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Re: KPXJ(TV), Minden, Louisiana, ID No. 81507
Application for Assignment of License
File No. BALCT-20081230AFW

Dear Counsel:

This is in reference to the application for consent to assign the license of KPXJ(TV), Minden, Louisiana, Channel 21 (CW), from Minden Television Company ("Minden") to KTBS, Inc. ("KTBS"). The application is unopposed. The applicants have requested a waiver of Section 73.3555(b)(2)[1] of the Commission's Rules, the local television multiple ownership rule or duopoly rule. KPXJ(TV) is assigned to the Shreveport, Louisiana Designated Market Area ("DMA") and KTBS is the licensee of station KTBS-TV, Shreveport. For the reasons stated below, we grant the requested waiver and grant the application.

Background. Under Section 73.3555(b)(2) of the Commission's Rules currently in effect,[2] two full-power television stations licensed in the same DMA that have Grade B overlap may be commonly owned if: (1) at least one of the two stations is not ranked among the top four stations in the DMA; and (2) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA after the merger. The Shreveport DMA would not have eight independently owned and operating full power television stations after the proposed merger. Therefore, the applicants have requested a waiver of the rule under Note 7(2) to Section 73.3555, the "failing station" standard.[3]

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1 47 C.F.R. § 73.3555(b)(2).

2 *Id.*

3 47 C.F.R. § 73.3555 Note 7.

The Commission's *Local Ownership Order*,[4] stated the criteria for a waiver of the television duopoly rule for a "failing station," defined as one which has been struggling for an "extended period of time both in terms of its audience share and financial performance."[5] These criteria are:

1. One of the merging stations has a low all-day audience share, (*i.e.* 4 percent of lower);

2. The financial condition of one of the merging stations is poor. For example, that the station has had a negative cash flow for the previous three years;[6]

3. The merger will produce public interest benefits; and

4. The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; and selling the station to an out-of-market buyer would result in an artificially depressed price.[7]

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

As part of their waiver request, the applicants have attached a chart demonstrating that KPXJ(TV)'s all day audience share has been below four percent for each of the last three years. Except for the May 2005 and February 2006 ratings books, KPXJ(TV)'s audience share was only one percent for the last three years.

With respect to its financial condition, the applicants have submitted financial data to demonstrate negative cash flow and operating losses for the three years preceding the filing of the application. The information submitted shows that the station has had a consistently negative financial position and has suffered net losses for the past three years.

In regard to the third criterion, KTBS states that the consolidation of the operations of KPXJ(TV) and KTBS-TV will produce tangible public interest benefits, including increased news programming, local programming, and community outreach. Specifically, KTBS states that KPXJ(TV) currently broadcasts a half-hour local newscast at 7:00 a.m. and at 9:00 p.m. It notes that the 9:00 p.m. broadcast is the only local news broadcast during that time slot. KTBS states that following the acquisition, it plans to expand those broadcasts from 30 minutes to 60 minutes. In addition, KTBS will explore adding a noon news broadcast on KPXJ(TV). KTBS asserts that the transaction will enable KPXJ to expand and more effectively disseminate public safety information about hurricane preparedness and disaster recovery assistance. KTBS further asserts that following the transaction, KPXJ(TV) will be able to provide expanded local sports coverage and expanded coverage of local public events programming.

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[4] *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999) ("*Local Ownership Order*"), *recon. granted in part*, 16 FCC Rcd 1067 (2001).

[5] *Id.* at 1076.

[6] *Id.*

[7] *Id.*

As part of its showing, the applicants have included the Declaration of Brian Byrnes, President of Paramount Media Advisors, Inc. ("Paramount"). Minden retained Paramount, a broadcast consultant and station broker, to market and sell KPXJ(TV) to an out-of-market buyer. According to Byrnes, Paramount contacted more than thirty prospective buyers who are active in the television broadcast industry. He states that many of those prospective buyers own stations that are in markets comparable in size to Shreveport and that a majority are affiliated with the same network as KPXJ(TV). Only one of the prospective buyers expressed sufficient interest to sign a non-disclosure agreement and receive a detailed offering memorandum concerning the station. After receiving the offering memorandum, that prospective buyer expressed no further interest in the station. Mr. Byrnes states that, in spite of this marketing process, no out-of-market buyer has made any offer of any kind to purchase KPXJ(TV).

Based on the foregoing, the applicants contend that "active and serious efforts" have been made to market the station and only an in-market buyer is available. They state that KTBS is willing and able to purchase KPXJ(TV) at a reasonable price and make the investments needed to advance the ability of KPXJ(TV) to better serve the public interest with more robust local programming. Therefore, they request a waiver of the local multiple ownership rule under the "failing station" waiver standard.

Discussion. Upon review of the record, we will grant the parties' request for a waiver of the local television duopoly rule, and we will grant the assignment application. The applicants have submitted detailed information regarding the station's bleak financial situation. The station's negative cash flow and operating losses for the past three years are consistent with the criterion the Commission has set for determining that a station is "failing." In addition, KPXJ(TV) has rarely exceeded even a one percent audience share for the last three years. In these circumstances, it is unsurprising that an out-of-market buyer cannot be found. We believe that the proposed merger of the two stations will not only help KPXJ(TV) overcome its existing shortcomings, but that it will provide a tangible benefit to the community through the expansion of local news and public affairs programming on the station.

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

In light of the above discussion, we find that the applicants are fully qualified, and conclude that the grant of the assignment application would serve the public interest.

ACCORDINGLY, IT IS ORDERED That, the request for a waiver of Section 73.3555 of the Commission's Rules pursuant to Note 7(2), the "failing station" standard, to permit the co-ownership of KPXJ(TV), Minden, Louisiana and KTBS-TV, Shreveport, Louisiana, IS GRANTED. IT IS FURTHER ORDERED That the application for the assignment of license of KPXJ(TV), Minden, Louisiana, from Minden Television Company to KTBS, Inc., File No. BALCT-20081230AFW, IS GRANTED.

Sincerely,

William T. Lake
Chief, Media Bureau