

discussed below, between the Employer, as the Licensor, and Waitt, as the Programmer. Waitt is engaged in the radio broadcasting business in the Central and Upper Midwest. Waitt leases the buildings in which the Employer's radio stations are located from Mr. Dean Sorenson, the owner of the buildings.

Mr. Sorenson is President of the Employer and he owns 70 percent of the shares of outstanding Common Stock of the Employer. The Plan owns the remaining 30 percent of the shares of outstanding Common Stock of the Employer. Since January 1, 2000, the Employer has been operating as a subchapter "S" corporation.

2. The Plan is an employee stock ownership plan that is sponsored by the Employer. The Plan was established by the Employer on December 31, 1995. As of May 30, 2003, the Plan had 157 participants. As of December 31, 2002, which is the most recent date financial information is available, the Plan had total assets of approximately \$3,148,522. Also, as of the same date, the Plan held 930 shares of Common Stock, valued at \$3,148,230, and representing approximately 99% of the fair market value of the assets of the Plan.

Sharon Otten, Fred Smith, Scott Kooistra, Bruce Erlandson, Trent Schmotzer, Bill Grady, Holly Gill, and Tony Sieler, serve as the Trustees for the Plan, and have discretionary control over the Plan's assets involved in the transaction. These individuals were all employees of Sorenson at the time the Interim Programming Agreement went into effect, although since that time, some of the Sorenson employees have become Waitt employees.

3. The Plan originally acquired 930 shares of non-treasury Common Stock from Mr. Sorenson in a single transaction on December 31, 1996.<sup>2</sup> The Common Stock was valued by Mr. Gerald C. Johnson, Jr., the President and sole owner of Johnson Communications Properties, Inc. of Minneapolis, Minnesota. Mr. Johnson is a qualified, independent broker and appraiser of broadcasting properties, with extensive experience in valuing radio stations in the upper Midwest. Although Mr. Johnson's original valuation (the Original Valuation) placed the total value of such Common Stock on the

date of the purchase at \$3,415,300, the actual purchase price paid by the Plan to Mr. Sorenson was negotiated down to \$3,331,577.<sup>3</sup>

4. The Plan derived the funds to purchase the Common Stock from Mr. Sorenson and from First Dakota National Bank (the Bank), an unrelated entity with respect to the Plan. Mr. Sorenson made one loan (the Sorenson Loan) to the Plan in the amount of \$2,898,718 and the Bank made another loan (the Bank Loan; together, the Loans) to the Plan in the amount of \$432,859.

The Sorenson Loan was evidenced by a promissory note (the Sorenson Promissory Note) dated December 31, 1996 between the Plan and Mr. Sorenson. The Sorenson Promissory Note was executed simultaneously with the Sorenson Loan and provided that the Plan repay the principal sum of the Sorenson Loan plus interest thereon at an annual interest rate of 8.5 percent. Such note required the Plan to make annual payments of both principal and interest totaling \$502,226.45, commencing on September 15, 1997. There were no prepayment penalties.

The Sorenson Promissory Note was made subject to the provisions of a pledge agreement (the Sorenson Pledge Agreement), also dated December 31, 1996, between the Plan and Mr. Sorenson. The Sorenson Pledge Agreement secured Mr. Sorenson's first lien interest in the 930 shares of Common Stock purchased by the Plan. An amortization schedule indicated that under normal amortization, the Sorenson Loan would be paid off by September 15, 2004.

5. The Bank Loan was also evidenced by a promissory note (the Bank Promissory Note), dated December 31, 1996, that was executed between the Plan and the Bank. The Bank Promissory Note required the Plan to repay the principal sum of the Bank Loan plus interest thereon at an annual interest rate of 8.5 percent until September 15, 2000. The Bank Promissory Note also provided that the Plan make three regular annual payments of \$75,316.98 and one irregular last payment, estimated at \$321,370.83. There were no prepayment penalties. The Bank Promissory Note was secured by both the Employer's and Mr. Sorenson's personal guarantees of

the entire \$432,859 principal amount of the Bank Loan.<sup>4</sup>

6. Also on December 31, 1996, Mr. Sorenson, in his capacity as President of the Employer, sent the Bank a letter agreement. The agreement stated, in pertinent part, that in consideration of the Bank Loan and all other financial accommodations provided by the Bank to the Plan, the Employer would not, without the Bank's prior written consent, amend any provision of the Plan requiring the Employer to make contributions necessary to enable the Plan to discharge its obligations under the Bank Loan and the Bank Promissory Note.

7. Cash that the Plan received from the Loans was converted into Common Stock. The Common Stock is being maintained by the Plan in a "suspense" account (the Suspense Account), separate from the participants' individual accounts. Initially, 317,752 shares of Common Stock were allocated to participants from the Suspense Account as payments were made by the Plan under the Loans. Because it was determined that there was insufficient compensation to permit deductible contributions, and that payments of the amounts due would violate the annual addition limits of section 415 of the Code, a freeze was placed on the Plan assets in 1999 in order to prevent any new participation in the Plan. Therefore, no further allocations of Common Stock were made to participants from the Suspense Account. At present, 612,248 shares of such stock continue to be held in the Suspense Account.

8. At the time of the freeze, there was \$105,000 available in Plan assets to make payments on the Loans. Both Mr. Sorenson and the Bank agreed to receive interest only payments on the Sorenson Loan until a sale of the Common Stock held by the Plan could be made, at which point they would be paid the principal amount of their respective Loans. Interest only payments were made on the Loans throughout 2000 and briefly during 2001, until the money ran out. The last interest only payment was made by the Plan to Mr. Sorenson on October 16, 2000 and to the Bank on

<sup>2</sup> The applicant represents that the acquisition and holding, by the Plan, of common stock of the Employer is covered under section 408(e) of the Act. However, the Department expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the original transaction. Further, the Department, herein, is offering no relief for transactions other than the transactions described in this exemption.

<sup>3</sup> The applicant represents that the difference between the negotiated price of the original 930 shares of Common Stock the Plan bought and the price listed in the Original Valuation does not constitute an excess contribution to the Plan in violation of sections 401(a)(4), 404 and 415 of the Code.

<sup>4</sup> The applicant represents that the Sorenson Loan and the Bank Loan comply with section 408(b)(3) of the Act and the regulations promulgated thereunder. In this regard, the Department is expressing no opinion on whether the Loans initially satisfied, or continue to satisfy, the requirements necessary for exemptive relief under section 408(b)(3) of the Act, nor is any relief provided for those Loans under this proposed exemption. The relief provided by this exemption is limited solely to the sale of the Common Stock to the Employer, a party in interest with respect to the Plan.