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July 7, 2006

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VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: MB Docket No. 03-15
KAEF(TV) and KAEF-DT, Arcata, California, Facility ID No. 8263
FCC File Nos. BPCDT-19991028AEY *et al.*
Request for Waiver of the July 1, 2006 Interference Protection Deadline**

Dear Ms. Dortch:

Pursuant to the Media Bureau's Public Notice issued on June 14, 2006, ^{1/} BlueStone License Holdings Inc. ("BlueStone"), licensee of KAEF(TV), channel 23, and KAEF-DT, channel 22, both Arcata, California, (collectively, "KAEF" or the "Station"), by its attorneys, hereby requests a waiver from compliance by KAEF-DT with the July 1, 2006 replication and maximization requirements established in the *Second DTV Periodic Review Report and Order*. ^{2/} Specifically, BlueStone requests a six-month extension of the *Order's* "use-it-or-lose-it" deadline for construction of digital television facilities that meet the requirements outlined in paragraph 78 of

^{1/} *DTV Channel Election Issues – Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, Public Notice, DA-06-1255 (Med. Bur. rel. June 14, 2006) (the "Public Notice"). This letter request is timely filed pursuant to a second Public Notice issued by the Bureau extending the time for filing. *See DTV Channel Election Issues – Media Bureau Extends Filing Deadline for Compliance with the July 1, 2006 Replication/Maximization Interference Protection Deadline to July 7, 2006*, Public Notice, DA 06-1372 (Med. Bur. rel. June 29, 2006) (extending replication/maximization interference protection deadline to July 7, 2006).

^{2/} *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd 18279 (2004) ("*Second DTV Periodic Review Report and Order*" or "*Order*").

the *Order* (“para. 78 facilities”). ^{3/} As described below, KAEF-DT currently serves 86 percent of the viewers encompassed within the April 1997 Grade B service area of KAEF(TV) (as adjusted for the 2000 Census) upon which KAEF-DT’s replication coverage is based. BlueStone submits that grant of a waiver to permit this temporary shortfall from the applicable para. 78 facilities would not impede the digital transition in the Eureka market while KAEF-DT works to come into full compliance with the *Order*’s requirements.

KAEF is the ABC Network affiliate serving the very small Eureka, CA Designated Market Area (“DMA”) – the 194th largest of the 210 total DMAs according to Nielsen Media Research. At the end of the transition, BlueStone intends to relinquish KAEF(TV)’s NTSC channel 23 and will continue digital operations on KAEF-DT’s assigned DTV channel 22. *See* FCC File No. BFRECT-20050209AIR (Form 382). The *Second DTV Periodic Review Report and Order* requires all commercial stations that receive a tentative DTV channel designation on their current digital channel, and that are either located outside the top 100 markets or are not affiliated with a top-four network, to construct their full, authorized DTV facilities by July 1, 2006, and to serve all viewers served by such station’s analog facilities as of 1997. ^{4/}

With its current facilities and power, KAEF-DT’s signal on channel 22 reaches approximately 86 percent of the population covered by the analog signal of KAEF(TV) on channel 23. Due to tower space shortages, a shortage of qualified installation technicians, and other such circumstances beyond the Station’s control, KAEF-DT does not expect to be able to complete construction of its full, authorized digital facilities on channel 22 until September 2006. KAEF has made a significant investment in the transmitter and antenna equipment necessary to build para. 78 facilities for a 50 kW station that will allow KAEF-DT to meet its interference-free service population replication obligations. KAEF has also filed a Form 301 application for minor change to modify the Construction Permit for KAEF-DT, in order to specify operation with the 50 kW replication power para. 78 facilities to be installed. *See* FCC File No. BMPCDT-20060705AAE.

Accordingly, the public interest would be served by grant of a limited extension allowing KAEF-DT to retain and carry over its current interference protection to its full, authorized service area following the digital transition. As the Commission explained in its *Sixth Report and Order* in the Advanced Television Systems docket, its goal in developing the digital Table of Allotments was to “ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.” ^{5/}

^{3/} *Id.*, 19 FCC Rcd at 18314-15, para. 78; *see also* Public Notice at 2 (noting that the Commission may grant a six-month extension of time to construct para. 78 facilities).

^{4/} Public Notice at 1-2 (citing *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18314-15, para. 78).

^{5/} *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd 14588, 14605, para. 29 (1997) (“*Sixth Report and Order*”).

The lack of compliance at this time by KAEF-DT is the product of circumstances beyond the Stations' control, including the inability to place equipment orders as a result of continuing uncertainty regarding the availability of tower space for its digital facilities. Having exhausted usable space at its existing KAEF(TV) transmitter site, the Station needed to locate a suitable replacement site for the new full-power digital facilities to be installed. With a tower and transmitter site lease now in place for use of space at the tower location of KEET(TV), Eureka, BlueStone can bring KAEF-DT into compliance with the *Order* expeditiously. KAEF expects delivery and installation in September of a new Harris Diamond digital transmitter, which was ordered in May 2006 at a cost of \$401,000. A new Dielectric antenna and transmission line, also scheduled to be installed in September, has been purchased at a cost of \$101,000. Installation costs are estimated at \$40,000, resulting in \$542,000 in total expenditures to bring KAEF-DT into compliance with the *Order*.

Strict adherence to the "use-it-or-lose-it" standard in this instance, when KAEF-DT is scheduled to meet all applicable requirements in the near future, would be contrary to the public interest and the Commission's goals for the transition. KAEF should not be penalized by losing interference protection, and a significant fraction of its viewers should not be put at risk of losing their local ABC network service following the transition, as a result of this minimal delay necessitated by questions regarding the availability of a suitable transmitter site. Preserving interference protection for KAEF-DT will ensure that viewers in the rural Eureka DMA will enjoy the benefits of receiving ABC network digital and high definition programming following the end of the DTV transition. Rote application of the July 1, 2006 build-out requirement would compromise the future operation of KAEF-DT – and thereby diminish, rather than facilitate, the availability of digital broadcast service to the public. Grant of the requested relief will serve the public interest and fulfill the Commission's objective of ensuring that, following the transition, KAEF's viewers will have access to the stations that they can now receive over-the-air.

Accordingly, for the reasons stated herein, BlueStone respectfully submits that KAEF-DT be granted a six-month waiver for operations on channel 22 at its current power level, as the Station awaits delivery and installation of transmitter and antenna upgrades scheduled for September. Notwithstanding the brief delay in construction of para. 78 facilities, BlueStone should be allowed to maintain KAEF-DT's post-transition interference protection to the full extent of KAEF(TV)'s existing interference-free Grade B contour.

The Secretary
July 7, 2006
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Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,

BlueStone License Holdings Inc.

By: _____

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cc: Shaun Maher, Media Bureau

DECLARATION AND VERIFICATION OF TOM CUPP

I, Tom Cupp, Engineering Manager and Chief Engineer of BlueStone License Holdings Inc., the licensee of KAEF(TV) and KAEF-DT, both Arcata, California, declare that I have read the foregoing Request for Waiver of the July 1, 2006 Interference Protection Deadline and verify under penalty of perjury that the facts set forth therein are true and correct to the best of my knowledge and belief.



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