

Request for Waiver of Section 73.3555(b)

I. Introduction

London Broadcasting Company (“London”), the parent of KCEB License Company, LLC, the proposed assignee in the instant application, hereby requests a “failing station” waiver of the Commission’s television duopoly rule, 47 C.F.R. § 73.3555(b), to permit common ownership of KCEB(TV), Longview, Texas (“KCEB” or “Station”) and KYTX(TV), Nacogdoches, Texas (“KYTX”), which is licensed to London subsidiary KYTX License Company, LLC. Both KCEB and KYTX are located in the Tyler-Longview Nielsen Designated Market Area (the “DMA”) and have overlapping Grade B contours, thus triggering the local television duopoly rule.

The current television duopoly rule permits the common ownership or control of two commercial television stations in the same DMA that have overlapping Grade B contours if: (i) at the time the assignment application is filed, 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 eight independently owned and operating full-power and non-commercial educational television stations would remain in the DMA after the proposed assignment.¹ KCEB is not among the top four stations in audience rankings in the market. Because only four independently owned and operated full-power television stations² would remain in the DMA post-consummation, however, London respectfully requests a failing station waiver in connection with the proposed assignment.

¹ 47 C.F.R. § 73.3555(b).

² The commercial stations in the Tyler-Longview DMA are: KCEB(TV), KETK-TV, KFXK(TV), KLTV(TV), KTRE(TV), KYTX(TV). KLTV(TV) operates KTRE-TV as a satellite station. There are no non-commercial television stations licensed to the Tyler-Longview DMA. See *2009 Broadcasting & Cable Yearbook* at A-2173.

II. The Proposed Assignment Satisfies the Commission’s Criteria for Grant of a Failing Station Waiver.

The Commission’s rules recognize a waiver of the television duopoly rule may serve the public interest where a merger involves a “failing station” — a station that has been struggling for “an extended period of time both in terms of audience share and financial performance.”³ More specifically, the Commission has stated that it would “presume such a waiver is in the public interest” if: (1) one of the merging stations has had a low all-day audience (*i.e.*, 4% or lower); (2) the failing station has had negative cash flow for three consecutive years immediately prior to the application; (3) the proposed merger will produce tangible 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.⁴ As demonstrated below, the proposed assignment of KCEB to London’s licensee subsidiary fully satisfies each of the criteria for a failing station waiver.

1. KCEB’s All-Day Audience Share is Below 4%

The first criterion the Commission evaluates in a failing station waiver request is whether one of the merging stations has a low audience share. In

³ *Review of the Commissions Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 at ¶ 79 (1999)(“*Local Ownership Order*”).

⁴ *Id.* at ¶ 81.

evaluating this criterion, the Commission generally examines all day audience share ratings during the three years prior to the proposed assignment.⁵

As demonstrated in the Nielsen audience share reports for the Tyler-Longview DMA for the last three years, attached hereto as Exhibit A, KCEB's all-day audience share has declined steadily for the past two and half years, and the Station's share has been far below four percent in each of the past three years. In fact, KCEB has measured no more than one percent of all day audience share (Monday – Friday, 9:00 am – 12:00 am) in every ratings book since May 2007. Even KCEB's highest share (one percent, measured in the May 2007 book) is well below the Commission's threshold. Therefore, the proposed transaction clearly satisfies the first criterion for a failing station waiver.

2. KCEB Has Had Negative Operating Cash Flow For Three Years

The Commission has stated that a failing station waiver “is more likely to be granted where one . . . of the stations has had a negative cash flow for the previous three years.”⁶ KCEB clearly meets this standard. As demonstrated by KCEB's income statements for the last three years, attached as Exhibit B hereto,⁷ the Station's financial condition is dire and is in no hope of improving without the efficiencies of joint operation with another in-market station.

⁵ See *In re: Assignment for License for WCWN(TV)*, 21 FCC Rcd 13522 (2006), see also *In re: Hispanic Keys Broadcasting, Inc.*, 19 FCC Rcd (2004).

⁶ *Local Ownership Order* at ¶ 81.

⁷ Redacted copies of the income statements are provided at Exhibit B. Complete copies of this material will be submitted to the Commission separately with a request for confidential treatment.

More specifically, KCEB has had negative operating cash flow for the past three years. In 2006, the Station had a net income loss of \$261,084; in 2007, the net income loss was \$185,576; and, in 2008, the net income loss had grown to \$311,648.

Further compromising KCEB's financial posture, White Knight Broadcasting ("White Knight"), which has operated the station pursuant to a Local Marketing Agreement ("LMA") since 2003, terminated the LMA in May 2009. As a result, within four months, the nine month average of the Station's revenues fell to just under \$4,000, which represents less than one-third of the Station's average monthly operating costs.

3. London's Acquisition of KCEB Will Produce Public Interest Benefits

The third factor in the Commission's failing station waiver analysis is whether the proposed merger would produce public interest benefits. The Commission has stated that a waiver "will be granted where the applicant demonstrates that the tangible and verifiable public interest benefits outweigh any harm to competition and diversity."⁸ In this instance, the consolidation of operations of KCEB and KYTX will produce considerable tangible and verifiable benefits to the public, including increases in news programming, local programming, and community outreach. In addition, the proposed acquisition will benefit viewers within the community by facilitating KCEB's transition to full-power digital facilities and preserving its CW affiliation.

⁸ *Id.*

Most importantly, London's common ownership of KCEB and KYTX will permit expanded local programming on KCEB, including news and public affairs programming.⁹ Because of its limited resources, KCEB has been unable to offer any local news programming. In contrast, KYTX has made a name for itself in the Tyler-Longview market by its dedication to local news. KYTX offers more primetime newscasts than any other station in the market, with a 5:30 a.m. to 7 a.m. newscast each weekday morning, a 5 p.m. newscast, a full hour of news at 6 p.m. (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 p.m. newscast. KYTX prides itself on reporting more local news than any other station in the market, averaging 14 local stories each day. Recently, the station's weekend news anchor and reporter earned a Lone Star Emmy in crime-news reporting for a story about a Mexican drug cartel setting up in East Texas.

KCEB's viewers will reap the benefit of London's focus on local news and information when London begins broadcasting KYTX's 6 p.m. newscast on KCEB. So as to reach a different segment of the audience, London currently plans to broadcast this hour long newscast after KCEB's primetime programming. Likewise, all local public affairs programming produced for KYTX, such as "Issues and Answers," a local Sunday morning interview show addressing current events of interest to the local community, will be re-broadcast on KCEB at a different time in order to reach a new audience. London also has plans to begin broadcasting a variety of local high school sporting events on KCEB.

⁹ See Declaration of Philip H. Hurley, Executive Vice President and Chief Operating Officer of London Broadcasting Company, Inc., attached hereto as Exhibit C.

Additionally, once KCEB's full power digital facility is operational, London will consider moving KYTX's My Texas TV ("MYTX TV") stream (currently offered on KYTX's channel 19.2), to KCEB's secondary stream. MYTX TV broadcasts regional sports, entertainment and news programming. In January 2010, KYTX plans to add a two-hour morning newscast (from 7 a.m. to 9 a.m.) to MYTX TV. London will also jointly market and brand all community outreach activities in order to reach both KCEB and KYTX viewers.

Absent grant of the waiver, it is likely that KCEB's owners would be forced to take the station dark, or that its license would otherwise be jeopardized by a failure to timely construct its full power digital facilities. Because it simply does not have the resources (an estimated \$470,000) necessary to complete construction of its full power facilities, KCEB continues to operate only a low power digital facility pursuant to special temporary authority¹⁰ some five months after the nation's digital transition date. London has committed to making the completion of the digital facility a priority.

Finally, London's proposed investment in KCEB will ensure that KCEB retains its CW affiliation. Given the station's financial condition, CW was unwilling to negotiate a renewal with Estes Broadcasting, Inc. ("Estes"). With the announcement of London's proposed acquisition of KCEB, however, CW has expressed a willingness to renew the Station's affiliation agreement.

4. There is No Out-Of Market Buyer for KCEB

¹⁰ See BDSTA-20090423AAH, as modified by BDSTA-20091015AAT to further reduce power.

The Commission's final consideration under the failing station standard is whether an in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station and that selling the station to an out-of-market buyer would result in an artificially depressed price.¹¹ In examining this factor, the Commission has required that "active and serious efforts" be made to market the station.¹²

In May 2007, concerned that the Station's worsening financial condition would cause White Knight to terminate the LMA, Estes retained Carl Strandell of the Holt Media Group, a nationally known broadcast consultant and station broker, to market KCEB to an out-of-market buyer or search for new investors. As stated in the Declaration of Carl Strandell attached as Exhibit D, Mr. Strandell worked for over two years to locate a purchaser for KCEB. Mr. Strandell spoke with nine potential purchasers, six of whom asked to review the confidential due diligence package. Yet, Estes received no offers from any potential buyer to purchase KCEB. In May 2009, after White Knight notified Estes that it planned to terminate the LMA, Estes dramatically reduced the purchase price of the Station. After this significant price reduction, Estes received one offer from an in-market television station owner willing to enter into a LMA, but not to purchase the Station. Given KCEB's deteriorating financial condition, however, Estes declined the offer and continued to pursue a buyer. In September 2009, London submitted the only offer Estes received to purchase the Station. Thus, the

¹¹ *Local Ownership Order* at ¶81.

¹² *Id.*

parties submit that “active and serious” efforts were made to sell the Station and only an in-market buyer is available.

III. CONCLUSION

As demonstrated above, the proposed assignment of KCEB to London’s subsidiary meets all of the requirements of the Commission’s failing station waiver standard for television duopolies. KCEB’s ratings have been far below four percent of all-day audience share for the past three years. KCEB experienced negative operating cash flows in 2006, 2007, 2008, and 2009. Common ownership of KCEB and KYTX 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, a nationally recognized broker, no out-of-market buyer has demonstrated any willingness whatsoever to acquire the station. Further, the public would benefit from KCEB’s conversion to full power digital facilities. These factors clearly demonstrate that grant of the requested waiver of the Commission’s television duopoly rule will serve the public interest. Therefore, London respectfully requests that the Commission grant a “failing station” waiver and the instant application.

Exhibit A

Total DMA / All

May-2009

For Internal Use only

					DMA	DMA
					HH	HH
	AFFIL	STATN	DAY	PROGRAM	RTG	SHR
110 TYLER-LONGVIEW (0.2%)						
Total Day						
May-2009	Y	KCEB	MTWRF__	DAYPART AVERAGE	0.2	0.7
May-2008	Y	KCEB	MTWRF__	DAYPART AVERAGE	0.3	0.8
May-2007	Y	KCEB	MTWRF__	DAYPART AVERAGE	0.5	1.3

Exhibit B

A complete copy of this material will be submitted to the Commission separately with a request for confidential treatment.

Run Date: 09/21/09
G/L Date: 09/21/09

KCEB 2006 Fin
DIMENSION ENTERPRISES LTD
INCOME STATEMENT
FOR THE 12 PERIODS ENDED DECEMBER 31, 2006

Page: 1
Time: 11:13 AM

____ PERIOD TO DATE ____		____ YEAR TO DATE ____	
ACTUAL	PERCENT	ACTUAL	PERCENT

G/L Date: 09/21/09

KCEB 2006 Fin
INCOME STATEMENT
FOR THE 12 PERIODS ENDED DECEMBER 31, 2006

Time: 11:13 AM

PERIOD TO DATE		YEAR TO DATE	
ACTUAL	PERCENT	ACTUAL	PERCENT

Approved Management Team

KCEB 2006 Fin

220 20

Run Date: 09/21/09
G/L Date: 09/21/09

KCEB 2007 Fin
DIMENSION ENTERPRISES LTD
INCOME STATEMENT
FOR THE 12 PERIODS ENDED DECEMBER 31, 2007

Page: 1
Time: 11:13 AM

____ PERIOD TO DATE ____		____ YEAR TO DATE ____	
ACTUAL	PERCENT	ACTUAL	PERCENT

G/L Date: 09/21/09 KCEB 2007 Fin Time: 11:13 AM
INCOME STATEMENT
FOR THE 12 PERIODS ENDED DECEMBER 31, 2007

____ PERIOD TO DATE ____ YEAR TO DATE ____
ACTUAL PERCENT ACTUAL PERCENT

KCEB 2007 Fin

Run Date: 09/21/09
G/L Date: 09/21/09

KCEB 2008 Fin
DIMENSION ENTERPRISES LTD
INCOME STATEMENT
FOR THE 12 PERIODS ENDED DECEMBER 31, 2008

Page: 1
Time: 11:15 AM

KCEB 2008 Fin
FOR THE 12 PERIODS ENDED DECEMBER 31, 2008

____ PERIOD TO DATE ____ YEAR TO DATE ____
ACTUAL PERCENT ACTUAL PERCENT

KCEB 2008 Fin

Run Date: 10/14/09
G/L Date: 10/14/09

KCEB 0909 Financials
DIMENSION ENTERPRISES LTD
INCOME STATEMENT
FOR THE 9 PERIODS ENDED SEPTEMBER 30, 2009

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_____	PERIOD TO DATE _____	_____	YEAR TO DATE _____	
	ACTUAL	PERCENT	ACTUAL	PERCENT

KCEB 0909 Financials
____ PERIOD TO DATE _____ YEAR TO DATE _____
ACTUAL PERCENT ACTUAL PERCENT

Run Date: 10/14/09
G/L Date: 10/14/09

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DIMENSION ENTERPRISES LTD	Page: 1
BALANCE SHEET	Time: 01:51 PM
SEPTEMBER 30, 2009	

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KCEB 0909 Financials

Exhibit C

DECLARATION OF PHILIP H. HURLEY

I, Philip H. Hurley, hereby declare the following under penalty of perjury:

1. I am the Executive Vice President and Chief Operating Officer of London Broadcasting Company, Inc. ("London").

2. London is the parent company of KCEB License Company, LLC, the proposed assignee of KCEB(TV), Longview, Texas ("KCEB"), located in the Tyler-Longview DMA. London is also the parent company of KYTX License Company, LLC, the licensee of KYTX(TV), Nacogdoches, Texas ("KYTX"), which also is located in the Tyler-Longview DMA.

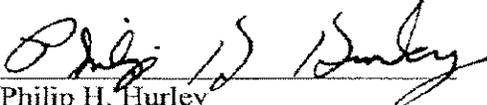
3. KYTX broadcasts more news during primetime hours than any other station in the Tyler-Longview DMA. KYTX broadcasts three and half hours each weekday of local news and averages over fourteen local stories each day.

4. London plans to significantly increase the amount of local news and public affairs programming offered on KCEB. London has plans to immediately begin broadcasting KYTX's 6 p.m. news hour on KCEB. London will broadcast this programming after KCEB's primetime programming in order to reach a new audience. Additionally, London will broadcast all public affairs programs produced for KYTX on KCEB, including KYTX's Sunday morning local interview show, Questions and Answers. London also plans to broadcast a variety of local high school sporting events on KCEB.

5. Once KCEB's full power digital facility is operational, London will consider moving KYTX's My Texas TV ("MYTX TV") stream (currently offered on KYTX's channel 19.2), to KCEB's secondary stream. MYTX TV broadcasts regional sports, entertainment and news programming. Beginning in January 2010, KYTX plans to add a two-hour morning newscast (from 7a.m. to 9a.m.) to MYTX TV.

6. London will also jointly market and brand all community outreach activities in order to reach both KCEB and KYTX viewers.

7. KCEB's affiliation agreement with CW had expired. CW was unwilling to renew KCEB's affiliation agreement given KCEB's financial distress. However, following the announcement that London had entered into an agreement to acquire KCEB, subject to FCC approval, CW indicated it would renew KCEB's affiliation agreement.


Philip H. Hurley

November 24, 2009

Exhibit D

DECLARATION OF CARL STRANDELL

I, Carl Strandell, hereby declare the following under penalty of perjury:

1. I am an associate broker with Holt Media Group ("Holt") with over 20 years experience in radio and television station brokerage. Additionally, I have extensive and direct knowledge about the broadcast industry, having worked as a general manager of radio stations for many years.
2. In May 2007, Estes Broadcasting, Inc. ("Estes") retained Holt to market KCEB (TV), Longview, Texas ("KCEB" or the "Station") for sale.
3. Over the next two and half years, I discussed KCEB with nine potential purchasers, including both out-of-market and in-market broadcast station owners. Six potential purchasers requested confidential due diligence information about the Station.
4. KCEB's negative cash flow, combined with a deteriorating national economy, made finding a purchaser for the Station extremely difficult. In May 2009, Estes agreed to reduce the asking price for KCEB significantly. Subsequently, Estes received one offer from an in-market television station owner willing to enter into a local marketing agreement for KCEB. Given the Station's desperate financial condition, however, Estes declined that offer and continued to seek a buyer for KCEB with the resources to complete construction of the Station's full power digital facility.
5. In September 2009, London Broadcasting Company, an in-market buyer, made an offer to Estes to buy KCEB. Holt actively marketed the Station to potential purchasers for more than two years, and London was the only company willing to purchase the Station.



Carl Strandell
Holt Media Group

November 20, 2009