EBC Harrison, Inc.
FCC Form 314
KWBM(TV), Harrison, Arkansas
Exhibit No. 14

REQUEST FOR DUOPOLY WAIVER UNDER SECTION 73.3555

By this application, EBC Harrison, Inc. seeks the Commission's consent for the assignment of license of UHF Television Station KWBM(TV), Channel 31, Harrison, Arkansas from RS Communications Limited Partnership ("RSC"). The parent company of EBC Harrison, Inc., Equity Broadcasting Corporation ("EBC"), also wholly owns TV 34, Inc., licensee of UHF Television Station KWBS(TV), Channel 34, Eureka Springs, Arkansas. Both KWBS and KWBM are located in the Springfield, Missouri Designated Market Area ("DMA"), and Grade B overlap exists between the two stations.[1] Under Section 73.3555 of the Commission's Rules, two television stations licensed in the same DMA that have grade B overlap may be commonly owned if (i) at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day audience share; and (ii) at least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. The proposed common ownership of KWBM and KWBS would leave 5 independently owned full-power commercial and noncommercial television stations in the Springfield DMA:

KDEB-TV, Springfield, MO, Channel 27, Fac. ID 3659 (FOX) (Quorom of Missouri License, LLC)
KOLR(TV), Springfield, MO, Channel 10, Fac. ID 28496 (CBS) (VHR Broadcasting of Springfield, Inc.)
KSPR(TV), Springfield, MO, Channel 33, Fac. ID 35630 (ABC) (Spring License, LLC)
KYTV(TV), Springfield, MO, Channel 3, Fac.ID 36003 (NBC) (KY3, Inc.)
KOZK(TV), Springfield, MO, Channel 21, Fac. ID 51102 (PBS) (Board of Governors for Southwest Missouri)

Therefore, because the common ownership of KWBM and KWBS does not meet the Commission's initial local duopoly showing, a waiver of the Commission's rules based on KWBM's status as a "failing station" is respectfully requested. Under the Commission's "failing station waiver" standard, common ownership of two stations that does not comply with the local duopoly requirements will be allowed if the applicant shows:

(i) One of the merging stations has had low all-day audience share (*i.e.*, 4 percent or less);
(ii) The financial condition of one of the merging stations is poor;
(iii) The merger will produce public interest benefits; and

[1] The map attached hereto shows the Grade B contour for both the licensed KWBS facilities and those authorized pursuant to File No. BPCT-20010927AAQ.

(iv) 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.[2]

As shown herein, because the operation of KWBM meets all four of these requirements, it is a classic case of a "failing station" and therefore common ownership with KWBS should be allowed.

Audience Levels. Since KWBM went on the air in January 2001 as a WB affiliate, it has never achieved above a 1.3 reportable audience share in the Springfield DMA. *See* Declaration of Debbie James and Marketron TV Sales Report of Nielsen ratings data, attached hereto. In addition, it should be noted that KWBS, which is a PAX affiliate, has never reported above a 1 reportable audience share in the DMA, and therefore both station rank far below the shares garnered by the large four (ABC, CBS, NBC and FOX) network affiliates in the market. Because KWBM has never approached the 4 percent level threshold set forth by the Commission, KWBM qualifies as a "failing station" under the first prong.

Negative Cash Flow. Attached hereto are year-end balance sheets and income statements from 2002 as well as monthly statements through July 2003, that all show KWBM has consistently operated at a loss, never making a profit nor achieving any positive cash flow. For the year ending December 2002, RSC suffered a net operating loss of $2,446,371.58, and through seven months of 2003, accrued losses have been estimated to be $1,094,570.00. *See, e.g.*, Richard W. Baker Declaration. It was this difficult economic situation that led in part to RSC entering into a Joint Sales Agreement with EBC Harrison, Inc. that commenced in September 2003, so that some of the losses from operating the Station could be stemmed. Therefore, KWBM meets this second failing station waiver prong as well.

Reasonable Available Buyers. Perhaps one of the more telling signs of KWBM's precarious position was the inability to find a suitable out-of-market buyer. Attached hereto is a Declaration from Rick Michaels, President of CEA Worldwide, the broker for KWBM, that indicates no outside buyer was found that made a reasonable offer for KWBM, as all were

[2] When The Federal Communications Commission issued its change in the media ownership rules, *Report and Order on Broadcast Ownership Rules (Biennial Regulatory Review Order)*, 18 FCC Rcd ___ , FCC 03-127, at paras. 221-232, it announced that it was modifying its failing station waiver standards to no longer require an applicant to comply with the fourth prong of the standard that it had tried and failed to secure a sale to an out-of market buyer. The FCC also announced a new waiver category for the merging of stations in which one may not be actually "failing" but which would be a combination that would properly serve the public interest. *Biennial Regulatory Review Order* at para. 225. By the action of the United States Court of Appeals for the Third Circuit, which issued a stay of these new media ownership rules on September 3, 2003, the FCC announced that all applications are to be processed under the prior, and now reinstated, media ownership rules. *See Public Notice*, DA 03-2867 (released September 10, 2003). Therefore, this waiver request is being filed and prepared under the original waiver prerequisites being set forth herein.

below the appraised market value. Therefore, EBC, with its knowledge of the Springfield market, was and remains the only party that has shown an interest in making any reasonable offer for KWBM.

Public Interest Factors. Allowing for the combined ownership of KWBM and KWBS in the Springfield market will allow for the two marginal stations to remain financially viable and competitive with the other full power commercial stations in the market.

Economic Efficiencies. Joint ownership will allow for the creation of economic efficiencies resulting from combined operations and facilities. If this waiver is granted, EBC will operate both stations from one studio facility, sharing engineering support, accounting, operation and all other program and management duties. EBC uses a state-of-the-art satellite delivery system for providing programming, which will also be used for the benefit of KWBS. The stations will be programmed separately; however, EBC will be able to rely on the discounts and other efficiencies that it can achieve by virtue of its interest and experience in operating television stations across the country.

Availability of the WB Network to Additional Viewers. The Springfield DMA consists of a 32-county area in Missouri and Arkansas. KWBM's city of license, Harrison, Arkansas, is at the southern edge of the market. Accordingly, KWBM's transmission facilities have been engineered to provide a city-grade signal covering Harrison, but the station does not provide a good quality signal to any cable headends in seventeen counties within the DMA. EBC's satellite delivery system will remedy this and provide a local WB Network signal to thousands of homes in the Springfield DMA for the first time.

No Harmful Effect on Springfield Marketplace. As noted above, this application proposes common ownership of two UHF stations that have a minimal presence in the broadcast market when compared to the remaining full power commercial television stations (ABC, NBC, CBS and FOX). There are also numerous radio broadcast stations, low power television stations, cable television and broadcast satellite television services, and daily and weekly newspapers. This merger will allow the viability of two full power television stations in the market.

Grant of this failing station waiver request would be consistent with the Commission’s past treatment of such cases. In *Kentuckiana Broadcasting, Inc. and Independence Television Company*, 16 FCC Rcd 6974 (2001), the Commission allowed for the common ownership of two UHF full power television stations in the Louisville, Kentucky market (Number 50 DMA) – WDRB(TV), a FOX affiliate, and WFTE(TV), a UPN affiliate. The merger resulted in five independently owned full power stations remaining in the market. There was a grandfathered LMA that existed between WDRB and WFTE. The FCC found that prior to the LMA, WFTE, the failing station, was close to bankruptcy and would not have been able to continue operating without the help of the programmer. Similar to the situation faced by EBC and RSC, a broker for WFTE declared no suitable out-of-market buyer was found that would offer a reasonable price for the station, and that because of the market domination by the ABC, CBS and NBC affiliates in the Louisville DMA, it made it difficult for the smaller stations to effectively compete. If anything, the waiver requested herein is even stronger based on the smaller size of the Springfield, Missouri DMA and the substantial losses suffered since KWBM began operations. *See also Pappas Telecasting of the Carolinas*, 17 FCC Rcd 842 (2002) (allowing for a "failing waiver" duopoly to be granted as the applicants met each of the four prerequisites -- low ratings, operating losses, no suitable out of market buyer, and a public interest showing of improved operations and programming).

As shown, herein, the facts are clear – KWBM meets each of the prerequisites required to be considered a "failing station," and this exhibit shows how the common ownership of KWBS and KWBM will help ensure the continued viability of a UHF station and allow for the public interest to continue to be served by KWBM, while having no harmful impact on the level of competition in the Springfield, Missouri market.