Federal Communications Commission
Washington, D.C. 20554

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KCEB License Company, LLC
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Re: KCEB(TV), Longview, Texas
Application for Assignment of License
Request for Waiver of Section 73.3555(b)
File No. BALCDT-20091130AFO
Facility ID No. 83913

Dear Licensees:

This is in reference to the above-referenced application for consent to assign the license for KCEB(TV), Longview, Texas, from Estes Broadcasting, Inc. to KCEB License Company, LLC, a wholly owned subsidiary of London Broadcasting Company ("London"). The application is unopposed. The applicants have requested a "failing station" waiver of the Commission's television duopoly rule[1] to permit common ownership of KCEB(TV) and KYTX(TV), Nacogdoches, Texas, which is licensed to another subsidiary of London. Both KCEB(TV) and KYTX(TV) are located in the Tyler-Longview, Texas Designated Market Area ("DMA") and have overlapping noise-limited DTV contours, thus triggering the local television duopoly rule. For the reasons stated below, we grant the requested waiver.

The current television duopoly rule permits common ownership of two commercial television stations in the same DMA that have overlapping Grade B[2] contours if: (i) at least one of the stations is

[1] 47 C.F.R. § 73.3555(b)(2).

[2] Post digital transition, the equivalent of the analog Grade B service contour is the noise limited DTV service contour. *Report To Congress: The Satellite Home Viewer Extension And Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, ET Docket No. 05-182, 20 FCC Rcd 19504, 19507, ¶3 ("For digital television stations, the counterpart to the Grade B signal intensity standards for analog television stations are the values set forth in Section 73.622(e) of the Commission's Rules describing the DTV noise-limited service contour.").

not ranked among the top four stations in the DMA, based on the most recent all-day audience share; 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.[3] The Tyler-Longview DMA would not have eight independently owned and operating full-power television stations post-merger. Therefore, the applicants have requested a "failing station" waiver in connection with the proposed assignment.[4]

The Commission's *Local Ownership Order*[5] established 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."[6] Specifically, the Commission will presume that such a waiver is in the public interest if the applicant can satisfy each of the following criteria: (1) one of the merging stations has had a low all-day audience share (*i.e.*, 4% or lower); (2) the financial condition of one of the merging stations is poor (*i.e.*, the failing station has had a negative cash flow for the preceding three years); (3) the merger will produce tangible and verifiable public interest benefits; and (4) the in-market buyer is the only available candidate willing and able to acquire and operate the failing station, and selling the failing station to an out-of-market buyer would result in an artificially depressed price.[7]

As to the first criterion, the applicants have submitted the Neilson audience share reports for the Tyler-Longview DMA for the last three years, demonstrating that KCEB(TV)'s all-day audience share has been far below four per cent in each of the past three years. In fact, the applicants assert that KCEB(TV) has measured no more than one per cent of all-day audience share in every ratings book since May, 2007.

On the second criterion, the applicants have provided income statements, demonstrating the station's negative cash flow and operating losses for the three years preceding the filing of the instant application.[8] In addition, the applicants contend that KCEB(TV)'s financial situation was further compromised when White Knight Broadcasting, which has operated KCEB(TV) pursuant to a Local Marketing Agreement ("LMA") since 2003, terminated the LMA in May, 2009. As a result, the applicants note that within four months of the termination, the nine-month average of KCEB(TV)'s revenues fell to just under $4,000, which represents less than one-third of the station's average monthly operating costs.

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[3] *Id.*

[4] 47 C.F.R. § 73.3555 Note 7.

[5] *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).

[6] *Id.* at 1076.

[7] *Id.*

[8] The applicants requested confidential treatment for this material pursuant to Sections 0.457(d) and 0.459(a)(b) of the Commission's rules.

With respect to the third criterion, the applicants state that the consolidation of operations of KCEB(TV) and KYTX(TV) will produce considerable tangible and verifiable benefits to the public, including increases in news programming, local programming and community outreach. The applicants explain that because of its limited resources, KCEB(TV) has been unable to offer any local news programming. In contrast, they assert that KYTX(TV) has made a name for itself in the market by its dedication to local news. Specifically, they assert that KYTX(TV) offers more prime time newscasts than any other station in the market, with a 5:30 am to 7 am newscast each weekday morning, a 5 pm newscast, a full hour of news at 6 pm (which focuses on local Tyler news during the first half hour and local news stories from Longview during the second half hour), and a 10 pm newscast. The applicants maintain that KCEB(TV)'s viewers will reap the benefits of London's focus on local news and information when London begins broadcasting KYTX(TV)'s 6 pm newscast on KCEB(TV). Likewise, all local public affairs programming produced for KYTX(TV) will be re-broadcast on KCEB(TV) at a different time to reach a new audience. London also has plans to begin broadcasting a variety of local high school sporting events on KCEB(TV). Additionally, London has proposed moving KYTX(TV)'s My Texas TV[9] stream to KCEB(TV)'s secondary stream.

Absent a waiver, the applicants aver that it is likely that KCEB(TV)'s owners would be forced to take the station dark. The applicants recently amended the application to provide further information regarding the status of KCEB(TV)'s digital television operations. In the amendment, they explain that Estes completed construction of the station's digital facilities and commenced full power digital operations in February, 2010. Because the station's financial condition has been dire, Estes contends that it was able to finance the construction and operation of the digital facility, solely because of the arrangements with London described in the Assert Purchase, Shared Services and Advertising Representation Agreements filed with the application. Estes states that it remains incapable of funding sustained operation of the station. Therefore, the applicants aver that KCEB(TV)'s continued ability to remain on-the-air hinges on London's acquisition of the station. Finally, the applicants state that the proposed investment in KCEB(TV) will ensure that the station retains its CW affiliation. The applicants explain that CW was unwilling to negotiate a renewal with Estes due to the station's financial condition. However, they assert that with the announcement of London's proposed acquisition of KCEB(TV), CW has expressed a willingness to renew the station's affiliation agreement.

Regarding the fourth criterion, the applicants submit that "active and serious" efforts were made to sell the station and only an in-market buyer is available. In support of their waiver request, the applicants have submitted the Declaration of Carl Strandell, a broadcast consultant and station broker from the Holt Media Group. The applicants state that in 2007, Mr. Strandell was retained to market KCEB(TV) to an out-of-market buyer or search for new investors, due to the licensee's concern at the time that the station's worsening financial condition would cause White Knight Broadcasting to terminate its LMA with KCEB(TV). Mr. Strandell explained that he worked for over two years to locate a purchaser for the station. Specifically, Mr. Strandell states that he spoke with nine potential purchasers, six of whom asked to review the confidential due diligence package. However, the licensee received no offers from any potential buyers to purchase the station. Mr. Strandell states that KCEB(TV)'s negative cash flow, combined with a deteriorating national economy, made finding a purchaser for the station extremely difficult.

In May 2009, after White Knight Broadcasting notified the licensee that it planned to terminate the

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[9] My Texas TV broadcasts regional sports, entertainment and news programming.

LMA, the licensee dramatically reduced the purchase price of the station. After this significant price reduction, the licensee received one offer from an in-market television station owner willing to enter into a LMA, but not to purchase the station. Given KCEB(TV)'s deteriorating financial condition, however, the applicants explain that the licensee declined the offer and continued to look for a buyer. In September, 2009, London Broadcasting Company submitted the only offer the licensee received to purchase the station. Thus, the applicants submit that "active and serious" efforts were made to sell the station and only an in-market buyer is available.

Upon review of the record, we will grant the applicants request for a waiver of the local television duopoly rule. The applicants have submitted detailed information regarding the station's dire financial condition. The station meets all of the requirements of the Commission's "failing station" waiver standard for television duopolies. KCEB(TV)'s ratings have been far below four per cent of all-day audience share for the past three years. In addition, KCEB(TV) experienced negative operating cash flows in 2006, 2007, 2008 and 2009. Moreover, the applicants have demonstrated that common ownership of KCEB(TV) and KYTX(TV) will result in tangible public interest benefits, including expanded local news, local sports and local public affairs programming. Despite extensive marketing efforts by the Holt Media Group, no out-of-market buyer has demonstrated any willingness whatsoever to acquire the station.

Consistent with the *Local Ownership Order*, we find that the combined operation of KCEB(TV) and KYTX(TV) will pose minimal harm to our diversity and competition goals because KCEB(TV)'s bleak financial situation hampers its ability to be a viable voice in the market. Under these circumstances, allowing KCEB(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. Therefore, 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 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 KCEB(TV), Longview, Texas, and KYTX(TV), Nacogdoches, Texas, **IS GRANTED**.

IT IS FURTHER ORDERED That the application for the assignment of license for KCEB(TV), Longview, Texas, from Estes Broadcasting, Inc. to KCEB License Company, LLC (File No. BALCDT-20091120AFO) **IS GRANTED**.

Sincerely,

William T. Lake
Chief, Media Bureau