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Re: KPBI(TV), Eureka Springs, AK, Facility ID No. 81593, File No. BALCDT-20110901AAD

Dear Counsel:

This is in regard to the application to assign the license of digital television station KPBI(TV), Eureka Springs, Arkansas, from Riverside Media, LLC ("Riverside") to Local TV Arkansas License, LLC ("Local TV"). KPBI(TV) is assigned to the Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas Designated Market Area ("Ft. Smith DMA"). Local TV is the licensee of KFSM-TV in Ft. Smith, which serves as the CBS affiliate in the Ft. Smith DMA.

Under Section 73.3555(b)(2) of the Commission's Rules,[1] two full-power television stations licensed in the same DMA whose Grade B contours overlap[2] 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. Although KPBI(TV) is not among the top-four ranked stations in the market, the Ft. Smith 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]

[1] 47 C.F.R. § 73.3555(b)(2).

[2] Although the rule refers to Grade B contours, DTV stations do not have Grade B contours and the Commission treats noise-limited contours as their functional equivalent. *See, e.g. Estes Broadcasting, Inc.*, Letter, 25 FCC Rcd 7596 (2010).

[3] 47 C.F.R. § 73.3555 Note 7.

The Commission's *Local Ownership Order*,[4] set forth 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 provided evidence demonstrating that KPBI(TV) did not have a reportable audience share for the July 2011 sweeps, thereby meeting the first listed criterion.

With respect to its financial condition, the applicants have submitted financial data to demonstrate the station's persistent financial difficulties. The current licensee, Riverside, acquired the station through a *pro forma* assignment from Pinnacle Media, LLC, which in turn acquired the station out of bankruptcy from Equity Broadcasting Company ("Equity") in November, 2009. Riverside member Greg Fess, who was a member of Equity, states in his Declaration which is attached to the application, that the station experienced persistent negative cash flow prior to its acquisition by Pinnacle. The applicants demonstrate that this negative cash flow continued throughout Pinnacle's ownership and during Riverside's ownership through the second quarter of 2011. They state that the station lost more than $150,000 during the first seven months of 2011. In light of the station's previous bankrupt status and its persistent negative cash flow since emerging from bankruptcy, the parties have demonstrated that the station has a consistently poor financial condition.

In regard to the fourth prong of the waiver standard, Greg Fess states in his Declaration that Pinnacle and Riverside first explored the possibility of selling KPBI(TV) in February 2010 and engaged Holt Media as part of those efforts. Over the next year, Pinnacle and Riverside also directly contacted potential buyers who did not have a presence in the DMA, buyers who did have a media property in the DMA, and investment funds. Only four prospects expressed an initial interest in the station and, following due diligence and further discussions, only two prospects, expressed serious interest. The applicants state that Local TV was the only party willing to enter into good faith negotiations at a

[4]*Review of the Commission's Regulations Governing Television Broadcasting,* Report and Order, 14 FCC Rcd 12903 (1999), *subseq. hist. omitted.*

[5] *Id.* at 12939.

[6] *Id.*

[7] *Id.*

reasonable price and that the sellers received no serious expressions of interest from any out-of-market buyers. This showing is consistent with what we have found acceptable in previous decisions.[8]

The parties state that, if the waiver is granted, Local TV would make long overdue upgrades to KPBI(TV)'s equipment installing HD-capable equipment and enabling the station to provide a better, more consistent on-air broadcast picture and signal. They also state that grant of the waiver would provide KPBI(TV) with access to KSFM-TV's production facilities, so that KBPI(TV) would provide its first locally produced programming. They state that KPBI(TV) intends to begin a 30-minute weekday newscast and to provide expanded coverage of local sports and other community events. The applicants also state that grant of the waiver will permit increased staffing at KPBI(TV) so that it will be able to be more responsive to the community and that the station will be able to provide local weather alerts for the first time.

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 persistent negative cash flow and operating losses are consistent with the standard the Commission has set for determining that a station is "failing." In addition, KPBI(TV) has not even managed a measurable audience share. In these circumstances, it is unsurprising that an out-of-market buyer cannot be found. We believe that the proposed combination of the two stations will not only help KPBI(TV) overcome its existing shortcomings, but that it will provide a tangible benefit to the community by upgrading the station's facilities and services.

Consistent with the *Local Ownership Order*, we find that the combined operation of KPBI(TV) and KFSM-TV will pose minimal harm to our diversity and competition goals because KPBI(TV)'s dire financial situation hampers its ability to be a viable voice in its market. Under these circumstances, allowing KPBI(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 KPBI(TV), Eureka Springs, Arkansas, and KFSM-TV, Ft. Smith, Arkansas, IS GRANTED. IT IS FURTHER ORDERED That the application for the assignment of license of KPBI(TV), Eureka Springs, Arkansas, File No. BALCDT-20110901AAD, IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[8] *See, e.g., Minden Television Company*, Letter, 24 FCC Rcd 10151 (Med. Bur. 2009)(Seller engaged consultant to market station and, despite persistent efforts, no credible out-of-market buyer emerged.).