Federal Communications Commission
Washington, D.C. 20554

March 13, 2012

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Contact Representative for Community Educators of Orlando, Inc., Assignee
Contact Representative for Community Television Educators of Waco, Inc., Assignee
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Re: Form 314 Application for Consent to Assignment of License of
WMFE-TV, Orlando, Florida (Facility ID No. 12855)
FCC File No. BALEDT-20110401ACW
KDYW(TV), Waco, Texas (Facility ID No. 6673)
FCC File No. BALEDT-20110826ADT

Dear Mr. Olender:

As you know, we received over five hundred and thirty letters and submissions protesting the proposed sale of reserved channel non-commercial educational ("NCE") television station WMFE-TV, Orlando, Florida to your client, Community Educators of Orlando, Inc. ("CEO") (collectively the "Letters"). Many of these Letters challenge the eligibility of CEO to operate an NCE TV station. Because of the similarities between the WMFE-TV transaction and the proposed sale of KDYW(TV), Waco, Texas to Community Television Educators of Waco, Inc. ("CTEW"), which shares the same officers with CEO, the issues with respect to the Buyers' qualifications apply to both assignments. In order to assess the claims raised in the Letters, we seek further information regarding both transactions.

In developing the rules governing NCE TV stations, the Commission identified education as the service's primary objective and localism as the "firm foundation" on which this service would be constructed.[1] Our rules therefore restrict ownership of such stations to "nonprofit educational organizations... upon a showing that the proposed stations will be used *primarily to serve the educational needs of the community*; for the advancement of educational programs; and to furnish a nonprofit and noncommercial television broadcast service."[2] Many of the Letters allege that Daystar Television Network ("DTN"), an entity founded by Marcus Lamb and his wife Joni and

[1] In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 F.C.C.R. 7386, 7405-7406 (2000) citing Reply Comments of Center for Media Education citing Carnegie Commission on Educational Television, Public Television: A Program for Action, 87 (1967) (Reiterating the emphasis in the Carnegie Report, on which Congress relied to develop and improve NCE television stations, of local communities as the heart of educational broadcasting.)
[2] 47 C.F.R. §73.621(a)(emphasis added)

headquartered in Bedford, Texas, will actually control CEO.[3] They also claim the station will not primarily air educational programming.[4] If true, either fact disqualifies CEO from holding an NCE TV license. Buyer did not file a response to the Letters. And although Seller did submit an Opposition, it dealt cursorily with the buyer eligibility allegations, citing CEO's representations in the application that it "is locally controlled" and its general narrative discussing its proposed educational programming.[5] CTEW, the Assignee of the Waco NCE TV station, proposes a board composition and offers a programming narrative very similar to that of CEO.

Given the allegations in the Letters, we do not believe that, at this point, the applications show that CEO and CTEW will meet the NCE TV licensee local control and programming requirements. To demonstrate eligibility, a prospective NCE TV buyer must supplement the Commission's standard Form 314 sales application with the eligibility section of the FCC Form 340 new NCE TV station application. In these submissions we seek sufficient programming descriptions to show that the proposed programming will fulfill the NCE TV educational requirements. With respect to localism, a non-profit corporation, (as opposed to an educational or governmental institution), seeking to operate a reserved channel NCE TV station must be broadly representative of the educational, cultural, and civic segments of the principal community to be served. The Assignee evidences this broad representation by placing among the officers, directors and members of its governing board representatives of at least four different elements of the community.[6]

Insufficiency of CEO and CTEW's Initial Eligibility Showings

With respect to the proposed programming, the initial Form 314s and 340 showings represent that CEO and CTEW will provide educational programming, but provide no details to support these assertions. In pertinent part, the WMFE-TV application states:

> CEO's purpose is to develop a program service that will ... provide a significant portion (over 50%) of its airtime to the following types of programming: 1. educational and instructional; 2. cultural interests and the arts; 3. civic activities and public affairs; 4. news and news analysis; 5. religion. Educational programming will be provided in conjunction with University of Central Florida. Furthermore, CEO will provide multi-cultural programming to the fast growing segments of the population comprised of Hispanics, African American and Asians.... CEO also proposes to offer interdenominational religious education.

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[3] DTN is the trade name of Word of God Fellowship, Inc. ("WOG"). Marcus Lamb serves as President and a Director of WOG, and Joni Lamb as the company's Vice President and a Director.

[4] For example, Central Florida resident Joel N. Leppard, as well as numerous others, assert that the buyer will not primarily advance educational programming. Viewers Elizabeth Turra and Cheryl Wheeless, as well as Melinda Sparks, WMFE-TVs former Broadcast Fundraising Manager, assert that DTN is the actual purchaser. Former WMFE employee, Michael Slifker, argues that selling the station to a Texas-based operation does not comport with the NCE TV license requirements. S. Peter Opotowsky, who has "lived and worked in broadcasting in the Orlando ADI since 1976," challenges whether DTN will serve the interests of Orlando, asking: "What kind of services will Daystar perform for Orlando in the next hurricane?" Similarly, WMFE-TV supporter Arya Eskamani "question[s] the agenda and history of the buying party, Daystar Television Network, in regards to the needs of the local community." All of the comments submitted regarding this transaction can be found at www.fcc.gov/cgb/ecfs under proceeding 11-75.

[5] Assignor's pleading primarily addressed the complaints about a potential loss of PBS programming and a lack of public input on the decision to sell the station prior to announcement of the proposed transaction.

[6] *See* Form 340 Section II, Question 3 and Worksheet 2.

> In addition to secular and religions educational programming, CEO desires to deal with the issues facing the proposed service area. CEO proposes to broadcast programs that deal with the following issues, as gleaned through its board of directors.... 1. Crime-a platform provided for law enforcement; 2. Drugs- a hotline will be implemented; 3. Teenaged pregnancy referral networks will be acknowledged; 4. Homelessness- a food and clothes bank will be established; 5. Marriage counseling -licensed professional counselors will be featured; 6. Family counseling -live call in program will feature counselors; 7. Volunteer organizations will be highlighted; 8. Civic opportunities will be spotlighted; 9. Job fairs will be promoted.

Other than the pledge to program in conjunction with the University of Central Florida, the KDYW(TV) application offers almost identical programming statements.

Regarding local control, each Assignee proposes a six member board. On neither board will any of the officers be from the local community: DTN's Marcus Lamb will serve as President, while Joni Lamb will be Vice President, Secretary and Treasurer. Both applications provide DTN's Bedford, Texas address as the address for the Lambs. According to the initial applications, each of the Lambs would hold a 16.68 percent voting and equity plus debt ("EDP") interest in each Assignee.

In addition to the Lambs, the Orlando 314 lists the following four directors, the addresses for whom are all in Orlando or its surrounding communities: Dr. Don Colbert, medical director of the Devine Health Wellness Center; Dr. David Uth, Senior Pastor of First Baptist Church; Steve Strang, publisher and founder of Charisma Magazine; and Florida State Representative Scott Plakon of the 37th District. Similarly, the Waco application includes four directors, all of whom have addresses in Waco or its surrounding communities: Dr. D. Michael Toby, Senior Pastor of First Baptist Church; businessman Hector Sabido; businessman and recording artist Daron Farmer; and Dr. Lee Farmer, founder and Senior Pastor at Waco Harvest Time Revival Center. For both applications, as initially filed, the four directors would hold 16.67% of the vote, as well as the EDP, in the Assignee. Finally, the address given for CEO and CTEW is the DTN headquarters address in Bedford, Texas, and Marcus Lamb signed as representative of both Assignees. Mr. Lamb also signed the Asset Purchase Agreements included with both applications.

As we considered the applications in light of the eligibility issues raised in the Letters, we received correspondence from the two United States Senators from Texas and the Congressman whose district includes Bedford, Texas, which gave further credence to the local control concerns. All three letters sought status information regarding the WMFE-TV application and included a copy of a letter from Marcus Lamb on DTN stationary requesting their assistance obtaining Commission grant of the application. In his letter, Mr. Lamb states that "... Daystar, through its subsidiary, Community Educators of Orlando (CEO), filed an application with the FCC to purchase WMFE-TV from Community Communications, Inc." The delay in grant of the WMFE-TV assignment, urges Lamb, is "presenting a burden to Daystar and CEO because we announced this sale long ago and it is hurting our credibility, and also hindering our expansion plans.[7]

[7] In April 2011, proposed CEO board member Steve Strang's *Charisma Magazine* posted an article reporting that "Marcus and Joni Lamb acquired WMFE ... through a company called Community Educators of Orlando." The article references an April 2 letter sent to DTN partners in which Marcus Lamb alludes to the transaction, revealing that "'Daystar has reached an agreement in principle to purchase

Insufficiency of Additional CEO and CTEW Eligibility Information Provided Upon Staff Request

Given the allegations in the Letters, the minimal eligibility showing in the applications, and the representations made by Mr. Lamb in the letters to his Congress Members, we verbally sought additional information in order to determine CEO and CTEW's eligibility to hold an NCE TV license. In particular, we requested more detail about Buyers' planned programming, including the general representations that they will broadcast "educational and instructional" material (some provided, in the case of CEO, "in conjunction with University of Central Florida") as well as "news and news analysis" and will, "in addition to secular ... educational programming," deal with issues facing the service area.

CEO and CTEW responded by submitting a sample weekly program line-up listing the titles of 157 hours of what appears to be DTN national programming and "approximately eleven hours of local programming." Because this amended showing still contained no detail about the proposed educational programming, staff again asked the Buyers to identify which of the listed programs fell into the categories included in the narrative: which it considers "secular" educational and instructional; news and news analysis; which will be provided "in conjunction with University of Central Florida" (in the case of WMFE-TV); which will be geared toward underserved segments of the population; which deals with issues facing the service areas, etc. Following this request, CEO and CTEW amended their applications to include brief descriptions of the eleven hours of proposed non-DTN programming.[8] We understand from these amendments that the stations plan to devote approximately 6.5% of their airtime to rebroadcast *local* or state programs, we do not know, however, whether they intend to broadcast primarily *educational* programs.

With respect to local control, we requested that Assignees clarify some of the Form 314 information, as well as confirm that DTN is not a reportable party by virtue of an EDP, or other attributable interest, or any arrangement giving it influence over the CTEW and CEO operations.[9] In reply, Buyers revised the applications to report that none of the proposed board members have any EDP interest in the Assignees. To explain the capitalization of these new non-profit corporations, the amendments reported that WOG funded the escrow in both transactions, (which consisted of the entire $3 million purchase price for WMFE-TV, and $50,000 for KDYW), and that upon approval of the assignment applications WOG will be repaid and Frost National Bank will provide funding. The involvement of WOG in the financing of these transactions raises additional questions with respect to the claims that DTN will actually control the proposed Assignees.

Additional Information Sought to Demonstrate CEO and CTEW Eligibility

Although we appreciate Assignees' responsiveness to our previous information requests, the additional material submitted did not sufficiently address our reservations about the proposed transactions. For this reason, we now send this formal request seeking additional information in

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another full power TV station in a Top 20 market....'" *See* http://charismamag.com/index.php/news-old/30642-daystar-founders-acquire-orlando-public-tv-station.

[8] In Orlando such programming includes rebroadcast of: WUSF-produced "The Florida Channel"; Orange County government produced programs; WUCF-produced "Growing Bolder"; and locally produced documentary show "Central Florida Perspectives." KDYW proposes to rebroadcast various Waco City Cable Channel programming.

[9] Section III, Question 4(a) requires the proposed Assignee to list all attributable parties. Under Item 4b and Worksheet 3, Section(IV)(E), the buyer must report any entity not reported in response to 4(a) that will have influence over the its operations by virtue of any agreements, understandings or arrangements with the licensee

order to determine whether the assignments comport with our NCE TV rules. Specifically, we seek a detailed description of the programming in support of Buyers' representation that they will use "over 50% of its airtime" to broadcast educational programming in accordance with Section 73.621 of the Commission's rules. To this end, please identify and describe the programming in the sample line up that is "clearly educational in nature, i.e., actually involve teaching or instruction, whether for formal credit or not."[10] Furthermore, both applications represent that the stations will air "secular ... educational programming," pledging, among other things, to show programs that are "educational and instructional," contain "news and news analysis," are responsive to "the issues facing the proposed service area," and are geared toward "vastly underserved" minority groups in the area. Please clarify to which of the scheduled programs these descriptions apply. Additionally, with respect to WMFE-TV, please submit a summary of the terms of your programming agreement with the University of Central Florida.

Concerning the local control requirement, although the four local board members proposed by CEO appear to minimally meet the "broadly representative" requirement,[11] we cannot conclude the same of the CTEW board. The CTEW Form 314 narrative does not make clear where Hector Sabido currently works, let alone which of the elements of the Waco community he represents. Nor is it clear that Pastors Toby and Farmer represent different elements of the community. The information about Daron Farmer shows his involvement in two different professions (businessman and recording artist), but does not indicate which element of the community he represents. Without further clarification, it appears that the board includes two pastors and two businessmen. Please identify which element of the Waco community each of the four proposed board members represent. Do any represent business organizations, local universities or boards of education, local government, cultural institutions, or organizations dedicated to the needs and interests of various segments of the Waco community, such as senior citizens, minorities, ethnic groups, and/or the disabled?

In addition to determining whether the boards qualify as "broadly representative", we seek confirmation that the proposed Assignees will be completely controlled by the local board. For this reason, please provide a copy of the CEO and CTEW By-Laws. Do the requisite state filings provide that each of the proposed board members has an equal 16.7 vote as indicated in the Form 314 applications? How often will the proposed boards meet? Please provide the address of the principal business office for each entity following consummation of the proposed transactions. How many local employees will work for each station? Who will have ultimate responsibility for CEO and CTEW personnel decisions, including the hiring and firing of employees, promotions and demotions, and signing payroll checks?

Given the scrutiny being received by the WMFE-TV application, coupled with the eligibility issues raised, we request submission of the documents excluded with the agreements between the parties, as listed in response to Section II, Question 3 and Exhibit 5. Additionally, in follow up to your statement concerning the funding of the transactions, please submit a copy of the loan agreements with Frost National Bank. Who, if any party, will guarantee the loan? Who will service the loans? How will CEO/CTEW raise the funds necessary to operate the stations? At which banks do, (or will), each of the Assignee entities have accounts? Who will control these accounts?

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[10] Section III, Question 4(b).

[11] We assume that CEO intends its four board members to fulfill the following community elements: Representative Plakon, "government"; Dr. Colbert "professions"; Pastor Uth, "religion"; and Mr. Strang, "business."

Finally, regarding programming, please submit an executed copy of the programming agreement(s) between the buyers and the proposed programming suppliers. Who will make the stations' programming decisions? What role will the board play in these decisions? Who will negotiate programming agreements on behalf of the stations? Who will sign the programming agreements?

As detailed above, absent further information we cannot conclude that CEO and CTEW meet the eligibility requirements for NCE TV licensees. Accordingly, we afford both entities the opportunity to submit sufficient evidence to demonstrate that the stations will be used to advance an educational program and will be locally controlled. We ask that CEO and CTEW submit the requested material, and any other information they deem necessary, within fifteen (15) days of the date of this letter.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

CC: John Bagwell
Lawrence Miller