or triple the amount of time it takes to obtain approval of sale or transfer of a license absent a waiver. These outdated requirements waste the resources of Commission staff who always have more consequential matters that demand their time and resources. It bears repeating: despite reviewing scores of requests to renew satellite waivers since 1991, this investment of Commission resources has not once led to the denial of a new waiver request for a station that previously obtained a satellite waiver.

In short, the regulations and policies requiring applicants to re-demonstrate, and the Commission to review and write a decision reaffirming, satellite waivers serve no rational purpose, impose unnecessary delays and waste the resources of private parties and the Commission itself.

Gray's Proposal to Reform the Flawed Satellite Waiver Policy

We do not foreclose the (heretofore unseen) possibility that local market conditions that once prevented the independent operation of a television station could radically improve over time, thereby obviating the need for a satellite waiver. For that reason, we propose a new Processing Guideline and subsequent codification of a rule that includes a “safety valve” permitting the public and the Commission to address this potential situation, without subjecting each and every station sale to the costs and delays of a new waiver request.

In particular, we propose that:

1. The Commission adopt a policy that immediately waives⁴ any and all provisions requiring issuance of a new waiver to replace a previously granted satellite waiver upon a transfer of control or assignment of license for such a station.
2. Licensees of such stations should be permitted to assign and transfer the licenses freely, that is, without a waiver request and without a written decision granting a new waiver, provided that:
 - (A) the proposed assignor and assignee certify in the relevant assignment and transfer applications that the underlying circumstances that were relied upon by the Commission in granting the current waiver have not changed materially since the issuance of the waiver, and
 - (B) one of the applicants uploads to the assignment or transfer application a complete copy of the written Commission decision granting the current waiver.
3. A grant of satellite status for a station would be specific to the station itself and not a particular parent-satellite combination, thus, giving licensees the flexibility to change

⁴ Immediate relief through the issuance of a blanket waiver via Processing Guidelines is permitted, if not compelled, by the Commission's obligation to regulate, and to waive unnecessary regulations, as necessary to advance the public interest. See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

a satellite station's parent without the need to re-demonstrate that the satellite continues to operate in an underserved area.

4. Through this Docket or another Docket, the Commission should codify the Processing Guideline outlined above.

This certification-and-upload approach would provide an opportunity for interested parties to review the most recent satellite waiver decision when reviewing the subject assignment or transfer application. If an interested party disagrees with the applicants' certifications, that individual could object to the application through the normal Public Comment process by bringing to the Commission's attention such facts and circumstances that are believed to warrant the cessation of the subject waiver upon the closing of the proposed transaction. The applicants could respond through the normal pleading cycle. Thereafter, the Commission would be able to analyze the facts and circumstances surrounding the waiver after the development of a complete record. Absent any opposition, however, the Commission should grant the application based on the applicants' certifications.

Moreover, by clarifying that a station's satellite status is not dependent on serving as a satellite to a particular parent station, it will provide licensees with sufficient flexibility to change a satellite's parent station to better serve local market conditions without the need to undergo additional Commission review. After all, if a station serves an underserved area as a satellite, it does not matter what station serves as its parent. Gray has firsthand experience for why this flexibility is so important. In 2016, Gray acquired KNEP-TV, Scottsbluff, Nebraska, and KSGW-TV, Sheridan, Wyoming. At the time, both stations operated as out-of-state satellites to KOTA-TV, Rapid City, South Dakota. Gray has since converted KNEP-TV and KSGW-TV to satellites of KNOP-TV, North Platte, Nebraska, and KCWY-TV, Casper, Wyoming, respectively, bringing in-state news and information for the first time to residents in these underserved areas.⁵ By confirming that satellite licensees have the flexibility to change a station's parent without prior Commission approval, licensees will be able to quickly adapt to local market conditions and better serve the public interest.

The Commission Should Adopt This Reform TODAY

We respectfully urge the Commission to revise its Processing Guidelines immediately to narrow its review of satellite station waivers and thereby speed Commission review of transactions. In this manner, the Commission could afford immediate relief to parties and the Commission itself without any negative impact or costs, all while preserving its ability to review any cases that truly warrant its review.

Respectfully submitted,



Kevin P. Latek
Executive Vice President, Gray Television, Inc.

⁵ Schurz Communications, Inc, *Letter*, 31 FCC Red 1113 (2016). In its decision approving Gray's acquisition of these stations, the Commission recognized the significant public interest benefits accruing from changing the parent stations of these satellites.