

the Sale price, such as those contemplated under the True-up. Accordingly, an administrative exemption is requested from the Department.

17. On May 26, 2000, the Plan and the Employer entered into a purchase agreement (the Purchase Agreement) to acquire the Common Stock held by the Plan. The purchase price was to be based on the amount which would have been due the Plan from Waitt for shares of Common Stock under the Stock Purchase Agreement. According to the Stock Purchase Agreement, Waitt promised to pay the Employer and the Plan a total of \$16,167,023 for such Common Stock. The purchase price was, however, subject to various adjustments. For example, not later than five days prior to the transaction closing date, the sellers would be required to submit a *pro forma* balance sheet to Waitt that had been prepared in accordance with generally-accepted accounting principles, along with a schedule setting forth the value of the Employer's Common Stock (the Computation of Stock Value, as calculated by Mr. Johnson, the independent appraiser who prepared the Original Valuation of the Common Stock). The purchase price would then be adjusted to an amount equal to the total value of the Employer's Common Stock, as set forth on such schedule. In addition, the parties agreed that the purchase price would be further adjusted to reflect the loss of the depreciation on the underlying broadcast assets. However, for purposes of the Purchase Agreement, it was determined that the Plan's price per share for the Common Stock would be valued without the loss of the depreciation adjustment.

18. On January 8, 2002, an addendum (the First Addendum) was made to the Purchase Agreement. In this regard, the Plan's price per share to be paid by the Employer for the Common Stock would be calculated to include additional value due to state and Federal taxes, amounts due to certain employees under an Individual Employment and Incentive Compensation Agreement, and accrued sales commissions.

19. According to a second addendum to the Purchase Agreement (the Second Addendum), effective November 13, 2002, the Purchase Agreement was again amended. In this regard, the Programming Agreement and proposed Sale by the Plan of its Common Stock to the Employer will occur on the first month following the publication, in the **Federal Register**, of the notice granting the final exemption (the Closing Date). The Employer will pay the Plan the fair

market value of the Common Stock as of December 31, 2002, as determined by an independent appraisal, plus the adjustments indicated in the First Addendum (e.g., Federal and state taxes, sales commissions, etc.). The fair market value of the Common Stock as of the Closing Date (the Closing Value) will be determined no later than two months after the Closing Date by an independent appraisal.

The Second Addendum also provides that the True-up, which is the difference between the Closing Value and the amount which has already been deposited on the Closing Date, will be paid to the Plan, plus interest based on the New York prime market rate, effective on the Closing Date until the date of the True-up. As collateral for the True-up, Mr. Sorenson has agreed to deposit \$100,000 cash in an escrow account for the benefit of the Plan.

20. In an independent appraisal report dated February 27, 2003, Mr. Johnson again valued the Common Stock held by the Plan and Mr. Sorenson, as of December 31, 2002 (the 2002 Appraisal). Mr. Johnson noted that the established value of all of the radio stations owned by the Employer was \$16,167,023 as opposed to the value of the Common Stock. He explained that the valuation of the Employer's assets was based upon a multiple of 8.75 times the adjusted cash flow of the Employer's radio affiliates for the year ending December 31, 1998, including a provision for the costs incurred in constructing a radio station located in South Dakota, which was not completed until mid-1999. Mr. Johnson further noted that the \$16,167,023 aggregate value of the Employer's assets had been reduced by \$3,500,000 to compensate Waitt for the fact that it would be acquiring Employer Common Stock as opposed to the Employer's underlying assets. He indicated that he believed the 8.75 multiple for the Employer's radio stations was entirely appropriate and that the \$16,167,023 selling price was realistic for such stations. Although Mr. Johnson did not express an opinion regarding the \$3,500,000 downward adjustment to the selling price, he acknowledged that such a price reduction was common in the industry.

As stated above, it was Mr. Johnson's opinion that \$16,167,023 represented the total fair market value of the various broadcast properties that were owned by the Employer as of December 31, 2002 rather than the value of the Common Stock. For the year ending December 31, 2002, he noted that the Computation of Stock Value equaled \$10,494,101. Because the Plan holds a 30 percent interest in all of the Employer's assets,

Mr. Johnson placed the fair market value of the Common Stock held by the Plan at \$3,148,230 ($\$10,494,101 \times 30\%$) as of December 31, 2002.

21. Thus, on the basis of the 2002 Appraisal, the Plan will receive 30% of \$15,794,416 from the Employer prior to time of the True-up. This gross amount reflects the \$10,494,101 value attributed to the Common Stock, plus the following positive adjustments: (a) State and Federal income taxes totaling \$3,500,000, (b) a \$1,692,315 aggregate amount due to certain employees under an "Individual Employment and Incentive Agreement," and (c) accrued sales commissions of \$108,000 that the Employer would be obligated to pay. Therefore, the net amount owed by the Employer to the Plan will be \$4,738,325, without the inclusion of the True-Up.

22. Upon conclusion of the Sale, proceeds from the Sale will effectively be split into two pools: (a) The proceeds related to the allocated shares (the Allocated Share Proceeds) and (b) the proceeds related to the unallocated shares (the Unallocated Share Proceeds). The Allocated Share Proceeds will be allocated to each Plan participant based on the shares held in their account. The Unallocated Share Proceeds will be used to pay off the Loans to the Bank and Mr. Sorenson. It is anticipated that the share proceeds will exceed the Loans by approximately \$290,000 and that such gain will be allocated to the participants.

23. Mr. John F. Archer, an attorney with the law firm of Hagen Wilka & Archer, P.C., of Sioux Falls, South Dakota, was designated by the Trustees to serve on behalf of the Plan as the independent fiduciary. In such capacity, Mr. Archer is representing the interests of the Plan and the Plan participants in connection with the Sale and the True-up. Mr. Archer asserts that he is qualified to act as an independent fiduciary for the Plan because of his background as it relates to reviewing business valuations. Such experience includes his position as the South Dakota Division of Securities Director from 1978 until 1983, in which he was chairman of the North American Securities Administrators Association Franchise Committee, and his private practice, which covers securities law, mergers and acquisitions, real estate law, franchise law, corporate law and title insurance law. In addition, Mr. Archer represents that he has been a speaker discussing securities and franchise law at various Continuing Legal Education seminars and has served on the South Dakota State Bar Committee on Corporations. Mr. Archer represents that he has had a professional