



Federal Communications Commission
Washington, D.C. 20554

June 17, 2016

DA 16-692
Released: June 17, 2016

Fireweed Communications LLC
c/o Marissa G. Repp
Repp Law Firm
1629 K Street, NW, Suite 300
Washington, DC 20006

Gray Television Licensee, LLC
c/o John Feore, Jason Rademacher,
and Henry Wendel
Cooley LLP
1299 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004

Re: KYES-TV, Anchorage, AK
Fac. ID No. 21488
File No. BALCDT-20151009ADJ

Counsel:

By this letter, the Chief, Video Division, pursuant to delegated authority, conditionally grants the above-captioned application to assign the license of station KYES-TV, Anchorage, Alaska, from Fireweed Communications LLC (Fireweed) to Gray Television Licensee, LLC (Gray or Applicant), and, in connection therewith, grants a waiver of the local television ownership rule to permit common ownership of KYES-TV (KYES or Station) and KTUU-TV¹ (KTUU), Anchorage, Alaska, pursuant to the “failing station” waiver standard.² We deny informal objections filed by GCI Communication Corp. (GCI) and the American Cable Association (ACA) to the extent they request denial of the application (collectively “petitioners”).³ We grant the application with one condition: for a period of two years post-consummation, KYES may not enter into an agreement to obtain a network affiliation held by an existing affiliate in the market that, at the time such agreement is executed, would result in KYES becoming a top-four station in the market in terms of audience share.

Background. The Commission’s Local Television Ownership Rule (commonly called the Duopoly Rule)⁴ permits common ownership of two full-power television stations licensed in the same

¹ The Commission approved the application for assignment of KTUU-TV from Northern Lights Media, Inc., a subsidiary of Schurz Communications, Inc., to Gray on February 12, 2016. The transaction was consummated on February 16, 2016. See File No. BALCDT-20150917ADQ.

² 47 C.F.R. § 73.3555, Note 7.

³ GCI Petition to Deny, filed Nov. 16, 2015; GCI Petition to Deny Amended Application, filed May 3, 2016; ACA Informal Objection, filed Dec. 17, 2015. The State of Alaska filed reply comments in opposition to the transaction. Fireweed and Gray filed a joint opposition (Joint Opposition) to GCI’s informal objection, to which GCI filed a reply, as well as separate opposition letters responding to the State of Alaska’s and ACA’s objections. In a subsequent pleading, Fireweed requested expedited processing, which GCI opposed. In response to a Division staff request, Gray filed a supplement to its Application, which GCI opposed. Gray and Fireweed then jointly replied.

⁴ 47 C.F.R. § 73.3555(b)(2).

Designated Market Area (DMA), the Grade B contours of which overlap,⁵ provided that, at the time the application to acquire the station is filed: (1) at least one of the two stations is not ranked among the top four stations in the DMA, based on the most recent all-day audience share (“top-four prohibition”); and (2) at least eight independently owned and operating, full-power commercial and noncommercial television stations would remain in the DMA after the merger. Both KYES and Gray’s KTUU are located in the Anchorage, Alaska DMA. While KYES is not ranked among the top four stations in the market, there would be fewer than eight independently owned and operating stations in the Anchorage DMA following grant of the transaction. Gray therefore requests a waiver of the Duopoly Rule pursuant to the Commission’s “failing station” waiver standard.⁶

The Commission may waive the restrictions of the Duopoly Rule and permit common ownership of two stations when one of the stations subject to a transaction is a “failing station.” The Commission has defined a “failing station” as one that has been struggling “for an extended period of time both in terms of its audience share and financial performance.”⁷ A “failing station” waiver will be presumed to be in the public interest if the following four criteria are met:

1. The station claimed to be failing has an all-day audience share of no more than four percent;
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.⁸

In order to satisfy the first criterion, the Applicant provides Nielsen ratings demonstrating that KYES has had an all-day audience share of one percent during each of the last four Nielsen “sweeps” periods.⁹ With regard to the second criterion, the Applicant submitted financial data confirming that KYES has had negative cash flow for the previous three years, with the largest loss being in 2014. The Applicant claims that this factor is particularly weighty because television stations in Alaska generally benefited from historically high political spending in 2014 as a result of an unusually competitive U.S. Senate race, yet KYES suffered through its worst year.¹⁰ None of the petitioners has challenged these showings, and we find that the Applicant has satisfied the first two criteria of the waiver standard.

GCI challenges the Applicant’s showing under the third and fourth prongs of the test asserting that the Applicant has not adequately demonstrated (a) that the merger will produce tangible and verifiable public interest benefits that outweigh any harm to competition and diversity,¹¹ and (b) that the in-market buyer [Gray] is the only reasonably available candidate willing and able to acquire and operate

⁵ Although the rule refers to Grade B contours, we note that, following the digital transition, the Commission has developed the digital noise-limited contour (NLSC) to approximate the same probability of service as the analog Grade B contour, and has tentatively concluded that it would better serve the public interest to replace the analog Grade B contour methodology with the digital NLSC methodology. *2014 Quadrennial Review*, 29 FCC Rcd at 4383-84.

⁶ 47 C.F.R. § 73.3555, Note 7.

⁷ *Review of the Commission’s Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12903, 12938 (1999)(*Local Ownership Order*).

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

⁹ Failing Station Waiver Request at 1.

¹⁰ *Id.*

¹¹ Petition at 6.

the station, and selling the station to an out-of-market buyer would result in an artificially depressed price.¹²

With respect to the third prong, Gray asserts that the transaction will serve the public interest because Gray will consolidate KYES into its existing KTUU facilities, utilize the support and resources of KTUU's experienced engineering team, and use KYES as a second outlet for local and national programming. GCI contends that Gray fails to adequately demonstrate that the combination of KYES and KTUU would benefit the public in Anchorage, rather than just Gray itself.¹³ Furthermore, GCI argues that Gray's proposed benefits "fail to reach the level to which the Commission has held other applicants."¹⁴ In their reply comment, the State of Alaska agrees, noting that the Applicant's public interest showing is minimal at best.¹⁵ GCI also argues that, if Gray were permitted to own the KTUU/KYES duopoly, "competition and diversity" in the market will be harmed because Gray would jointly negotiate retransmission consent for KYES and KTUU and tie carriage of KYES to KTUU, and additionally, Gray could potentially drop its MyNetwork affiliation in favor of a "big four" network affiliation post-merger.¹⁶ ACA similarly argues in its objection that grant of this application would exacerbate problems in the retransmission consent market, and that Gray, as a result of the transaction, would control close to half of the Anchorage market. As an alternative to denying the transaction outright, GCI requests that the Commission impose conditions (1) preventing KYES from switching its MyNetwork affiliation to a "big four" network affiliation, and (2) prohibiting Gray in retransmission consent negotiations from tying carriage of or payment for KYES to carriage of or payment for KTUU. Gray replies that the public interest benefits it set forth in its Application are "real and sufficient to justify a failing station waiver."¹⁷ Gray asserts that KYES would (1) have access to sufficient financial resources to improve service, (2) benefit from robust engineering support, (3) be able to operate from upgraded modern facilities which would help expand the accessibility of KYES's signal for viewers, some of which do not receive a signal from any other full-power stations in the market, (4) provide viewers expanded emergency weather coverage, (5) introduce local news and public affairs programming, neither of which KYES currently airs, and (6) provide an additional platform for local businesses to advertise and reach local consumers.¹⁸

With respect to the fourth prong of the standard, Gray submitted a broker letter from Patrick Communications detailing reasons why the broker believes that any efforts to market the Station would be futile. GCI argues that the broker letter is insufficient to meet the Commission's "clear requirements," and that the Commission should not accept a predictive judgment from a broker in this case.¹⁹ Additionally, with respect to the letter, the State of Alaska notes that, "without attempting to market and sell the station to another purchaser, it is likely that other potential purchasers were not aware that the Station was for sale" so "some effort to sell should be required."²⁰ In response to these arguments, Gray and Fireweed amended the Application to include a Declaration from Fireweed member Jeremy Lansman

¹² 47 C.F.R. § 73.3555, Note 7.

¹³ Petition at 7; Petition to Deny Amended Application at 7; Response to Joint Reply to Petition to Deny Amended Application at 2.

¹⁴ GCI's Reply to Joint Opposition at 8.

¹⁵ State of Alaska Reply Comment at 2.

¹⁶ Petition at 8-9; Reply to Joint Opposition at 8-9; ACA Informal Objection at 2. All "big four" networks currently have affiliates in Anchorage. Gray's KTUU-TV is affiliated with NBC; GCI's KTVA is affiliated with CBS; KYUR is affiliated with ABC; and KTBY is affiliated with FOX.

¹⁷ Joint Opposition at 10.

¹⁸ *Id.*; Gray's Supplement to its Failing Station Waiver Public Interest Showing (filed Apr. 22, 2016).

¹⁹ Petition at 2, 4-6; Reply to Joint Opposition at 6.

²⁰ State of Alaska Reply Comment at 3.

describing efforts to market the station. GCI questions whether such efforts were sufficient and queries why Fireweed did not include this information in its initial filing.²¹ GCI states that, had Mr. Lansman approached GCI after GCI entered the broadcast market in 2012, the company “could have been interested in a potential acquisition.”²² Gray responds that it has adequately demonstrated that it is the only entity ready, willing, and able to operate the Station and any sale to an out-of-market applicant would result in an artificially depressed price.²³ Gray contends that its letter from Patrick Communications detailing the broker’s professional opinion that “no knowledgeable and experienced television operator could be found that would provide a viable full service operation with KYES-TV as a standalone station” and “an effort to find a qualified out-of-market buyer would either be fruitless or at a very depressed price” sufficiently demonstrates that only an in-market buyer would purchase KYES.²⁴ Moreover, Gray and Fireweed contend that, while one way to satisfy the “failing” station standard is to submit a broker letter that affirms efforts to sell the permit have been made, that is not the only way.²⁵ Regardless, Gray and Fireweed rely on the Declaration from Mr. Lansman stating that he made efforts to market the station, but none of them led to an agreement for sale.²⁶ Additionally, the supplement Gray and Fireweed filed in response to a Division request for additional information provides a detailed account of all efforts taken to market the Station. The filing includes a further Declaration from Mr. Lansman which sets forth evidence of approximately eight separate interactions he had over the past fourteen years with potential purchasers, none of which resulted in an agreement to sell the Station.²⁷ Furthermore, Gray and Fireweed provide two additional declarations in their Joint Reply from Kepper, Tupper and Company and Wells Fargo, to further demonstrate “the futility of marketing efforts for KYES-TV beyond what has [already] been done.”²⁸

In addition to responding to petitioners’ arguments, Gray challenges GCI’s standing to file a petition to deny, stating that, while GCI may own and operate a television station in the market, its objections to the Application rest on speculation about the potential impact of the merger on GCI’s cable services in the market.²⁹ GCI replies that its pleading clearly demonstrates that it is a party in interest and therefore has standing under Section 309(d) of the Act.³⁰ Furthermore, GCI argues that it meets the requirement to make specific allegations of fact sufficient to show that grant of the Application would be *prima facie* inconsistent with the public interest, convenience, and necessity.

Discussion. As set forth in Section 309(d) of the Communications Act of 1934, as amended (the Act), only a “party in interest” has standing to file a petition to deny.³¹ The petition must contain specific

²¹ GCI’s Petition to Deny Amended Application at 2-4; Response to Joint Reply to Petition to Deny Amended Application at 2 (arguing that “Fireweed failed to properly market the station...”).

²² Petition to Deny Amended Application at 4.

²³ Joint Opposition at 8.

²⁴ Failing Station Waiver Request; Joint Opposition at 8.

²⁵ Joint Opposition at 8.

²⁶ Joint Opposition, Exhibit C: Declaration of Jeremy Lansman.

²⁷ Amended Application, Declaration of Jeremy Lansman, filed Apr. 22, 2016.

²⁸ See Gray and Fireweed’s Joint Reply, Exhibit B: Letter from John B. Tupper, President, Kepper, Tupper and Company, to William Lake, Chief, Media Bureau, and Exhibit C: Letter from Bruce Levy, Managing Director – Technology, Media, and Telecom, Wells Fargo Securities, LLC, to William Lake, Chief, Media Bureau, filed May 19, 2016.

²⁹ Gray and Fireweed Joint Opposition at 5.

³⁰ 47 U.S.C. § 309(d).

³¹ 47 U.S.C. § 309(d); 47 C.F.R. § 73.3584; See *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9156, 9162-63 (2014).

allegations of fact demonstrating that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience, and necessity.³² The allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit or declaration under penalty of perjury of a person with personal knowledge of the facts alleged.³³ GCI did not include a declaration with its pleading. We find that without a declaration, GCI's pleading fails to comply with the pleading requirements set forth in 309(d) of the Act and so it must be treated as an informal objection.

The Commission applies a two-step analysis to informal objections under the public interest standard. First, it must determine whether the informal objection contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.³⁴ This first step "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [objection] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."³⁵ If the objection meets this first step, the Commission then must determine whether, "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioners have raised a substantial and material question of fact as to whether the application would serve the public interest.³⁶ We find that the petitioners have failed to meet the second step of the analysis because they have not identified a substantial and material question of fact as to whether the Application will serve the public interest. We find that grant of a "failing station" waiver to permit common ownership of KYES and KTUU is presumptively in the public interest on this record.³⁷

Based on the record before us, we find that the Applicant has adequately demonstrated that the public interest benefits of the proposed transaction outweigh any alleged harm to competition and diversity. Specifically, the Applicant asserts that the combined operation of KYES and KTUU will result in the introduction of local programming that KYES is not currently offering, in particular expanded emergency weather coverage, as well as local news and public affairs programming, neither of which KYES currently airs. Petitioners do not dispute these assertions. Instead GCI simply alleges that all the benefits identified by the Applicant are really just benefits to Gray. We disagree. We find that such local programming inures to the benefit of the public.

In addition to programming benefits, the Bureau has found in past transactions that technical benefits may also serve the public interest.³⁸ In this case, upgraded facilities would realistically improve service to individuals who may not already receive KYES's signal, especially given the unique terrain and characteristics of markets in Alaska. Fireweed has stated that without prompt action it is likely to go off the air and would not likely be able to return to service in the foreseeable future.³⁹ Fireweed explains that

³² *Id.*

³³ *Id.*

³⁴ 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*).

³⁵ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

³⁶ *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

³⁷ *Local Ownership Order*, 14 FCC Rcd at 12954.

³⁸ See *Borger Broadcasting, Inc.*, Letter Order., 25 FCC Rcd 1204, 1207 (MB 2010) (describing benefits including returning the failing station to full power, upgrading facilities, and broadcasting local programming for the first time); *Banks-Boise, Inc.*, Letter Order, 24 FCC Rcd 401, 404 (MB 2009) (describing benefits including initiating a thirty-minute daily local newscast on the failing station); *William H. Fitz, Esq.*, Letter, 22 FCC Rcd 11845 (MB 2007) (describing benefits including upgrading the failing station to HD and broadcasting weather, emergency information, and local news for the first time on the failing station).

³⁹ Fireweed Emergency Request for Expedited Processing of Application at 1.

it is a small business owned by two individuals without sufficient wealth or other media interests to continue operating the station, one of whom is retired and the other who plans to retire soon; the Station continues to lose money each month it is on the air; and it is on a short-term lease with little prospect of being able to enter into a long-term one.⁴⁰ All of these factors support a conclusion that KYES satisfies prong three of the failing station waiver test. As the Commission has said previously, “it makes little sense to force a station to go dark...before considering whether it should receive a waiver of the duopoly rule to permit it to merge with another station in the market.”⁴¹ The harm would be particularly serious here since, not only could viewers lose the KYES signal, some may actually lose their only over-the-air service as the Station currently provides a first television broadcast service to portions of the state.⁴² The Commission has long stated that it disfavors reductions and losses of television service.⁴³

Petitioners have cited two chief prospective competitive harms that we have taken into consideration in our review: the possibility of a network affiliation swap that would result in Gray owning two top-four stations in terms of audience share; and the possibility that Gray may tie carriage of KYES to carriage of KTUU with a resultant increase in retransmission consent fees.⁴⁴ We determine here that for a period of two years post-consummation, we will not allow KYES to enter into an agreement to obtain a network affiliation held by an existing affiliate in the market that, at the time such agreement is executed, would result in KYES becoming a top-four station in the market in terms of audience share. In the *2014 Quadrennial Review*, the Commission tentatively found that “transactions involving the sale or swap of network affiliations between in-market stations that result in an entity holding an attributable interest in two top-four stations can be used to evade the top-four prohibition,” and “in order to close this loophole, we propose[d] to clarify that such transactions must comply with the top-four prohibition at the time the agreement is executed.”⁴⁵ We believe that failing to prohibit KYES from acquiring such an

⁴⁰ *Id.* at 2-6.

⁴¹ *Local Ownership Order*, 14 FCC Rcd at 12939.

⁴² Fireweed Emergency Request for Expedited Processing of Application at 5-6.

⁴³ Proposals that would result in a loss of television service are considered to be *prima facie* inconsistent with the public interest and must be supported by a strong showing of countervailing public interest benefits. See *West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc. v. FCC*, 460 F. 2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964) (finding that “once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public generally will be benefited”); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

⁴⁴ We find that the combination as currently constituted would not result in excessive concentration in the broadcast television advertising market. As discussed above, KYES currently holds only 1 percent of the audience share in the market. Furthermore, compared to the affiliates of CBS, NBC, ABC and FOX who have collectively a 69.1 percent share of the local TV ad revenue in the market, KYES has a mere 3.6%. See *Failing Station Waiver*, Letter from Patrick Communications.

⁴⁵ *2014 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, 4392 (2014)(*2014 Quadrennial Review*)(tentatively finding that “an entity should not be permitted to directly or indirectly own, operate, or control two television stations in the same DMA through the execution of any agreement...involving stations in the same DMA, or any individual or entity with a cognizable interest in such stations, in which a station (the “new affiliate”) acquires the network affiliation of another station (the “previous affiliate”), if the change in network affiliations would result in the licensee of the new affiliate, or any individual or entity with a cognizable interest in the new affiliate, directly or indirectly owning, operating, or controlling two of the top-four rated television stations in the DMA at the time of the agreement” and

affiliation via an executed agreement in this instance at least for a period of two years might result in the very type of public interest harm the Commission's top-four prohibition seeks to prevent.

On the issue of retransmission consent, we decline to impose a condition on the merger. The Commission's Rules already require broadcasters and multichannel video programming distributors (MVPDs) engaging in retransmission negotiations to negotiate in good faith.⁴⁶ The Commission has adopted a two-part framework for evaluating good faith.⁴⁷ First, the Commission has established a list of objective good faith negotiation standards, the violation of which is considered a *per se* breach of the good faith negotiation obligation.⁴⁸ Second, even if the specific *per se* standards are met, the Commission may consider whether, based on the totality of the circumstances, a party has failed to negotiate retransmission consent in good faith.⁴⁹ Pursuant to Section 103(a) of the STELA Reauthorization Act of 2014, these rules were amended to reflect that coordinated or joint negotiations by broadcast stations in the same local market is one of several *per se* violations of the good faith negotiation requirement, unless such stations are under common de jure control.⁵⁰ Since KYES and KTUU would be under common *de jure* control following grant of the merger, any future joint negotiations that may take place within the retransmission consent context would not violate the Commission's Rules currently in place. We have not forbidden joint negotiation by stations that are commonly owned.

Finally, with respect to the fourth prong of the standard, we find that Gray has adequately demonstrated that it is the only reasonably available candidate willing and able to acquire and operate the Station at this time. In addition to the broker letter Gray provided from Patrick Communications and the Kepper, Tupper and Wells Fargo declarations Gray and Fireweed included in their Joint Reply, Fireweed provided a detailed account of its efforts to market and sell the Station. Fireweed has engaged in discussions over the last fourteen years with such parties as a brokerage service, an organization that e-mails sales advisories and is focused on selling media outlets, a newspaper and broadcast company, a religious television network, a commercial mortgage banking and real estate company looking to acquire broadcast interests, and a TV station owner. None of these discussions led to an agreement to sell the Station. Our analysis under the fourth prong does not merely take a numerical count of the number of potential out-of-market buyers a licensee must contact in order to satisfy the "failing station" waiver standard. Rather, in order to accurately reflect the differences in markets and economic conditions, we review the record as a whole, and as set forth in the Rules, we review each request on a case by case basis.⁵¹

proposing "to find any party that has control over two top-four stations in the same DMA as a result of such transactions to be in violation of the top-four prohibition and subject to enforcement action.").

⁴⁶ 47 C.F.R. § 76.65(a).

⁴⁷ *Id.* at § 76.65(b)(1).

⁴⁸ *Id.*

⁴⁹ *Id.* at § 76.65(b)(2). The Commission recently adopted an NPRM, as directed by Section 103(c) of the STELA Reauthorization Act of 2014, seeking comment on the totality of the circumstances test. *Implementation of Section 103 of the STELA Reauthorization Act of 2014 Totality of the Circumstances Test*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327 (2015)(*Totality NPRM*).

⁵⁰ 47 C.F.R. § 76.65(b)(1)(viii) (adopted in *Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, 30 FCC Rcd 2380, 2381 (2015), and effective Apr. 2, 2015). *See also Totality NPRM* at note 65 (Congress in Section 103 of STELAR revised Section 325 of the Act to "prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market . . . to grant retransmission consent . . . unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission," Pub. L. No. 113-200, § 103(a); 47 U.S.C. § 325(b)(3)(C)(iv), and the Commission codified this language in its rules nearly verbatim. *See* 47 C.F.R. § 76.65(b)(1)(viii). *See also Amendment of the Commission's Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3354-55, para.6 (2014).

⁵¹ 47 C.F.R. § 73.3555, Note 7.

Here, we find that the evidence presented meets the four prongs of the “failing station” waiver standard. We are persuaded that the Station’s poor financial performance year after year, combined with its location and the competition already present among stronger stations in the market, have resulted in a failing station that is unlikely to recover and become a viable voice in the market unless it is able to be combined with, and benefit from, the resources of a stronger station. We will not insist that the Station go dark so that it can continue to spend money it does not have in an attempt to market the Station to a buyer it may not find. The public interest is best served if the Station remains on the air.

In light of the above discussion, we find that the Applicant is fully qualified and conclude that a grant of the Application would serve the public interest.

ACCORDINGLY, IT IS ORDERED That, subject to the condition set forth herein, the request for a “failing station” waiver of Section 73.3555(b)(2) of the Commission’s rules for station KYES-TV, Anchorage, Alaska, IS GRANTED, and That the Application, File No. BALCDT - 20151009ADJ, IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc:

GCI Communication Corp.
David M. Hymas
Associate General Counsel
2550 Denali Street, Suite 1000
Anchorage, AK 99503

GCI Communication Corp.
Kara L. Azocar
Regulatory Counsel, Federal Affairs
1900 L Street NW, Suite 700
Washington, DC 20036

Barbara S. Esbin
Scott C. Friedman
Cinnamon Mueller
1875 Eye Street, NW, Suite 700
Washington, DC 20006

American Cable Association
Ross J. Lieberman
Senior Vice President of Government Affairs
2415 39th Place, NW
Washington, DC 20007

American Cable Association
Matthew M. Polka
President and CEO
875 Greentree Road
Seven Parkway Center, Suite 755
Pittsburgh, PA 15220

Clyde E. Sniffen Jr.
Chief Assistant Attorney General
Office of the Attorney General
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501