

## Failing Station Waiver Request

By this application Ventura TV Video Appliance Center Inc. ("Ventura") seeks consent from the Commission to the assignment of the license of KPIF(TV), Pocatello, Idaho (FID 86205). The proposed assignee, Ventura Media Communications, LLC, is under common 100 percent ownership and control with Ventura TV and Appliance, which recently consummated the purchase of same market KVUI, hence the need to request a waiver. Ventura requests that the Commission waive its local television ownership rule to permit this assignment, because KPIF, which is located in the Idaho-Falls-Pocatello, Idaho DMA, is a "failing" station. This transaction meets the test for a "failing" station set forth in Note 7(2) to Section 73.3555 of the Commission's Rules.<sup>1</sup>

### Failing Station Waivers

Section 73.3555(b) generally bars common ownership of television stations in the same television market with overlapping digital noise limited contours unless at least one of the stations in the proposed combination is not ranked among the top four stations in the market, and there would be at least eight independently owned and operated full-power stations in the market after an acquisition is consummated. Ventura is the licensee of KVUI(TV), Pocatello, Idaho (FID 78910), which is also assigned to the Idaho Falls-Pocatello, Idaho DMA and KVUI's digital noise limited contour overlaps that of KPIF. The Idaho-Falls-Pocatello, Idaho DMA is the 162<sup>nd</sup> ranked DMA in the country; it does not have enough full power television stations to have eight independent voices.

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<sup>1</sup> 47 C.F.R. § 73.3555.

Ventura, therefore, requests a waiver of the local television ownership rule, because KPIF is a “failing” station. The Commission will presume a “failing” station waiver request to be in the public interest if (1) the “failing” station has a low all-day audience share (*i.e.*, no more than four percent), (2) the station has had negative cash flow for three consecutive years prior to the application, (3) the parties demonstrate public interest benefits that will flow from the proposed transaction, and (4) there is no out-of-market buyer willing and able to acquire the station at other than an artificially depressed price.<sup>2</sup> The proposed transaction meets all four of these standards.

#### KPIF Has a Low All-Day Audience Share

KPIF consistently has failed to achieve an all-day audience shares in excess of four percent. With a consistent failure to achieve any meaningful audience share, KPIF satisfies the first criterion of the failing station exception.

#### Poor Financial Condition

This prong of the waiver showing focuses on the three years immediately preceding the filing of the application. As the separately filed financial data reveals, KPIF had virtually no income in each of the three years and in each year operated with negative cash flow.<sup>3</sup> See Attachment A (redacted).

#### Public Interest Benefits

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<sup>2</sup> 47 C.F.R. § 73.35555, Note 7.

<sup>3</sup> The separately filed confidential financial information provides the costs to operate KPIF as a stand-alone station. The confidential financial information will be filed separately with the Commission, together with a request for confidential treatment.

The Commission recognized when it adopted its “failing station” waiver policy in 1999 that “[a]llowing a ‘failing’ station to join with a stronger station in the market can greatly improve its ability to improve its facilities and programming operations, thus benefiting the public interest.”<sup>4</sup> It understood that these waivers might be “of particular assistance to struggling stations in smaller markets that are not covered by the eight voice/top four ranked station test.”<sup>5</sup>

KPIF is not a competitive station in the Idaho Falls-Pocatello, Idaho DMA. Not surprisingly, over the last several years, KPIF has not registered ratings from Nielsen, and it has earned virtually no income. The station’s present situation is untenable. Without a failing station waiver, it is only a matter of time before KPIF ceases operations and becomes a failed station.

By combining with KVUI and by tapping into Ventura’s resources in the market, KPIF will finally become a bona fide competitor in the market. By making improvements to KPIF’s facilities and/or rebroadcasting KPIF’s programming on a multicast channel for KVUI, Ventura will be able to deliver KPIF’s programming to the vast majority of over-the-air viewers and the MVPDs in the market that do not carry KPIF’s programming. Once the MVPDs are able to receive a good quality signal from KPIF, Ventura believes that most MVPDs will want to retransmit it - especially once Ventura begins to improve the station’s programming by leveraging Ventura’s relationships with major programming suppliers and by integrating it with KVUI.

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<sup>4</sup> *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Red 12903, 12939 (1999).

<sup>5</sup> *Id.*

Simply ensuring that KPIF is available in the homes of viewers would be a tremendous public interest benefit and a substantial improvement over the status quo. But, given the station's financial performance over the last several years, KPIF's current ownership is unable to make the investments necessary to deliver the station's programming to most viewers and MVPDs in the market. Only by combining with an in-market station, like KVUI, will it be possible to turn KPIF into a viable station that can better serve its local audiences and become a competitor in the market.

In addition to increasing the potential for KPIF to be fully distributed and available throughout the market, substantial programming and operational improvement would result from Ventura's common ownership of KPIF and KVUI and provide tangible public interest benefits:

- Today, KPIF is operating on a shoestring budget. Operated together with KVUI, KPIF will have access to sufficient financial resources to modernize its operations and meet and expand its financial obligations.
- The station's poor financial condition has prevented it from producing its own local newscast; therefore, KPIF does not have any local meteorologists or local anchors that can provide breaking news or emergency weather cut-ins. By combining KPIF with KVUI, KPIF will have access to all of the news resources from KVUI. When events warrant, Ventura will provide KPIF viewers with live, breaking weather coverage using resources from KVUI. Ventura also will have the capability to provide non-weather emergency programming and information for viewers of KPIF as necessary.

- KPIF will have access to the full support of and resources from KVUI's engineering team.

#### No Rational Out-of-Market Buyer

Buyers are not willing and able to acquire and operate a failing station such as KPIF without the ability to operate it in conjunction with a stronger, in-market station (such as KVUI), and thereby taking advantage of the synergies that generate public interest benefits like those described above. Attachment B hereto is the statement of George Kimble describing his attempts to sell KPIF to an out-of-market buyer. Thus, the fourth prong of the failing station test is satisfied, because no reasonable out- of-market buyer would express interest in acquiring KPIF.

Ventura respectfully submits that the public interest would be served by granting a failing station waiver in order to allow common ownership of KPIF and KVUI. In adopting the failing station exception to the Duopoly Rule, the Commission stated that allowing failing stations to combine with a stronger station would “pose minimal harm to our diversity and competition goals, since their financial situation typically hampers their ability to be a viable ‘voice’ in the market”<sup>6</sup> That is the case here, where a waiver will allow KPIF to strengthen its “voice” in the market. A combination with KVUI also would make available new financial, operational, and programming resources that would provide improved service to viewers throughout the Idaho Falls-Pocatello DMA.

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<sup>6</sup> *Id.* at 12938-39.

In light of the demonstrable benefits of common ownership and operating KPIF from the KVUI main studio, and given that KPIF is a “failing” station under the Commission’s rules, the public interest would be served by grant of the instant waiver requests.

# **ATTACHMENT A**



## KOZACKO MEDIA SERVICES

Brokers & Consultants to the Communications Industry

George Kimble 6890 E. Sunrise Dr. #120-40 Tucson AZ 85750 520-465-4302 [georgeWkimble@aol.com](mailto:georgeWkimble@aol.com)

April 5, 2017

Mr. Kevin Bae  
Pocatello Channel 15, LLC  
3654 W. Jarvis Ave.  
Skokie, IL 60076

Dear Kevin:

As you know I have been working on trying to find a buyer for KPIF TV—a full power station in the Pocatello, Idaho market since last summer. Pocatello is a very small market- Size #163, but revenue size #176 - with **6 full power stations**. All the networks are taken, and KPIF is left with a minor source of programming such as Retro TV.

I have approached numerous exiting operators & my list of want-to-be operators & could not find anyone who would be willing to take on this challenge.

Sincerely,

George W. Kimble

# **ATTACHMENT B**

10:24 AM

11/14/17

**KPIF-TV**  
**Statement of Cash Flows**  
January through December 2014

	<u>Jan - Dec 14</u>
<b>OPERATING ACTIVITIES</b>	
Net Income	██████████
Adjustments to reconcile Net Income to net cash provided by operations:	
Accounts Receivable	██████████
Accounts Payable	██████████
Due from Merced	██████████
Payroll Liabilities	██████████
Net cash provided by Operating Activities	██████████
<b>INVESTING ACTIVITIES</b>	
Accumulated Depreciation	██████████
Net cash provided by Investing Activities	██████████
<b>FINANCING ACTIVITIES</b>	
Due to Chicago 13	██████████
Due to KM Communications	██████████
Net cash provided by Financing Activities	██████████
Net cash increase for period	██████████
Cash at beginning of period	██████████
Cash at end of period	██████████

10:22 AM

11/14/17

**KPIF-TV**  
**Statement of Cash Flows**  
January through December 2015

	<u>Jan - Dec 15</u>
<b>OPERATING ACTIVITIES</b>	
Net Income	[REDACTED]
Adjustments to reconcile Net Income to net cash provided by operations:	
Accounts Payable	[REDACTED]
Due from Merced	[REDACTED]
Due to Milwaukee	[REDACTED]
Payroll Liabilities	[REDACTED]
Net cash provided by Operating Activities	[REDACTED]
<b>INVESTING ACTIVITIES</b>	
Accumulated Depreciation	[REDACTED]
Net cash provided by Investing Activities	[REDACTED]
<b>FINANCING ACTIVITIES</b>	
Due to Chicago 13	[REDACTED]
Due to KM Communications	[REDACTED]
Net cash provided by Financing Activities	[REDACTED]
Net cash increase for period	[REDACTED]
Cash at beginning of period	[REDACTED]
Cash at end of period	[REDACTED]

10:22 AM

11/14/17

**KPIF-TV**  
**Statement of Cash Flows**  
January through December 2016

	<u>Jan - Dec 16</u>
<b>OPERATING ACTIVITIES</b>	
Net Income	██████████
Adjustments to reconcile Net Income to net cash provided by operations:	
Accounts Payable	██████████
Due to KM LPTV of Atlanta LLC	██████████
Payroll Liabilities	██████████
Net cash provided by Operating Activities	██████████
<b>INVESTING ACTIVITIES</b>	
Accumulated Depreciation	██████████
Net cash provided by Investing Activities	██████████
<b>FINANCING ACTIVITIES</b>	
Due to Chicago 13	██████████
Due to Eldorado	██████████
Due to KM Communications	██████████
Net cash provided by Financing Activities	██████████
Net cash increase for period	██████████
Cash at beginning of period	██████████
Cash at end of period	██████████