

relationship with Mr. Sorenson at various times between 1989 and 1994 and has assisted Mr. Sorenson in the purchase of his personal residence as well as the sale or purchase of Mr. Sorenson's commercial enterprises. However, Mr. Archer does not believe that these matters carry any conflict of interest with respect to the proposed transactions.

Mr. Archer states that he has no current ongoing relationship with Mr. Sorenson or the Employer, and he confirms that his firm will derive less than one percent of its gross annual income from the Employer. Mr. Archer has agreed to represent the interests of the Plan and its participants and he has executed a representation agreement (the Representation Agreement) with the Trustees containing the duties and capacities that such representation includes.

24. As independent fiduciary, Mr. Archer certifies that he has reviewed and analyzed the proposed transactions and related documents, as well as their potential effects, both direct and collateral, to the Plan participants. In addition, Mr. Archer states that he has evaluated the overall fairness of the subject transactions, specifically as to the other parties involved, and the validity of the proposed valuation. Based on such review and evaluation, Mr. Archer states that he is of the opinion that the 2002 Appraisal reflects a fair valuation of the Employer. He also explains that the sale of the shares owned by the Plan to the Employer based on the price set forth in the Purchase Agreement, treats the Plan participants fairly and justly in comparison to the other parties involved in such transaction. Further, after reviewing the 2002 Appraisal, Mr. Archer states that he concurs with the appraisal amount and he is of the opinion that the Sale is in the best interests of the Plan.

In addition, Mr. Archer states that the subject transactions are in the best interests of the Plan and its participants because the price being paid to the Plan is based on the sale of the Employer's Common Stock to a third party and it was determined on an arm's length basis between the Employer and Waitt. In reviewing other similar sales, Mr. Archer states that the Sale price in this case is consistent with other transactions dealing with radio stations and that the Plan's price per share will be higher than that paid to Mr. Sorenson because the Plan's interest in the Employer's Common Stock will be valued to include certain special adjustments (*i.e.*, Federal and state income taxes, amounts due to

employees under Individual Employment and Incentive Compensation Agreements and accrued sales commissions). Mr. Archer states that his role as representative and adviser to the Plan will continue until such time as the transactions are completed or abandoned. Mr. Archer explains that the transactions will be deemed complete for purposes of his representation upon receipt of the final valuation to be used in the distribution of funds to Plan participants or will be deemed abandoned upon receipt of notice from the trustee of the Plan, the Employer, or Mr. Sorenson that the transactions will not be completed.

25. Mr. Archer notes that while the Employer is receiving a programming fee of \$13,500 per month under the Interim Programming Agreement from Waitt, it would appear that this fee is normal and customary in today's marketplace and that it is not uncommon that when a transaction of this sort is made that this type of fee is paid to a licensor such as the Employer. Mr. Archer states that he has reviewed this matter with other owners of radio stations and has found this practice to be consistent. Consequently, he believes that the payment of this programming fee by Waitt to the Employer does not make the Sale unfair to the Plan participants. Mr. Archer also notes that Mr. Sorenson is receiving lease payments from Waitt for the rental of the buildings that are owned by Mr. Sorenson in which the Employer's radio stations are located. Assuming that the lease payments are fair market value, Mr. Archer does not believe these rental payments would make the proposed Sale transaction unfair to the Plan participants.

Further, Mr. Archer opines that the subject transactions are protective of the Plan, participants and beneficiaries because they comply with the organization and governing documents of the Plan and the Trustees have been given all information necessary to determine their fairness.

Finally, Mr. Archer confirms that his duties with respect to the transactions are to ensure that there is a final valuation of the Common Stock as of the Sale date, to supervise the payment of the True-up and disbursement of the funds to Plan participants, and the filing of tax notices and final Form 5500, among other things. Mr. Archer also confirms that he will take all actions that are necessary and proper to enforce and protect the rights of the Plan participants and beneficiaries.

26. In summary, it is represented that the transactions will satisfy the statutory

criteria for an exemption under section 408(a) of the Act because:

(a) The Sale will occur in the following manner:

(1) The Employer will pay the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain adjustments indicated in the Second Addendum to the Purchase Agreement;

(2) The Closing Value of the Common Stock will be determined no later than two months after the transaction date;

(3) As additional consideration, the Plan will receive the difference between the Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True-up; and

(4) As collateral for the True-up, Mr. Dean Sorenson will deposit \$100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan will not pay any commissions or other expenses with respect to the Sale.

(c) The transactions have been approved by an independent fiduciary who will monitor such transactions on behalf of the Plan.

(d) The Trustees have determined that the Sale and True-up will be appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**Hayden O. Grona IRA (the IRA)
Located in San Antonio, Texas**

[Application No. D-11192]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved land (the Property) by the IRA to Mr. Grona's children (the Children), disqualified persons with