

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

In re Application of	)	
	)	
<b>SCANLAN TELEVISION, INC.</b>	)	File No. BPCT-941116KH
	)	Facility ID No. 66546
For a Construction Permit for a New Television	)	
Station on Channel 10, Ishpeming, Michigan	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 4, 2000**

**Released: February 8, 2000**

**By the Chief, Mass Media Bureau**

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned, unopposed application for a new television construction permit on Channel 10 in Ishpeming, Michigan, filed by Scanlan Television, Inc. (Scanlan). Scanlan is currently the licensee of station WBKP(TV), Channel 5 (ABC), Calumet, Michigan. Under the Commission's recently revised duopoly rule, which became effective November 16, 1999, an entity may own, operate or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research) if: 1) the Grade B contours of the stations do not overlap; or 2) if at least one of the stations is not ranked among the top four stations in the DMA and more than eight independently owned commercial and noncommercial television stations are licensed in the DMA. *See* 47 C.F.R. § 73.3555(b) (1999). Here, both WBKP(TV) and proposed Channel 10 are within the Marquette, MI DMA, which does not have operating at least eight independently owned commercial and noncommercial television stations. Accordingly, Scanlan's operation of WBKP(TV) and proposed Channel 10 as full-service television stations would violate the current duopoly rule. *See In the Matter of Review of Commission's Regulations Governing Television Broadcasting*, MM Docket No. 99-221, FCC 99-209, released August 6, 1999.<sup>1</sup> However, Scanlan proposes to convert station WBKP(TV) into a satellite of the new station, and requests a grant of the application pursuant to the exception to the duopoly prohibition for satellite operation as set forth in Note 5 of Section 73.3555 of the Commission's rules.

2. The Commission initially granted Scanlan's above-captioned application on September 29, 1999 as part of a settlement among four mutually exclusive applicants for Channel 10 in Ishpeming. However, it was subsequently discovered that Scanlan had not timely amended its Channel 10 application, as required by Section 1.65 of the Commission's rules, to

<sup>1</sup> In addition, because the Grade B contour of WBKP(TV) would overlap the proposed Grade B contour of the new station, the operation of both stations as full-service television stations would violate former television duopoly rule, 47 C.F.R. § 73.3555(b) (1998), which was in effect at the time Scanlan filed its Channel 10 application.

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report the April 12, 1995 filing and the March 7, 1996 grant of its WBKP(TV) application.

Rather, on September 14, 1999, Scanlan tendered an amendment to its Channel 10 application to report the existence of WBKP(TV) and to request that the Commission permit the operation of WBKP(TV) as a satellite station of proposed Channel 10. Because the staff had not received this amendment, it initially granted the Channel 10 application. Upon discovery, the staff rescinded the grant of the Channel 10 application and returned it to pending status.<sup>2</sup>

### REQUEST FOR SATELLITE STATUS

3. Pursuant to the Commission's television satellite policy, as set forth in *Television Satellite Stations*, 6 FCC Rcd 4212 (1991) (subsequent citations omitted), an applicant for satellite status is entitled to a presumption that the proposed satellite operation is in the public interest if it meets three 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.* at 4213-14. Applications meeting these criteria, when un rebutted, will be viewed favorably by the Commission. If an applicant cannot 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. *Id.* at 4214. Scanlan contends that its proposed operation of station WBKP(TV) presumptively qualifies for satellite status and that, should the Commission find otherwise, compelling circumstances justify the grant of satellite station status on an *ad hoc* basis.

4. Regarding the first criterion, Scanlan submits an engineering study which demonstrates that no City Grade contour overlap exists between station WBKP(TV), Calumet, and the proposed new station on Channel 10 at Ishpeming. Based on this showing, we find that Scanlan has satisfied the first prong of the presumptive satellite standard. For the purposes of the second criterion, an area is deemed underserved if, under the "transmission test," there are two or fewer full-service stations already licensed to the proposed satellite community of license, or, under the "reception test," 25 percent or more of the area within the proposed satellite's Grade B contour, but outside the parent's Grade B contour, receives four or fewer services, not including the proposed satellite service. *Television Satellite Stations*, 6 FCC Rcd at 4215. Here, Scanlan maintains that station WBKP(TV) meets the transmission test, as it is the only station licensed to Calumet. We agree with Scanlan that station WBKP(TV) provides service to an underserved community, thereby meeting the second presumptive criterion.

5. With respect to the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station. 6 FCC Rcd at 4215. Initially, we note that Scanlan does not base its satisfaction of

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<sup>2</sup> While we do not believe that Scanlan intended to deceive the Commission regarding the common ownership of WBKP(TV) and Channel 10 and the prohibited overlap between these stations, we are concerned by Scanlan's failure to timely amend its application and notify the Commission of the changed circumstances relevant to its pending application. We expect Scanlan to take more care in discharging its obligations to the Commission in the future.

the third criterion on efforts to sell station WBKP(TV), and, in fact, wishes to keep the station and

operate it as a satellite of new Channel 10. Scanlan asserts that because the station has never been a profitable enterprise, no other operator would be able to operate the station in Calumet as a full-service station. While we do not find that this argument meets the third criterion, we find the applicant's overall showing sufficient to justify satellite operation under our *ad hoc* analysis. See, e.g., *Red River Broadcast Corp.*, 12 FCC Rcd 2548 (1997); *Plains Television Partnership*, 9 FCC Rcd 4435 (1994).

6. In support of its view that WBKP(TV) has never been a profitable enterprise and that no other operator would be able to sustain its operation as a full-service station, Scanlan submits a signed statement of its President, Thomas Scanlan, describing how WBKP(TV)'s monetary losses have increased during each year of its operation. In 1996, the station suffered a net loss of \$158,536.73; in 1997, the station had net losses of \$374,613.58; and in 1998, WBKP(TV)'s net losses increased to \$428,122.97. According to Thomas Scanlan, the station could only stay in business by borrowing money from Scanlan Communications, Inc., a corporation under common control with Scanlan, and by engaging in a substantial financial restructuring, under which Scanlan will defer payment of interest and principal on a \$1.4 million note until December 31, 2002. It is apparent that Scanlan has incurred substantial and accelerating financial losses during the nearly four years that WBKP(TV) has been operating as a full-service station. We believe that the demonstrated lack of profitability for WBKP(TV) is a significant circumstance in support of Scanlan's satellite request.

7. Additionally, Scanlan provides a statement from Larry Patrick, President of Patrick Communications, which is a media brokerage and investment-banking firm.<sup>3</sup> Patrick claims that WBKP(TV) is in a market "far too small and too sparsely populated to support a full-service operation." According to Patrick, Calumet, WBKP(TV)'s city of license, has a population of fewer than 1,000 residents, and all of Houghton County, where Calumet is located, has fewer than 15,000 people. We believe that the area's sparse population and lack of economic base, along with the above-described record of Scanlan's increasing operational losses, are persuasive factors warranting approval of Scanlan's request for satellite status. As the Commission stated in *Sidney T Warner*, 3 FCC Rcd 4034 (1988), "[i]n the past, we have authorized satellite stations . . . as a means of providing television service to small communities having an insufficient economic base to support a full-service television operation." (footnote omitted). See also *Milton S. Maltz*, 13 FCC Rcd 15527 (1998) ("[T]he record strongly suggests that [the] . . . community of license . . . lacks the population and economic base to sustain full-service operations."). The presence of other satellite stations in the market also underscores the economics of the area. The Traverse City-Cadillac market consists of three pairs of parent stations and their satellites: WWTN(TV), Cadillac, MI which operates WWUP-TV, Sault Ste. Marie, MI as a satellite; WGTU(TV), Traverse City, MI which operates WGTQ(TV), Sault Ste. Marie, as a satellite; and WPBN-TV, Traverse City, which operates

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<sup>3</sup> See *Tak Communications, Inc.*, 11 FCC Rcd 2564 (1995), where a broker's statement as to the demographics of the market, competition from VHF network affiliates, and inability of the proposed continued satellite operation to reach more than one-third of the audience reached by its VHF competitors was a persuasive factor in finding satellite status warranted.

WTOM-TV, Cheboygan, MI as a satellite. We agree with Scanlan's contention that many

communities of northern Michigan apparently do not generate sufficient revenues to support a full-service station.

8. Further, the Commission has expressly recognized the difficulties faced by television stations operating in or near the Upper Peninsula of Michigan and has granted satellite status to a number of stations on that basis. In *Northwoods Education Television Association*, 13 FCC Rcd 24138 (1998), the Commission granted satellite status to WYOW(TV), Eagle River, Wisconsin "located in a remote, northern section of the Wausau-Rhineland DMA." Similarly, in *GRK Productions Joint Venture*, 13 FCC Rcd 12168 (1998), the Commission, observing that "the communities of northern Michigan do not generate sufficient revenue to support a full-service station," granted satellite status to WGKU(TV), Vanderbilt, Michigan, located in the Traverse City-Cadillac DMA. The Wausau-Rhineland, WI DMA, the 136th largest with 162,870 households, and the Traverse City-Cadillac DMA, the 118th largest with 217,730 households, are adjacent to and significantly larger than the Marquette DMA, the 177th largest with 82,940 households. We further note Scanlan's assertion that Calumet's geographical isolation from major population centers contributes to its inability to sustain a full-service station. Calumet is located some 100 miles from Marquette and WBKP(TV) can only reach a quarter of the population of that DMA.

9. We also note Scanlan's contention that, if it is required to divest WBKP(TV) in order to obtain new Channel 10, WBKP(TV) may lose its network affiliation with ABC in favor of new Channel 10. If this occurs, according to Scanlan, 5,902 residents of the Upper Peninsula of Michigan will lose over-the-air ABC service. Such a result is not in the public interest and was avoided in *Northwoods Educ. Tele. Ass'n*, 13 FCC Rcd at 24144-24145, where we observed that the grant of satellite status to a station would "ensure the continuation of ABC television service to communities in the northern counties of the Wausau-Rhineland DMA."

10. In sum, we agree with Scanlan's assertion that the low population density and the sparse market revenues associated with WBKP(TV) would preclude a knowledgeable broadcaster from attempting a stand-alone operation. Accordingly, we conclude that Scanlan has set forth sufficiently compelling arguments to support an *ad hoc* determination that grant of satellite status to WBKP(TV) is warranted and an exception to the duopoly rule pursuant Note 5 to Section 73.3555 of the Commission's rules should be granted. Thus, we find that the operation of WBKP(TV) as a satellite of a new Channel 10 in Ishpeming, MI would be in the public interest. In view of the foregoing, and having determined that the applicant is qualified to operate the station as proposed, we find that a grant of this application will serve the public interest, convenience and necessity.

#### CONCLUSION

11. Accordingly, IT IS ORDERED, That the request by Scanlan for the operation of station WBKP(TV), Calumet, Michigan, pursuant to the satellite exception to the duopoly rule, Section 73.3555 of the Commission's rules, IS GRANTED.

12. IT IS FURTHER ORDERED, That the application (File No. BPCT-941116KH) for a construction permit for a new television station on Channel 10 in Ishpeming, Michigan, IS GRANTED.

**FEDERAL COMMUNICATIONS COMMISSION**

Roy J. Stewart  
Chief, Mass Media Bureau