

June 29, 2001. To date, no further payments have been made by the Plan. At present, the outstanding principal balances of the Sorenson Loan and the Bank Loan are \$1,979,095 and \$295,808, respectively.

9. Although the Plan defaulted on the Loans, the default provisions therein gave both Mr. Sorenson and the Bank the discretion to waive foreclosure on the Loans if the circumstances warranted. Therefore, both Mr. Sorenson and the Bank agreed that the enforcement of their rights to the collateral for the Loans was not in their best interests, as it would not be helpful to completing an eventual sale of the Employer to Waitt. On December 28, 2001, Mr. Sorenson and the Bank signed an agreement to extend the maturity date of the Loans from December 15, 2001 until June 15, 2002 in order that neither Loan could be foreclosed upon. Since then, in an agreement signed by both parties on December 27, 2002, the maturity date of the Loans was further extended until June 15, 2003. Such agreement has been re-extended pending the outcome of this exemption request.⁵

10. Mr. Sorenson wishes to retire from the day-to-day management of the individual stations. While he had hoped that a group of key employees would emerge to acquire a small ownership stake outside of the Plan and assume the role of group-wide management, this has not happened. Mr. Sorenson also believes that a decrease in the fair market value of the radio stations is likely to occur over the next several years. Therefore, he has researched the marketplace to determine a prospective sale price should there be a willing buyer. Based on his research, Mr. Sorenson and his advisors consider a multiple of cash flows (a key factor used in calculating the purchase or selling price of radio stations) within the range of 8.0 and 9.0 to be a realistic target.

11. Mr. Sorenson has been approached by Waitt, a willing buyer, and the multiple of cash flows offered and agreed upon by Waitt and the Employer is 8.75. The Employer has also negotiated with Waitt an arrangement to transfer ownership of the broadcasting stations to Waitt. The preferred method is for the parties to enter into a long-term programming

agreement (the Programming Agreement) with a purchase option (the Option Agreement) at its conclusion.

12. The Interim Programming Agreement with Waitt, dated January 1, 2000, was signed by Mr. Sorenson in his capacity as President of the Employer, and was approved by the Trustees on behalf of the participants. As initially executed, the Interim Programming Agreement stipulates that, not later than September 1, 2000, the Employer and Waitt would enter into either: (a) The Programming Agreement concurrently with the Option Agreement or (b) a stock purchase agreement (the Stock Purchase Agreement). However, because the applicant did not obtain the requested exemption as of the September 1, 2000 termination date, neither option was selected. Therefore, the Interim Programming Agreement still remains in effect and it has been extended by the Employer and Waitt every six months.

13. As consideration, under the Interim Programming Agreement, Waitt is required to pay the Employer \$114,516, which amount is to be increased (or decreased) each month by an amount equal to \$13,500 for every one percent increase (or decrease) in the New York prime rate, as published in the Wall Street Journal, on the 15th day of the preceding month. In addition, Waitt is required to reimburse the Employer for expenses incurred in the operation of the station and to deposit \$1,374,000 in an escrow account. Also, pursuant to the Interim Programming Agreement, the broadcasting stations are being operated by Waitt, who supplies the stations with programming, while the Employer maintains ultimate control over the stations' finances, personnel matters and programming content. Further, the Interim Programming Agreement requires the Employer to continue to employ 15 management employees of the stations. All other employees became Waitt employees effective April 1, 2000, at the start of the Interim Programming Agreement.

14. The Interim Programming Agreement provides that upon its termination date, Waitt may exercise either of two options. First, Waitt can extend the Interim Programming Agreement into the ten year Programming Agreement that will end on December 31, 2009. At this time, Waitt may purchase the assets of the Employer for \$12,967,023, under the terms of the Option Agreement, provided Waitt pays the Employer \$3,200,000 as the option amount. Second, Waitt may immediately purchase, for \$16,167,023 (subject to certain adjustments), all of the

Employer's Common Stock held by the Employer and the Plan, pursuant to the provisions of the Stock Purchase Agreement. The Interim Programming Agreement will terminate on the earliest of (a) the effective date of the Programming Agreement and the execution of the Option Agreement, (b) the closing date of the Stock Purchase Agreement, or (c) a date mutually agreed to by the parties with at least thirty (30) days prior written notice.⁶

15. The Trustees have concluded that a sale of the Common Stock and the retirement of the Loans with the Sale proceeds would be in the best interests of the Plan participants. Moreover, the Trustees believe that allowing the debt to go into default would only disrupt this process and could damage the interests of the Plan participants. Therefore, as noted above, both Mr. Sorenson and the Bank offered, and the Trustees accepted, the waiver of default and deferral of payments pending the resolution of the proposed Sale and True-Up transactions described herein.⁷

16. To facilitate the termination of the Plan and allow the participants (most of whom are now Waitt employees) to diversify their portfolios into other investments with better future returns, the Trustees propose that the Common Stock held by the Plan be sold. The Employer is willing to purchase the Common Stock (and the Trustees are willing to sell such stock) under a deferred payment arrangement, in accordance with a "True-up" or adjustment to the purchase price. The Plan will not be required to pay any fees or expenses in connection with the Sale. Then, the Employer proposes to distribute the Sale proceeds to the participant accounts in the Plan.

Because the Employer is a subchapter S corporation, section 408(d)(2)(A) of the Act provides that the statutory relief under section 408(e) of the Act is unavailable with respect to the proposed Sale transaction since more than 50 percent of the Common Stock is owned by Mr. Sorenson, a shareholder-employee. Also, section 408(e) of the Act does not exempt extensions of credit in connection with adjustments to

⁶ To date, neither the Programming Agreement nor the Stock Purchase Agreement have gone into effect. From correspondence in the exemption application file, it appears that the parties are inclined to enter into the Programming Agreement, which will be dated contemporaneously with the date of the Sale transaction described herein.

⁷ Although the Trustees represent that such waiver should not cause the Loans to lose their status as exempt loans under section 408(b)(3) of this Act, the Department again expresses no opinion in this proposed exemption on whether the provisions of section 408(b)(3) of the Act have been violated while the Loans are outstanding.

⁵ In regard to the deferral of payments, the Employer also agreed to waive its right to recoup interest payments made on behalf of the Plan under its guaranty agreement to the Bank with respect to the Bank Loan (see Representation 5) in order that the Plan could retain a greater amount of the final Sale proceeds. It is represented that the interest paid by the Employer through February 28, 2003 is \$52,670.96.