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Cottonwood Communications Portland, LLC
260 Peachtree Street NW
Suite 1100
Atlanta, GA 30303

Ironwood Communications Portland, LLC
c/o Gregory L. Masters
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Re: Application for Consent to Assignment of License
WPME, Lewiston, ME, Facility ID No. 48408,
File No. BALCDT-20150710ABA

Dear Licensee and Counsel:

By this letter we grant the above-captioned uncontested application (the "Application") for the assignment of television broadcast station WPME, Lewiston, Maine from Cottonwood Communications Portland, LLC ("Cottonwood") to Ironwood Communications Portland, LLC ("Ironwood"). In connection with the sale, we also grant a waiver of Section 73.3555(b), the local television multiple ownership rule, to permit Ironwood's common ownership of WPME and WPXT, Portland, Maine, based on WPME's status as a "failing station."¹

Background. WPXT, a CW affiliate, and WPME, a MyNetworkTV affiliate, are both located in the Nielsen Designated Market Area ("DMA") of Portland-Auburn, Maine. Ironwood is the current licensee of WPXT, and pursuant to an Agreement for the Sale of Commercial Time ("JSA"), Ironwood sells the commercial announcements of WPME and retains thirty percent of the revenues collected.² WPME and WPXT also share certain services under a shared services agreement ("SSA") which permits Ironwood to provide programming on WPME up to 15% of the station's weekly programming time.³ According to the Application, the JSA and SSA will be terminated upon consummation of the proposed assignment.

Discussion. Section 73.3555(b)(2) of the Commission's rules permits common ownership of two full-power television stations licensed in the same DMA, the Grade B contours of which overlap, provided that, at the time the application to acquire the station(s) is filed: (1) at least one of the two

¹ 47 C.F.R. § 73.3555, Note 7.

² Application, Att. 17, "Agreement for the Sale of Commercial Time."

³ Application, Exh. 20, Request for Failing Station Waiver Request ("WPME Waiver Request") at 4 n.15.

stations is not ranked among the top four stations in the DMA, based on the most recent all-day audience share; and (2) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA after the merger.⁴

The Commission's *Local Ownership Order* set forth the following criteria for a waiver of the television duopoly rule for a "failing station,"⁵ defined as one which has been struggling for an "extended period of time both in terms of its audience share and financial performance:"⁶

1. One of the merging stations has a low all-day audience share (*i.e.*, 4 percent or lower);
2. The station has had a negative cash flow for the previous three years;
3. The merger would produce tangible and verifiable public interest benefits that outweigh any harm to competition and diversity; 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

A waiver will be presumed to be in the public interest if the applicant satisfies each criterion.⁸

We find that the WPME Waiver Request meets all four prongs of this test. First, Ironwood submits Nielsen ratings for the three years preceding the filing of the application, and from November

⁴ Although the rule refers to Grade B contours, we note that, following the digital transition, the Commission has developed the digital noise-limited service contour ("NLSC") to approximate the same probability of service as the analog Grade B contour, and that it has stated that the two are roughly equivalent. See 47 C.F.R. § 73.622(e); *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Inquiry, 25 FCC Rcd 6086, 6117 (2010). In the *2010 Quadrennial Review Report and Order and NPRM*, the Commission confirmed that the digital NLSC is an accurate measure of a station's current service area and proposed a modified rule whereby the analog Grade B contour would be replaced with the digital NLSC, such that within a DMA an entity could own or operate two stations in a market if the digital NLSCs of those stations did not overlap. *2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4383 (2014) ("*2010 Quadrennial Review Report and Order and NPRM*"). While this rulemaking is still pending, we have previously relied on the equivalency of these contours in using the NLSC overlap rather than the Grade B contour overlap to allow common ownership under the local television ownership rule. See, e.g., *Colins Broadcasting Corporation*, Letter Order, 28 FCC Rcd 1282, 1282 n.3 (Vid. Div. MB 2013) ("*Colins Letter*"). In this instance, the predicted noise-limited service contours of the stations overlap, and we again undertake the same Grade B contour approximation in applying this rule. WPME Waiver Request at 1.

⁵ *Review of the Commission Regulations Governing Broadcasting*, Report and Order, 14 FCC Rcd 12903 (1999) ("*Local Ownership Order*").

⁶ *Id.* at 12939.

⁷ 47 C.F.R. § 73.3555, Note 7; *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

⁸ *Local Ownership Order*, 14 FCC Rcd at 12939, para. 81.

2010 through May 2015, WPME’s audience share was between 0% and 1%.⁹ We find that this showing satisfies the first criterion of the waiver standard.¹⁰

With regard to the second criterion, Ironwood has submitted financial data to demonstrate negative cash flow and operating losses at the station for the three years preceding the filing of the application.¹¹ Specifically, WPME reports that it has incurred operating losses over the last three full years: a negative broadcast cash flow of \$350,235 in 2012; of \$259,989 in 2013; and of \$114,261 in 2014. These submissions satisfy the second of the waiver standard criteria.

Third, Ironwood states that the proposed combination of WPXT and WPME would benefit the public interest by increasing local programming and non-broadcast activities designed to engage the community and promote charitable causes. For example, without additional resources resulting from common ownership with WPME, Ironwood would not be able to continue producing “KickStart” and “MEST Up,” which are academically based game shows that award college scholarships for eighth-graders and high school students, respectively. Common ownership will also allow WPME to continue to broadcast local high school football games and University of Maine hockey. Moreover, common ownership would allow WPME to expand its work in the community, including co-sponsorship of events such as blood drives.¹² Consistent with the *Local Ownership Order*, we believe that the combined operation of the stations will pose minimal harm to diversity and competition, and that allowing WPME to operate in tandem with a stronger station will help it to become a more viable local voice in the market, through a definite improvement in programming.¹³

With regard to the fourth criterion, Ironwood submits that it began to seek an out-of-market buyer for WPME beginning in 2013, and engaged Frank Higney of Kalil & Co., Inc., a television brokerage company, to solicit interest in WPME.¹⁴ Higney contacted approximately 20 potential out-of-market parties, none of which signed a non-disclosure agreement nor submitted an offer. Higney states his view that WPME is “unmarketable” because “[m]ost buyers are looking for Big 4 affiliates (ABC, CBS, FOX, NBC) with a strong local news presence, especially when considering a standalone opportunity.” Higney concludes that based on an extensive marketing process and significant outreach to prospective buyers, it is unlikely that WPME could be sold to an out-of-market buyer on a standalone basis.¹⁵ Consistent with our previous decisions, we find that Ironwood is the only reasonably available candidate willing and able to acquire and operate WPME, and selling the station to an out-of-market buyer would result in an artificially depressed price.¹⁶

⁹ WPME Waiver Request at 2; *id.* at Att. B, Nielsen Ratings Information, “WRAP Sweeps: Dayparts Analysis.”

¹⁰ *See, e.g., Colins Letter*, 28 FCC Rcd at 1283.

¹¹ WPME Waiver Request at 3; *id.* at Att. C, “WPME – Financial Statements.”

¹² WPME Waiver Request at 3-5.

¹³ *Local Ownership Order*, 14 FCC Rcd at 12939, para. 80.

¹⁴ WPME Waiver Request at 5-6; *id.* at Att. D., Decl. of Frank Higney (“Higney Decl.”).

¹⁵ *Id.*

¹⁶ *See, e.g., Pappas Arizona License, LLC*, Letter Order, 28 FCC Rcd 17048, 17049 (Vid. Div. MB 2013) (finding fourth criterion satisfied where out of 40 out-of-market prospective buyers contacted, only one made an offer, which was seen as having an unreasonable contingency); *Venture Technologies Group LLC*, Letter Order, 28 FCC Rcd 1992, 7993 (Vid. Div. MB 2013) (finding fourth criterion met where no offers made out of several dozen out-of-market prospective buyers contacted).

Conclusion. Having reviewed the application, pleadings, and other facts before us, we conclude that grant of the Application as requested will comply with the Commission's rules and section 310(d) of the Act. We conclude that Ironwood is fully qualified and that grant will serve the public interest, convenience, and necessity.

ACCORDINGLY, IT IS ORDERED, That the request for a "failing station" waiver of Section 73.3555(b)(2) of the Commission's rules to permit the common ownership of WPME, Lewiston, Maine and WPXT, Portland, Maine, IS GRANTED.

IT IS FURTHER ORDERED, That the above-referenced applications for consent to assign the license of WPME, Lewiston, Maine, File No. BALCDT-20150710ABA, IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau