Federal Communications Commission
Washington, D.C. 20554

September 27, 2005

DA 05-2519
Released: September 27, 2005

KSMO Licensee, Inc.
c/o Kathryn R. Schmeltzer, Esq.
Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128

Meredith Corporation
c/o John R. Feore, Jr., Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, DC 20036-6802

Re: Assignment of License for
KSMO-TV, Kansas City, MO
Facility ID No. 33336
File No. BALCT-20050107ACA

Dear Counsel:

This is in reference to the application for consent to assign the license for KSMO-TV, Channel 62, Kansas City, Missouri (WB), from KSMO Licensee, Inc. ("Sinclair") to Meredith Corporation ("Meredith"). The application is unopposed. The application requests a waiver of Section 73.3555(b)(2) of the Commission's rules, the television duopoly rule, to permit Meredith, licensee of KCTV(TV), Channel 5, Kansas City, Missouri (CBS), to acquire KSMO. Both KSMO and KCTV are in the same Nielsen Designated Market Area ("DMA") and their Grade B contours overlap.

Under Section 73.3555(b)(2) of the Commission's rules in effect,[1] two television stations licensed in the same DMA that have Grade B overlap may be commonly owned if: (i) at least one of the stations is not

[1] 47 C.F.R. § 73.3555(b)(2). On June 2, 2003, the Commission adopted revised media ownership rules. *In re 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13691-92 (2003) ("*2002 Biennial Regulatory Review*"). The effective date of those rule changes, however, was subsequently stayed by order of the 3rd Circuit Court of Appeals on September 3, 2003. *Prometheus Radio Project v. FCC,* No. 03-3388 (3rd Cir. Sept. 3, 2003) (per curiam) (*"Prometheus"*). With respect to Section 73.3555(b)(2), the court continued the stay

ranked among the top four stations in the DMA; and (ii) at least eight independently owned and operating, full-power commercial and non-commercial educational television stations would remain in the DMA after the merger. The Kansas City, Missouri DMA would not have eight independently owned and operated television stations post-merger. Thus, the proposed common ownership of KCTV and KSMO would violate Section 73.3555(b)(2). Meredith requested a waiver on the basis that KSMO is a "failing station", however. [2] Alternatively, Meredith requests a "general" waiver.

Duopoly Waiver Request. The Commission's *Local Ownership Order* established the criteria for a waiver of the television duopoly rule for a "failing station" – one which has been struggling for "an extended period of time both in terms of its audience share and financial performance." These criteria are:

> (a) One of the merging stations has had a low all-day audience share (*i.e.,* 4 percent or lower);
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> (b) The financial condition of one of the merging stations is poor. "A waiver is more likely to be granted where one …of the stations has had a negative cash flow for the previous three years;"
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> (c) The merger will produce public interest benefits. "A waiver will be granted where the applicant demonstrates that the tangible and verifiable public interest benefits of the merger outweigh any harm to competition and diversity;" and
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> (d) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; selling the station to an out-of-market buyer would result in an artificially depressed price. [3]

If the applicant satisfies each criterion, a waiver of the rule will be presumed to be in the public interest.

As part of its waiver request, Meredith attaches a chart showing Nielsen reported audience shares for the all-day share. The chart shows that KSMO averaged a 3.85 household audience share in 2002, a 3.3 household audience share in 2003, and a 3.15 household audience share in 2004, based on a Nielsen four-book average. In a September 7, 2005 submission for which it requests confidential treatment, Meredith discloses that, based on Nielsen data, 2005 household audience share has further declined to 2.7.

With respect to KSMO's financial condition, Meredith's request appends a cash flow summary intended to show negative cash flow for the three years preceding the filing of the instant application. Moreover, on January 10, 2005, Sinclair submitted summary balance sheets and income statements for KSMO covering

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in *Prometheus Radio Project v. FCC,* 373 F.3d 372 (3rd Cir. 2004) (*"Prometheus Stay Order"*). On June 13, 2005, the Supreme Court of the United States denied a petition for writ of certiorari. 125 S.Ct. 2904.

[2] *See* 47 C.F.R. § 73.3555, Note 7. *See also Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12935-40 (1999) (*"Local Ownership Order"*), *recon. granted in part,* 16 FCC Rcd 1067 (2001).

[3] 14 FCC Rcd at 12939.

2001 through September 30, 2004, with a request for confidential treatment. The parties filed additional financial documentation on May 27, 2005; June 28, 2005; July 1, 2005; July 26, 2005; and September 7, 2005.[4]

In the documents filed September 7, 2005, Meredith shows that KSMO revenue has declined steadily over the past five years. The station's share of advertising revenue in the Kansas City DMA has also fallen significantly during this period. In addition, Meredith shows a sharp decline in the asset value of KSMO's current program contracts relative to current contracts payable. The same is true with respect to long term program contracts.

The September 7, 2005 submission appends an analysis of KSMO's financial condition by Michael G. Baumann, Ph.D., and Stephen E. Siwek, M.B.A., of the firm Economists Incorporated. Therein, the authors find, *inter alia*, that KSMO has shown steep declines in traditional measures of liquidity both over time and in comparison to other Sinclair television group stations.

Meredith maintains that consolidated operations of the two stations will result in tangible and verifiable public interest benefits that far outweigh any conceivable harm to competition and diversity. Specifically, Meredith pledges to invest over $1 million to restore and upgrade KSMO's physical plant and equipment. In addition, pointing out that, due to its financial situation, KSMO currently cannot offer locally originated programming, Meredith claims that a number of broadcast and non-broadcast public interest benefits will flow as a direct result of the joint operation of KSMO and KCTV. Meredith would maintain separate network affiliations for the two stations and would continue to provide separate non-network programming on KSMO targeted to its viewers. Meredith also promises certain programming initiatives. Within six months, it represents that it would launch a new 30-minute prime-time local newscast, Monday through Friday, and a new, weekly, 30-minute public affairs program focusing on issues of concern to the community. Within one year, Meredith pledges to begin a new, weekly, 30-minute public affairs show hosted by local high school students and addressing issues of importance to teens and young adults. Pointing out that, through KCTV, Meredith has extensive local programming and access to local program content, Meredith indicates that it would repurpose appropriate local programming and program content for broadcast on KSMO. It also would make available to KSMO local programming and program content that it cannot include in the existing KCTV schedule. Meredith states that, during the four quarters beginning with the fourth quarter of 2003 and ending with the third quarter of 2004, KSMO aired an average of 3 ½ hours of "core" children's programming per week. Meredith pledges to increase that amount to four hours per week of "core" children's programming. Moreover, Meredith will increase the number of KSMO public service announcements by at least ten percent initially. In addition, Meredith would regularly attend the Kansas City area broadcasters' quarterly ascertainment event to meet with community leaders and assess their concerns and the needs and interests of the public.

Meredith goes on to pledge that it would attempt to secure rights to broadcast Kansas City Chiefs football games on KSMO and commits to air weekly post-game reports on KSMO. Meredith states that it intends to work with owners of certain popular informational and other programming currently airing on KCTV

[4] Each filing requested confidential treatment. In a letter filed July 26, 2005, however, the parties clarified that they were seeking confidential treatment only for financial data.

and either obtain the right to air a second run on KSMO or move the primary run to KSMO. According to Meredith, with no local news staff at KSMO, the station's ability to cover severe weather and public emergencies is limited, whereas Meredith is widely recognized as having the best severe weather team in Kansas City and a full local news staff. With the merged operation of KCTV and KSMO, Meredith maintains, Meredith would immediately be able to improve the depth of emergency and severe weather coverage on KSMO.

In addition to its programming commitments, Meredith commits to continue - and increase - KSMO's non-programming service to the Kansas City community. It will continue KSMO's participation at events such as SIDS Stroll, Abby's Run, a Gilmore Girls "She's My Best Friend" contest promoting mother-daughter relationships, and donation of holiday toys to Excelsior Springs Good Samaritan Center. Meredith states that it will use KSMO to provide coverage of community events, particularly when KCTV would otherwise be constrained by existing network and programming commitments. Meredith claims that the two stations, together, can provide fuller coverage of community events than they could independently. Moreover, Meredith indicates that, under its ownership, KSMO will serve the community through additional activities such as blood drives, food drives, contributions to local school fundraisers, volunteering and youth mentoring efforts. Meredith would extend its established internship program for young adults to KSMO.

In addressing the fourth criterion, Meredith states that, beginning in November 2001, Sinclair's parent, Sinclair Broadcast Group ("SBG") made an extensive effort to find buyers for KSMO. SBG retained the services of Bear Stearns, a nationally recognized independent broker with substantial experience in TV ownership, consulting, and station brokerage, to market certain assets, including KSMO. From late 2001 through early 2002, Bear Stearns contacted approximately forty parties, including major broadcasters throughout the country. Only five, including Meredith, requested further information on KSMO and other stations licensed to SBG. Only two potential purchasers - Meredith and one other party - continued to pursue a possible purchase of KSMO. The other party was interested in KSMO only as part of a package deal including other SBG stations. SBG found the various purchase prices offered by this party to be inadequate, and the party eventually withdrew.[5] In addition, another party contacted SBG directly, asking for information about KSMO. This party and SBG entered into talks, but SBG has not heard from the party since July 2004.

Alternatively, Meredith argues that, if the Commission is disinclined to grant the failing station waiver it should nevertheless grant a "general waiver" of what Meredith terms "the 8 TV voices test of the Duopoly Rule" in order to permit the proposed combination.[6] According to Meredith, rigid application of the "8 TV voices" test would be inappropriate because a permanent waiver to permit a duopoly of KSMO and KCTV would serve, not undermine, the Commission's policy goals of competition and diversity. Meredith references the above-stated public interest benefits that it maintains will accrue as a result of the consolidated operation of the two stations. In addition, Meredith argues that, even with the consolidated operation, data regarding the Kansas City DMA demonstrate that it must contend with robust media competition. Specifically, Meredith indicates that there are now ten full-power television stations in the

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[5] *See* declaration of Michael E. Anderson, Senior Managing Director for Bear Stearns, Attachment C of waiver request.

[6] *See* 47 C.F.R. § 73.3555(b)(2).

DMA, representing at least eight independent voices, and there are also eight LPTV stations representing an additional six television owners. Meredith states that the market has 45 radio stations representing at least 20 separate radio voices; 106 cable systems that provide service to DMA households, representing approximately 63 percent of the total DMA TV households; 18 daily newspapers representing 12 different owners, and 91 weekly newspapers, which, combined with daily newspapers, represent 70 different owners.

Discussion. We will grant the parties' request for a waiver of the television duopoly rule and we will grant the above-captioned application. On balance, based upon the showings submitted under the waiver criteria established by the Commission in the *Local Ownership Order*, we are persuaded that grant of a waiver is warranted on grounds that KSMO is a failing station.

Specifically, the parties have demonstrated that KSMO has a low audience share. Significantly, not only is the audience share below 4 percent for every year since at least 2002, ratings have decreased steadily since then. Furthermore, the financial documentation submitted by the parties shows that KSMO's financial condition is poor. In reviewing the extensive financial information submitted by the parties, especially the information presented regarding the distribution of revenues in the market, we are persuaded that station KSMO is failing to such an extent that its ability to be a viable voice in the Kansas City market is severely hampered. Specifically, the parties have shown not only that station KSMO's revenues have declined steadily over the past five years, but that the station's share of advertising revenue in the DMA has fallen significantly.[7] Additionally, there appears to be a sharp decline in the asset value of KSMO's program contracts relative to contracts payable. Finally, we note that two independent economists have opined that KSMO has shown steep declines in the traditional measures of liquidity both over time and in comparison to other Sinclair television group stations. Given these very negative operational circumstances, it is not surprising that little news, public affairs or other public interest programming is currently being provided by station KSMO.[8] The proposed merger would address these shortcomings, and numerous public interest benefits will accrue from the combined operation of KSMO and KCTV. For example, Meredith's pledge of a new 30-minute prime-time local newscast, Monday through Friday; a new, weekly, 30-minute public affairs program focusing on issues of concern to the Kansas City community; and an increase to four hours per week of "core" children's programming, are the kinds of public interest benefits the Commission envisioned in adopting the failing station waiver exception. We note that Meredith also pledges to invest more than one million dollars to restore and upgrade the KSMO facilities and to include new weather forecasting capabilities in a part of our country where severe weather is not an unusual occurrence. Finally, the parties have established that Meredith is the only reasonably available buyer for station KSMO.

Consistent with the *Local Ownership Order*, we find that the combined operation of KCTV and KSMO will pose minimal harm to our diversity and competition goals because KSMO's financial situation hampers its ability to be a viable voice in its market. Under these circumstances, allowing KSMO to be

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[7] In this regard, we note that the *Local Ownership Order* suggests that the Commission would look favorably upon the grant of relief to stations unable to compete effectively. 14 FCC Rcd at 12935.

[8] As the *Local Ownership Order* indicated, failing stations "rarely have the resources to provide local news programming, and often struggle to provide significant local programming at all." 14 FCC Rcd at 12939.

operated by a stronger station in the market will result in a definite improvement in facilities and programming, an outcome which clearly benefits the public interest.[9]

In view of this result, we need not address the parties' request for a "general waiver". Having found the applicants qualified to be Commission licensees, we find that grant of the KSMO-TV assignment application would serve the public interest.

Accordingly, IT IS ORDERED, That the request for a "failing station" waiver of the television duopoly rule, Section 73.3555(b)(2), to permit Meredith to own and operate both KSMO-TV and KCTV(TV), IS GRANTED. IT IS FURTHER ORDERED, That the application (File No. BALCT-20050107ACA) for consent to the assignment of the license for KSMO-TV, Kansas City, Missouri, from KSMO Licensee, Inc. to Meredith Corporation, IS GRANTED.

Sincerely,

Donna C. Gregg
Acting Chief, Media Bureau

[9] 14 FCC Rcd at 12939.