

SECTION III
EXHIBIT 15

Request for Duopoly Waiver

Pursuant to the instant application, The Hearst Corporation (“Hearst”), the ultimate parent company of KMBC Hearst-Argyle Television, Inc., licensee of KMBC-TV, Kansas City, Missouri, proposes to acquire KCWE(TV) through the Assignee, a subsidiary of Hearst. KMBC-TV and KCWE(TV) are each located in the Kansas City, Missouri, Designated Market Area (“DMA”) and the Grade B contours of the stations overlap. As described in Exhibit 14, Hearst currently holds a grandfathered non-attributable television Time Brokerage Agreement with KCWE(TV) dated August 24, 1995 (the “TBA”). Other than KMBC-TV and KCWE(TV), Hearst does not directly or indirectly own, operate, or control any other broadcast station in the Kansas City DMA.

Due to the pendency and the Commission’s recent grant of the application for Assignment of License for KSMO-TV, Kansas City, in FCC File Number BALCT-20050107ACA from KSMO Licensee, Inc. to the Meredith Corporation, the Kansas City DMA no longer has eight independently owned and operated television voices, and thus, notwithstanding its existence and treatment as a “single voice” in the Kansas City market since 1995, combination of KMBC-TV and KCWE(TV) would be prohibited under a general application of the Commission’s local television ownership rule. *See* 47 C.F.R. §73.3555(b). However, because KCWE was an unbuilt station at the time Hearst entered into the

grandfathered TBA in 1995, Hearst respectfully requests an unbuilt station waiver of Section 73.3555(b) of the Commission's Rules to permit common ownership of KMBC-TV and KCWE(TV).

Pursuant to the Commission's *Local Ownership Order*, the parties to a grandfathered TBA may seek a duopoly waiver "based on the circumstances existing just prior to the parties entering into the LMA [or TBA]." *Review of the Commission's Regulations Governing Television Broadcasting* ("Local Ownership Order"), 14 FCC Rcd 12903, FCC 99-209 (1999), ¶ 147; *see also Order on Reconsideration*, 14 FCC Rcd 20571, FCC 99-343 (1999), n.30. Where an applicant that is a party to a grandfathered TBA requests a duopoly rule waiver on the basis that the station subject to the TBA was unbuilt prior to the parties entering into the TBA, as is the case here, the Commission requires the applicant to demonstrate that (a) the TBA combination resulted in the construction of an authorized but unbuilt station, and (b) the permittee of the unbuilt station had made reasonable efforts to construct the station, but had been unable to do so prior to entering into the TBA. *See Review of the Commission's Regulations Governing Television Broadcasting*, ("Local Ownership Reconsideration Order"), 16 FCC Rcd 1067, FCC 00-431 (2001), ¶ 28; *see also KB Prime Media, LLC and Pegasus*, DA 05-357 (Rel. Feb 10, 2005); *KB Prime Media, LLC and WFXU Corporation*, 17 FCC Rcd 6296, FCC 02-106 (Rel. Mar. 29, 2002); *K-W TV, Inc. and WTHN Broadcasting, Inc.*, DA 02-110 (Rel. Jan 15, 2002); *Kentuckiana Broadcasting, Inc. and Independence Television Company*, DA 01-744 (Rel. Mar. 23, 2001). Hearst respectfully submits that these criteria are satisfied in the instant case.

I. Hearst's TBA With KCWE(TV) Resulted In The Construction Of An Authorized But Unbuilt Station

It is indisputable that Hearst's TBA with KCWE(TV) resulted in the construction of KCWE(TV), which at the time the parties entered into the TBA was an authorized but unbuilt station. The Commission granted KCWE(TV)'s initial construction permit to the Assignor (formerly, T.V. 32 Inc.) on July 3, 1993. *See* FCC File Number BPCT-19861216K4. Ultimately, through October 19, 1998, the Assignor filed for and the Commission granted six requests for extensions of time to construct the station. *See* FCC File Numbers BMPCT-19960430IY; BMPCT-19960816KE; BMPCT-19970224KF; BMPCT-19970815KE; BMPCT-19980212KF; BMPCT-19980817KE. The station was constructed and the FCC granted KCWE(TV)'s license on August 19, 1999. *See* FCC File Number BLCT-19990419KF.

When Hearst and the Assignor entered into the TBA on August 24, 1995, KCWE(TV) was an unbuilt station authorized pursuant to a valid construction permit. As part of the consideration under the TBA, Hearst provided the funds, equipment, and programming necessary for the construction and operation of the station. Prior to Hearst entering into the TBA, KCWE(TV)'s construction permit had been outstanding for over two years. The station was constructed only after Hearst agreed to enter into the TBA, to lease space on its tower, and to provide the financing necessary to complete the project.

II. Prior To Entering Into The TBA With Hearst, The Assignor Had Made Reasonable Efforts To Construct KCWE(TV), But Had Been Unable To Do So

KCWE-TV, Inc. (formerly, T.V. 32, Inc.¹)'s original application for an authorization allowing construction of a new commercial television station on Channel 32 at Kansas City, Missouri, was filed in December of 1986. The FCC permit was issued on July 3, 1993, after a lengthy comparative hearing, to T.V. 32, Inc. This entity was controlled by Robert B. Liepold, a telephone company executive with no prior broadcast experience. In addition to Liepold, T.V. 32, Inc. had one other voting shareholder, Tom Jones, who owned a minority interest and had extensive broadcast experience. T.V. 32, Inc. also had a complicated debt structure involving three other parties whose services had helped the company secure the permit through the Commission's comparative hearing process.

T.V. 32, Inc. unsuccessfully attempted for some two years to secure financing and programming to construct and operate the new station. After securing the construction permit, T.V. 32, Inc.'s stockholders and debt holders had different goals. Neither of the shareholders could afford to fund construction of the station, and neither were willing to cause the company to incur further debt, which would have required personal guarantees and would have been next to impossible, given the company's existing debt structure at that time. Further, Tom Jones's wife, and later Jones himself, became seriously ill, and due to these changed circumstances, Jones was simply unable to commit further to T.V. 32, Inc. Also, the company's debt holders were not willing to loan any more funds and wanted to get out of the deal.

¹ T.V. 32, Inc. later changed its name to KCWB-TV, Inc. and, later, to KCWE-TV, Inc.

Despite the different goals and commitments of T.V. 32, Inc.'s stockholders and debt holders, Liepold still desired to construct and put the station on the air. It became apparent to Liepold that it would be necessary to find an experienced investor to fund the station's construction. Liepold hired a broker, and considered approximately 50 different investors. Most of the investors considered had no prior broadcast experience and were not interested given the complexities involved in constructing a station and securing competitive programming. With only a year left in which to construct the station, in 1995, T.V. 32, Inc. entered into an agreement with Sonia and David Salzman who arranged for Hearst to finance the construction of the station, lease equipment, and supply it with programming through the TBA.

T.V. 32, Inc. believed that Hearst's experience and presence in the market would help launch the station with a network affiliation and a strong competitive schedule of syndicated and local programming. The TBA allowed the licensee to achieve those objectives. The station launched as a WB affiliate, and it is now an affiliate of UPN. Working with Hearst, the station was also able to obtain the rights to broadcast Kansas City Royals baseball games. It is without question that Hearst's financial resources and broadcast programming expertise allowed the station, which went on the air in 1996, to commence broadcasting operations and secure competitive programming.

Indeed, Hearst's involvement with the construction of KCWE(TV) was invaluable as construction of the station involved considerable and unanticipated expenses. KCWE(TV)'s original construction permit was for Channel 32. However, as it turned out, serious zoning and land use permitting problems developed with the station's originally proposed site that ultimately prohibited the construction of the station on Channel 32. Because of the TBA with Hearst, KCWE(TV) was able to co-locate its transmission facility

on Hearst's tower with KMBC-TV, which required KCWE(TV)'s construction permit to be modified to specify Channel 29. KCWE(TV) would not have been able to locate on Hearst's tower absent the TBA between the parties. This arrangement with Hearst has enabled the licensee of KCWE(TV) to operate with broadcast facilities substantially comparable or superior to other stations in the market. KCWE(TV) continues to operate from Hearst's tower site today.

In light of the fact that T.V. 32, Inc.'s stockholder with experience in the television business was unable to commit further to the company due to his wife's illness, that Liepold was a neophyte in the broadcasting business, and that T.V. 32, Inc.'s stockholders and debt holder had different goals for their interests in the company, T.V. 32, Inc.'s lack of success in securing financing to construct and operate the station is not surprising. It is worth noting that, from the inception of its relationship with KCWE(TV), Hearst has incurred substantial losses under the TBA.

Absent Hearst entering into the TBA with KCWE(TV) and its involvement in financing the construction and operation of the station, T.V. 32, Inc. would have been unable to build and operate the station on its own. Thus, despite KCWE(TV)'s owner's reasonable efforts to locate financing for the station's construction, without Hearst's assistance, it would have simply been unable to do so.

CONCLUSION

As Hearst's TBA with KCWE(TV) resulted in the construction of KCWE(TV) which, at the time, was an authorized but unbuilt station, and because Assignor had made reasonable efforts to finance the construction of KCWE(TV) prior to entering into the TBA with Hearst, the instant application satisfies the Commission's criteria for an unbuilt station duopoly waiver.

Furthermore, Hearst submits that a duopoly waiver is in the public interest because Hearst's TBA with KCWE(TV) has enhanced both programming diversity and competition in the Kansas City DMA. KMBC-TV and KCWE(TV) provide distinct programming, as KMBC-TV is a network affiliate of ABC and KCWE(TV) is now a network affiliate of UPN. Absent Hearst's role in constructing KCWE(TV), a full power television station outlet may not have been available initially for WB, and later for UPN, programming in the Kansas City DMA. KCWE(TV) is ranked fifth in the market in audience share, while KMBC is ranked second in the market.² With such disparate audience shares and distinct programming, the stations serve different audiences and compete for different advertisers. Indeed, as recognized by the Commission, "construction of a [previously unbuilt] station, even by the owner of another television station in the market . . . increases program choice for viewers, may increase outlet diversity, and increases the amount of advertising time available for sale in the market." *See Local Ownership Order*, 14 FCC Rcd 12903, FCC 99-209 (1999), ¶ 85.

For the foregoing reasons, Hearst submits that it has satisfied the applicable criteria for an unbuilt station waiver and that the requested waiver is in the public interest. Hearst respectfully requests that the Commission grant the requested waiver and permit Hearst's common ownership of KMBC-TV and KCWE(TV).

* * * * *

² See May 2005 Total Day Ratings (9:00 AM – 12:00 Mid) as measured by Nielsen Media Research.

DECLARATION OF ROBERT B. LIEPOLD

I, Robert B. Liepold, am President of KCWE-TV, Inc. (formerly T.V. 32, Inc.). I hereby declare under penalty of perjury that I have reviewed the foregoing **Request for Duopoly Waiver** and that the factual statements and considerations contained therein are true and correct to the best of my personal knowledge, except as to those based upon information and belief which I believe to be true and correct.

Executed this, the 7TH day of October, 2005.

Robert B. Liepold