



Federal Communications Commission
Washington, D.C. 20554

September 9, 2014

HITV Operating Co., Inc.
c/o Robert J. Follard, III, Esq.
Cooley LLP
1299 Pennsylvania Ave., NW Suite 700
Washington, DC 20004

Southeastern Media Holdings, Inc.
c/o Harry C. Martin, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

Media Council of Hawaii
c/o Angela J. Campbell
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Ave., NW
Washington, DC 20001

Re: Application for Transfer of Control
KFVE(TV), Honolulu, HI (Fac. ID 36917)
File No. BTCCDT-20131120AEP

Dear Counsel:

The staff has under consideration the above-captioned application, which seeks approval of the transfer of control of HITV License Subsidiary, Inc. ("HITV License") from HITV Operating Co., Inc. ("HITV Operating") to Southeastern Media Holdings, Inc. ("Southeastern") (collectively, "Applicants"). Media Council of Hawaii ("MCH") filed an informal objection against the proposed transaction. HITV Operating, Southeastern, and Raycom Media, Inc. ("Raycom") have filed oppositions. By this letter, we seek further information to aid in our review of the transaction.

On October 26, 2009, Raycom and HITV License executed an agreement to exchange certain non-license assets. The transaction consisted of an exchange of Raycom's MyNetwork TV affiliation agreement, and Raycom's right, title and interest in certain other contracts (including certain other programming agreements) related to the business and operation of its Station KFVE(TV), for HITV License's CBS Network affiliation and certain other assets related to the operation of its Station KGMB(TV), including a portion of KGMB(TV)'s real property. At the same time that Raycom and HITV License exchanged network and limited non-network programming for their respective stations, they also exchanged call signs. Raycom and HITV did not file an application to effectuate the exchange, asserting that there was no change in ownership or control of a broadcast television license and, thus, no need to acquire Commission approval. At the time the instant application was filed, therefore, HITV License is the licensee of stations KFVE(TV), Honolulu, HI (MyNet); KGMD-TV, Hilo, HI (MyNet); and KGMV(TV), Wailuku, HI (MyNet) (collectively, "HITV License Stations").¹

In addition to the asset exchange, Raycom and HITV License entered into a series of agreements that included a Term Loan Note, a Purchase Option Agreement, a Shared Services Agreement, and a Studio

¹ KGMD-TV and KGMV(TV) traditionally operated as satellites of KFVE(TV) in the Honolulu, HI Nielsen Designated Market Area ("DMA").

Lease. Under the Term Loan Note, Raycom agreed to pay \$22 million to HITV License, the balance to come due on October 1, 2016, as consideration for the exchange. In the meantime, Raycom agreed to make quarterly 5% interest payments (\$275,000) to HITV License as well as to make annual principal payments at the rate of 60% of the excess cash flow (cash flow minus certain expenses) of the Raycom subsidiaries in Honolulu. Under the Purchase Option Agreement, Raycom also acquired the right to purchase the license of station KFVE(TV) in the future. This option was assigned to Ottumwa Media Holdings, LLC, which was renamed American Spirit Media, LLC, the 100% parent of the proposed transferee in this case. The 100% owner, President, and CEO of American Spirit is Thomas B. Henson. American Spirit and Raycom are parties to sharing arrangements in seven different markets.

MCH filed a "Complaint and Request for Emergency Relief Regarding Shared Services Agreement Between Raycom Media and MCG Capital for Joint Operation of Television Stations KHNL, KFVE, and KGMB, Honolulu, Hawaii" opposing the asset exchange agreement. On November 25, 2011, the Bureau granted in part and denied in part the Complaint. MCH has filed an application for review of this decision.

On October 24, 2013, American Spirit notified HITV License of its intent to exercise the option. Pursuant to the Amended and Restated Option Agreement, HITV License, upon exercise, would sell its stock interests to American Spirit as well as its right, title, and interest in the Term Loan Note. The exercise price was calculated as the remaining principal on the Term Loan Note, plus certain incidental expenses. A November 18, 2013, letter between HITV License and American Spirit indicated that the exercise price was \$11,914,084.00 at the time of exercise that would be reduced by any principal payments made by Raycom during the interim between exercise notice and consummation of the transaction.

In response to this letter, provide the following information in the form of an amendment to the above-captioned application:

- 1). In light of the original value of the 2009 Term Loan Note, how was the market value for station KFVE(TV) in the instant transaction derived? Is American Spirit liable to Raycom for the money already paid under the 2009 Term Loan Note?
- 2). How is American Spirit financing the acquisition? If there will be a purchase loan to pay for the outstanding balance of the Term Loan Note, please provide the following information:
 - A). The name of the bank providing the loan and a copy of all loan documentation, including commitment letters if the loan agreement has not been finalized;
 - B). Indicate whether Raycom will be guaranteeing the loan and, if so, reduce the guarantee to writing and provide a copy of the written guarantee.
- 3). Explain in detail the relationship between Raycom and American Spirit. What sharing arrangements exist between Raycom and American Spirit in other markets? Do Raycom and American Spirit share lending facilities in any of these markets? Are these joint lending facilities assisting in the purchase of Station KFVE(TV) and, if so, explain the specific nature of the assistance.
- 4). Explain how American Spirit would operate station KFVE(TV) in the absence of the sharing arrangements with Raycom.
- 5). Do Raycom and American Spirit file consolidated financial statements? Are the results of American Spirit recorded in the financial statement of Raycom pursuant to FASB Interpretation No. 46 governing consolidation of Variable Interest Entities? If not, explain in detail why the financial statements are not consolidated. If Raycom is not, due to its ownership structure, subject to FASB Interpretation No. 46, are the profits and losses of American Spirit nevertheless recorded on Raycom's financial statement as required by GAAP? Please provide an affidavit from a board-certified public accountant to support your answer to this inquiry.

6). Provide any other information that you believe would assist the Commission in resolving the matters raised in this proceeding and this letter of inquiry.

The requested information must be accompanied by a declaration of a person having personal knowledge of the truth of any factual statements made. See 47 C.F.R. § 1.16. Raycom and American Spirit should provide the requested information as soon as possible, but in any event within 30 days from the receipt of this letter. MCH will be provided 15 days from the receipt of the information from Raycom and American Spirit to file a response.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc: Adrienne T. Biddings, Esq.