

**Chelsey Broadcasting of Cheyenne, LLC
KGWN-TV, Cheyenne, WY
KSTF, Scottsbluff, NE**

**EXHIBIT 14
FCC Form 314
Section III, Paragraph 6**

This application seeks FCC consent to the assignment of licenses of KGWN-TV, Cheyenne, Wyoming, and its satellite KSTF, Scottsbluff, Nebraska, from Assignor Benedek License Corporation ("BLC") to Chelsey Broadcasting of Cheyenne, LLC ("Assignee" or "Chelsey"), a Delaware limited liability company. The parent and satellite stations are located in communities in the Cheyenne-Scottsbluff DMA and their Grade B contours partially overlap. The FCC has found, however, that co-ownership of the two stations is warranted under the satellite exemption requirements of Note 5 to Section 73.3555(b), the television duopoly rule. Annex A hereto contains Assignee's request for authority to continue to operate KSTF as a satellite of KGWN-TV.

ANNEX A

SATELLITE SHOWING

**REQUEST FOR CONTINUED
SATELLITE STATUS FOR KSTF(TV)**

By this application, Chelsey Broadcasting Company, LLC (“Chelsey”), seeks authority to co-own and continue to operate KSTF(TV) (Scottsbluff, Nebraska) as a satellite of parent station KGWN-TV (Cheyenne, Wyoming). The parent and satellite stations are located in the geographically large but sparsely populated Cheyenne-Scottsbluff Designated Market Area (“Cheyenne DMA”), which is the 197th ranked television market, according to Nielsen Media Research.¹ As shown below, operation of KSTF as a satellite of KGWN-TV is vital to the continued service of KSTF to Scottsbluff, and such operation satisfies the satellite exemption requirements of Note 5 to Section 73.3555(b), the television duopoly rule.

Under well-established policy, the Commission presumes that a satellite proposal serves the public interest if (i) no city-grade overlap exists between the parent and the satellite; (ii) the proposed satellite would provide service to an underserved area; and (iii) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.² The FCC, repeatedly, has found that the co-ownership of these two stations fully

¹ As the FCC previously has noted, the small satellite community is widely separated from the community of the parent station—Cheyenne and Scottsbluff are about 80 miles apart. See *Stauffer Communications, Inc.*, 10 FCC Rcd 5165, 5167 n. 3 (1995). Cheyenne is located in Laramie County, Wyoming, which had a population of 81,607 in 2000; Scottsbluff is located in Scotts Bluff County, Nebraska, which had a population of only 36,951 in 2000. U.S. Census Bureau, *available at* <http://www.census.gov>.

² *Television Satellite Stations Review of Policy and Rules*, 6 FCC Rcd 4212, 4215 (1991), *on recon.*, Second Further Notice of Proposed Rulemaking, 6 FCC Rcd 5010 (1991), *on further recon.*, *Review of the Commission’s Regulations Governing Television Broadcasting*, 10 FCC Rcd 3524 (1995) (collectively, “TV Satellite Order”). See also *Review of the Commission’s Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12943 (1999) (Commission will continue to except satellite stations from the new TV duopoly rule).

satisfies each of its three presumptive criteria, thus warranting the grant of continued satellite status under the duopoly rule.³ As shown below, the same conclusion is fully justified today.

I. Lack of City-Grade Overlap

Appendix B hereto contains a copy of the engineering study submitted with the 1996 and 1995 transfer of control applications for acquisition of the subject stations by, respectively, the existing owner (Benedek License Corporation, or “Benedek”) and the previous owner (Stauffer Communications). It shows that no city-grade contour overlap exists between KGWN-TV and its satellite, KSTF. The lack of overlap remains true today as the stations continue to operate with substantially the same technical facilities. Thus, the instant transaction satisfies the first criterion of the satellite presumption.

II. Service to Underserved Area

With respect to the second criterion, the instant transaction meets the “transmission test,” which defines as “underserved” an area with two or fewer full-service stations already licensed to the community.⁴ KSTF occupies one of only two channel allotments in Scottsbluff, Nebraska.⁵ Because the satellite station serves an underserved community, the transaction meets the second criterion.

³ See, e.g., *Stauffer Communications, Inc.*, 10 FCC Rcd 5165 (1995) (“Stauffer Decision”); Letter to Benedek Broadcasting Corporation, File Nos. BALCT-96011IP-IX, BALTTV-96011IY, and BALCTT-96011IZ, JA-JB (April 8, 1996) (“Benedek Decision”). Appendix A includes the 1995 and 1996 decisions. As noted in Appendix D, a second satellite of KGWN-TV, KTVS(TV) (Sterling, Colorado), was sold in 1999 to a Denver station which planned to operate KTVS (which is located in a county in the Denver DMA) as a satellite.

⁴ TV Satellite Order, 6 FCC Rcd at 4215.

⁵ 47 C.F.R. § 73.606.

III. Inability To Operate As Full-Service, Stand-alone Facility

With respect to the third criterion, there is ample evidence that no qualified buyer is available to purchase and operate satellite station KSTF as a full-service, stand-alone station and that KSTF would be unable to operate on a stand-alone basis.

The Commission traditionally has authorized TV satellite operations in rural, sparsely populated areas such as Scottsbluff because they lack an adequate economic base to support full-service television operations.⁶ In its 1995 Stauffer Decision, the FCC accepted the views of an experienced media broker on the inadequacy of the economic base for full-service operations in the satellite station's community of license as evidence that no qualified buyer would be willing to operate KSTF as a full-service, stand-alone station.⁷ Among other things, the broker concluded that this community could not sustain a full-service station and that the paucity of available advertising revenue would cause a competent media brokerage firm to refuse to list the station on a full-service, stand-alone basis.⁸

In its Stauffer Decision, the FCC further noted that engineering materials showed that the satellite could not extend its signal to cover Cheyenne—which itself is small, as evidenced by the market's rank. According to the media broker on whose opinion the FCC relied in its Stauffer Decision, the inability of KSTF to serve the largest community in the DMA “would render [it] non-competitive, force [it] to go dark, and leave [its] own small communit[y]

⁶ See, e.g., TV Satellite Order, 6 FCC Rcd at 4212.

⁷ Stauffer Decision, 10 FCC Rcd at 5166-67.

⁸ *Id.*

unserved.”⁹ The FCC recognized this important fact in deciding to permit the continuance of the parent-satellite status of KGWN-TV and KSTF. The Commission recognized that to do otherwise would render the satellite station non-competitive, as it would be unattractive to any qualified buyer seeking to purchase and operate it as a full-service, stand-alone facility.¹⁰

In its subsequent Benedek Decision, the FCC, relying on essentially the same factors and factual circumstances (circumstances which remain unimproved), again found that the applicant “adequately demonstrated the unlikelihood of finding an alternative operator willing and able to operate” KSTF as a full-service, stand-alone facility.¹¹

The critical factors on which the FCC relied in its Stauffer and Benedek Decisions remain applicable today. The already-small Cheyenne television market has shrunk significantly—declining from its 193rd DMA rank (1995 Nielsen circulation) to its current 197th Nielsen DMA rank (2001 Nielsen circulation).¹² As shown in the attached declaration of Mr. K. James Yager, Benedek’s President and Chief Operating Officer, KSTF is unable to generate sufficient revenues to support its operations.¹³ These circumstances provide solid proof of the continuing inability of KSTF to operate as a full-service, stand-alone station. In addition, despite serious sales efforts, Benedek has received no offers for the purchase of KSTF as a full-service, stand-alone facility. In short, there is ample evidence that the public interest would be served by granting authority to continue to operate KSTF as a satellite of its Cheyenne parent station.

⁹ *Id.* at 5167.

¹⁰ *Id.* at 5166-67 & n.3.

¹¹ Benedek Decision at 4. *See also* Media Ventures Partners statements attached as Appendix C.

¹² *See Television & Cable Factbook* 1996, Vol. 64, A-1238; *Television & Cable Factbook* 2002, Vol. 70, A-1506.

¹³ *See* Appendix D.

Continuing the satellite status of KSTF would also serve the public interest by facilitating the opportunity for digital conversion. As Mr. Yager notes in his declaration, the DTV conversion of each station will require an expenditure of about \$750,000 per station. Because KSTF operates at a loss and does not generate sufficient revenue to cover current expenses despite substantial cost-cutting measures, joint operation of the parent and satellite provides the only realistic avenue for the digital conversion of either station.

Thus, Chelsey respectfully requests that the FCC authorize, under its established policy and precedent, the continued operation of KSTF (Scottsbluff) as a satellite of parent station KGWN-TV (Cheyenne). Grant of such relief would not diminish diversity or competition but would simply preserve the stations' long-established relationship. Given the economic difficulties of KSTF, continuance of its satellite status provides the only realistic opportunity for it to provide service to residents of the rural, sparsely populated areas of Nebraska that rely on the station's service.

APPENDIX A

STAUFFER DECISION; BENEDEK DECISION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

STAUFFER COMMUNICATIONS, INC.
(Transferor)

and

File Nos. BTCCT-940915KH-KP
BTCCTV-940915KS
BTCCT-940915KT-KV

MORRIS COMMUNICATIONS
CORPORATION
(Transferee)

For Consent to the Transfer of Control
of Licenses of Stations:

KCOY-TV, Santa Maria, California
KMIZ(TV), Columbia, Missouri
WIBW-TV, Topeka, Kansas
KGWN-TV, Cheyenne, Wyoming
KSTF(TV), Scottsbluff, Nebraska
KTVS(TV), Sterling, Colorado
KGWC-TV, Casper, Wyoming
KGWR-TV, Rock Springs, Wyoming
KGWL-TV, Lander, Wyoming
KO8IQ, Laramie, WY
K68DC, Claretton, WY
K16AE, Gillette, WY
K44DN, Paso Robles, CA

MEMORANDUM OPINION AND ORDER

Adopted: May 2, 1995;

Released: May 8, 1995

By the Commission:

1. The Commission has before it for consideration the unopposed applications for consent to the transfer of control of Stauffer Communications, Inc. (Stauffer), licensee of the above-captioned stations, to Morris Communications Corporation (Morris). Stauffer is also the owner of The Topeka Capital-Journal, a daily newspaper published in Topeka, Kansas, which is being acquired by Morris.

2. Stauffer has owned and operated television station WIBW-TV and The Topeka Capital-Journal for twenty years, pursuant to its grandfathered status under our multiple ownership rules. However, the proposed transfer to Morris would violate the Commission's television-newspaper cross-ownership rule. Accordingly, Morris has requested a temporary waiver of Section 73.3555(d)(3) of our Rules during which it will arrange to sell station WIBW-TV. We also consider here the proposal of Morris to continue operating stations KSTF(TV) and KTVS(TV) as satellites of KGWN(TV), and KGWR(TV) and KGWL(TV) as satellites of KGWC-TV.

TEMPORARY WAIVER OF THE TELEVISION-NEWSPAPER CROSS-OWNERSHIP RULE

3. Within the market of Topeka, Kansas, Stauffer has owned and operated WIBW-TV and The Topeka Capital-Journal daily newspaper for twenty years, pursuant to its grandfathered status under our multiple ownership rules. However, grandfathered status under our multiple ownership rules terminates upon Commission approval of a transfer of control. See 47 C.F.R. §73.3555, Note 4. Consequently, the proposed transfer of control to Morris will violate the Commission's television-newspaper cross-ownership rule, which prohibits common ownership of a daily newspaper and a television broadcast station license in the same market. See 47 C.F.R. §73.3555(d)(3).

4. In order to come into compliance with Section 73.3555(d)(3) of the Commission's rules, Morris has requested an eighteen-month waiver of that rule. Within that waiver period, Morris proposes to dispose of television station WIBW-TV. In support of its request, Morris asserts that eighteen months is necessary because an immediate sale would "unnecessarily restrict" the value of the station and "artificially limit" the range of potential buyers. Morris points to minority-controlled and local groups as entities who could be precluded by an immediate sale of WIBW-TV, noting that such entities often do not have immediate access to the capital required for acquisition of a station. According to Morris, in the past the Commission has allowed such considerations as justification for temporary waiver of the multiple ownership rules. See e.g., *Citadel Communications Company, Ltd.*, 5 FCC Red 3842, 3844 (1990).

5. Morris also claims that grant of the requested waivers would not violate the Commission's objectives of economic competition and diversity of programming and viewpoints. It indicates that the Topeka market is served by fourteen radio stations, four television stations, one low power television station and an abundance of cable television systems. Thus, Morris maintains that the community of Topeka, Kansas would continue to be served by a number of media voices if its waiver request was granted.

6. Morris further notes that a grant of the waiver request would not create any new media combinations but would merely continue the existing common ownership of WIBW-TV and The Topeka Capital-Journal for a short period pending divestiture of the acquired television station. Moreover, unlike the television-newspaper combined operation under Stauffer's ownership, Morris states that following the transfer of control, WIBW-TV will be operated with a staff separate from the staff involved in the daily operation of The Topeka Capital-Journal. Morris contends such daily operation by independent staffs actually promotes the Commission's goal of diversity.

7. Based on the representations provided above, we believe that a temporary waiver of Section 73.3555(d)(3) is consistent with Commission precedent and will serve the public interest. See e.g., *Metromedia Radio and Television, Inc.*, 102 FCC2d 1334 (1985), *recon. denied*, 59 RR2d 1211 (1986). As we have stated in the past, the primary goals of our multiple ownership rules are to promote diversity of ownership and viewpoint, as well as to prevent any undue concentration of economic power contrary to the public interest. We find that a temporary waiver of our multiple ownership rules will not appreciably affect the principles of diversity or competition in the circumstances present in this case. First, the market of Topeka hosts a multiplicity of alternative media services. In addition, the instant televi-

sion-newspaper combination has existed for several years without undue adverse effects on the public interest. We believe the proposed temporary continuation of that multiple ownership combination would not create any significant additional burden adverse to our interests in diversity and competition. Further, this transaction would eventually allow a grandfathered newspaper-television cross-ownership in Topeka to be broken up as a result of the grant of these applications. Therefore, competition among the mass media will ultimately increase. Further, we believe that requiring an immediate sale of the television station could artificially limit the range of potential buyers to those with immediate access to the necessary capital, and could work an economic hardship on Morris without offsetting public interest benefits. See *Knoxville Channel 8 Limited Partnership*, 4 FCC Red 4760, 4761 (1989). An eighteen-month waiver period, on the other hand, would avoid such hardship and would provide the opportunity for a broader range of potential buyers, thus serving our policies of diversity and economic competition. Accordingly, we will grant the requested temporary waiver.

SATELLITE PROPOSALS

8. Pursuant to the satellite exception to the multiple ownership rule set forth in Note 5 to Section 73.3535 of the Commission's Rules, television stations KSTF(TV), Scottsbluff, Nebraska and KTVS(TV), Sterling, Colorado, operate as satellites of KGWN-TV, Cheyenne, Wyoming. Television stations KGWR-TV, Rock Springs, Wyoming and KGWL-TV, Lander, Wyoming operate as satellites of KGWC-TV, Casper, Wyoming. Morris seeks to acquire these six television stations and to maintain the satellite status of KSTF(TV), KTVS(TV), KGWR-TV and KGWL-TV. In support of its request, Morris contends that the continued operation of the stations as satellites meets the three criteria established by the Commission in *Television Satellite Stations*, 6 FCC Red 4212 (1991) (petitions for partial stay and reconsideration pending).¹ The Commission requires all applicants seeking to transfer existing satellite stations and to continue these stations' satellite status to demonstrate that the stations meet our satellite policy at the time of transfer. *Id.* at 4215.

9. Pursuant to the Commission's satellite policy, an applicant is entitled to a presumption that its proposed satellite operation is in the public interest if it meets three criteria: (1) no City Grade contour overlap exists between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able either to construct or to purchase and operate the satellite as a full-service station. *Id.* at 4212. If an applicant cannot qualify for the presumption, we will evaluate the proposal on an ad hoc basis to determine whether other compelling circumstances warrant grant of the application. *Id.* at 4214.

10. With regard to the first criterion of the presumption, Morris has submitted an engineering study which demonstrates that the City Grade contours of KGWN-TV and its two satellites, KSTF(TV) and KTVS(TV), do not overlap. Moreover, the engineering study demonstrates that there is no City Grade contour overlap between KGWC-TV and its two satellites, KGWR-TV and KGWL-TV. Thus, both proposed satellite operations meet the first component of the presumption.

11. With respect to the second criterion, Morris has demonstrated that the area where each satellite station is located is underserved by using one of our two tests. The first is a "transmission test," which defines as "underserved" an area with two or fewer full-service stations already licensed to the community.² Morris has certified that KTVS(TV) is the only full-service station licensed to Sterling, Colorado; and KSTF(TV) is one of only two full-service stations licensed to Scottsbluff, Nebraska. Further, Morris has shown that KGWR-TV is the only full-service station licensed to Rock Springs, Wyoming; and KGWL-TV is one of only two television stations licensed to Lander, Wyoming. Accordingly, these stations also meet the second criterion for the satellite presumption.

12. As to the third criterion to qualify for the presumption, an applicant must demonstrate that no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service stand-alone station. In this regard, Morris has submitted a declaration from Gerald N. Holley, Vice President-Broadcasting of Stauffer, which states that, in its eight years of ownership, Stauffer has received no solicitations to purchase and operate any of the four satellite stations as a stand-alone television facility. Morris has also submitted two statements by Brian E. Cobb, a media broker and a founding partner of Media Venture Partners, a media brokerage firm, asserting that neither the Cheyenne-Scottsbluff-Sterling market nor the Casper-Riverton-Lander-Rock Springs market would be able to sustain a full-service stand-alone station. Mr. Cobb states that if approached, he would refuse to list the four satellite stations for sale because he considers such efforts to be futile. Moreover, he contends that any competent media brokerage firm would view such a project as a "misuse" of time, given the sparsity of available revenue in each market. Further, the media broker points out that each of the four satellite stations serves only a small community. Therefore, Mr. Cobb does not believe they would be able to obtain a *bona fide* national sales representation firm willing to represent them in an effort to gain additional revenues. He asserts that, to be competitive in a market covering such a large geographic area, a station must serve the largest community. With regard to KGWL (Lander, Wyoming) and KGWR (Rock Springs, Wyoming), the applicants' engineering review concludes that neither of these stations, even if operating with maximum facilities, would be able to cover Casper, the main population center in the market. Likewise, with regard to KSTF (Scottsbluff, Nebraska) and KTVS (Sterling, Colorado), neither of these

¹ We note that there is an outstanding proceeding that invites comment on whether television satellite stations should continue to be exempted from the national multiple ownership rules. *Second Further Notice of Proposed Rulemaking* in MM Docket No. 87-8, 6 FCC Red 5010 (1991). Grant of the applica-

tions now before us would not implicate the 12-station rule. See also *Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8, FCC 94-322, released January 17, 1995.

² We have also defined an "underserved area" in terms of a "reception test," but that test is not material here. See *Television Satellite Stations*, 6 FCC Red at 4215.

stations, even if operating with maximum facilities, would be able to cover Cheyenne, the main population center in its market.³ Thus, Mr. Cobb maintains that each station's inability to serve the largest community in the market would render the stations non-competitive, force them to go dark, and leave their own small communities unserved.

13. Based upon the above, we believe that the applicants have adequately demonstrated the unlikelihood of finding an alternative operator willing and able to operate the four satellite stations as full-service stand-alone facilities. See *P.P.D. & G., Inc.*, 8 FCC Rcd 8229 (1993). Thus, we conclude that the applicants have satisfied the third criterion and that allowing continued operation of KGWL-TV and KGWR-TV as satellites of KGWC-TV, and KSTF(TV) and KTVS(TV) as satellites of KGWN-TV would, therefore, be in the public interest.

CONCLUSION

14. Having determined that the applicants are qualified in all respects, we find that grant of the transfer of control of the licenses held by Stauffer to Morris will serve the public interest, convenience and necessity.

15. Accordingly, IT IS ORDERED, that the above-captioned applications for transfer of control of Stauffer Communications, Inc. to Morris Communications Corporation ARE GRANTED.

16. IT IS FURTHER ORDERED, that the requests for operation of stations KSTF(TV), Scottsbluff, Nebraska, KTVS(TV), Sterling, Colorado, KGWR-TV, Rock Springs, Wyoming and KGWL-TV Lander, Wyoming, pursuant to the satellite exception to Section 73.3555 of the Commission's Rules, IS GRANTED.

17. IT IS FURTHER ORDERED, that the request for temporary waiver of Section 73.3555(d)(3) of the Commission's Rules IS GRANTED, subject to the condition that Morris divest itself of its interest in WIBW-TV no later than eighteen months from the consummation of this transaction.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

³ Pursuant to Section 73.614(b)(5), a maximum facility would have an effective radiated power of 5,000 kilowatts with a height above average terrain (HAAT) of 610 meters. This would provide Grade B coverage to an approximate distance of 65 miles. As calculated in the engineering statement submitted with the application, the distance from Casper to Lander is 122.9 miles and the distance from Casper to Rock Springs is 172.9 miles.

With regard to KSTF(TV) and KTVS(TV), as calculated in the engineering statement, the distance from Cheyenne to Scottsbluff is 78.3 miles and the distance from Cheyenne to Sterling is 90.9 miles.



Federal Communications Commission
Washington, D.C. 20554

APR 8 1996

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Re: KCOY-TV, Santa Maria, CA
KMIZ(TV), Columbia, MO
WIBW-TV, Topeka, KS
KGWN-TV, Cheyenne, WY
KSTF-TV, Scottsbluff, NE
KTVS(TV), Sterling, CO
KGWC-TV, Casper, WY
KGWR-TV, Rock Springs, WY
KGWL-TV, Lander, WY
KOSIQ, Laramie, WY
K68DC, Clareton, WY
K16AW, Gillette, WY
K44DN, Paso Robles, CA

File Nos. BALCT-960111IP-IX,
BALTTV-960111IY and BALTT-
960111IZ, JA-JB

Gentlemen:

This is in reference to the unopposed applications for assignment of the above-captioned television and TV translator licenses from Stauffer Communications, Inc. (Stauffer) to Benedek Broadcasting Corporation (Benedek). Benedek is the current licensee of KHQA-TV, Hannibal, Missouri. Because the Grade B contours of KMIZ(TV) and KHQA-TV overlap, the proposed assignee has requested a waiver of the Commission's duopoly rule, Section 73.3555(b), which proscribes common ownership of television stations whose Grade B contours overlap. We also consider here the proposal of Benedek to continue operating

stations KSTF(TV) and KTVS(TV) as satellites of KGWN(TV), and KQWR(TV) and KGWL(TV) as satellites of KGWC-TV.¹

SATELLITE PROPOSALS

Pursuant to the satellite exception to the multiple ownership rule set forth in Note 5 to Section 73.3555 of the Commission's Rules, television stations KSTF(TV), Scottsbluff, Nebraska and KTVS(TV), Sterling, Colorado, operate as satellites of KGWN-TV, Cheyenne, Wyoming. Additionally, television stations KQWR-TV, Rock Springs, Wyoming and KGWL-TV, Lander, Wyoming operate as satellites of KGWC-TV, Casper, Wyoming. Benedek seeks to acquire these six television stations and to maintain the satellite status of KSTF(TV), KTVS(TV), KQWR-TV and KGWL-TV. In support of its request, Benedek contends that the continued operation of the stations as satellites meets the three criteria established by the Commission in Television Satellite Stations, 6 FCC Rcd 4212 (1991) (petitions for partial stay and reconsideration pending).² The Commission requires all applicants seeking to assign existing satellite stations and to continue these stations' satellite status to demonstrate that the stations meet our satellite policy at the time of assignment. *Id.* at 4215.

Pursuant to the Commission's satellite policy, an applicant is entitled to a presumption that its proposed satellite operation is in the public interest if it meets three criteria: (1) no City Grade contour overlap exists between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able either to construct or to purchase and operate the satellite as a full-service station. *Id.* at 4212. If an applicant cannot qualify for the presumption, we will evaluate the proposal on an *ad hoc* basis to determine whether other compelling circumstances warrant grant of the application.

¹ Grant of the instant applications will result in Benedek having an interest in 14 television stations with a national audience reach of 1.36%. Therefore, the applicants also requested temporary waiver of the twelve-station limit, Section 73.3555(e) of the Commission's rules, in order to come into compliance with that rule. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (Telecom Act). Section 202(c)(1) of the Telecom Act directs the Commission to "modify its rules for multiple ownership set forth in Section 73.3555 of its regulations by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own." As a result, Benedek has requested grant of the assignment applications without a divestiture order. Accordingly, because the modification of our rules became effective on March 15, 1996, upon publication in the Federal Register, *see* 61 Fed. Reg. 10,692 (to be codified at 47 C.F.R. § 73.3555), a waiver is unnecessary and the applicants are not required to divest.

² We note that there is an outstanding proceeding that invites comment on whether television satellite stations should continue to be exempted from the national multiple ownership rules. Second Further Notice of Proposed Rulemaking in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991).

Id. at 4214.

With regard to the first criterion of the presumption, Benedek has submitted an engineering study which demonstrates that the City Grade contours of KOWN-TV and its two satellites, KSTF(TV) and KTVS(TV), do not overlap. Moreover, the engineering study demonstrates that there is no City Grade contour overlap between KGWC-TV and its two satellites, KGWR-TV and KGWL-TV. Thus, both proposed satellite operations meet the first component of the presumption.

With respect to the second criterion, Benedek has demonstrated that the area where each satellite station is located is underserved by using one of our two tests. The first is a "transmission test," which defines as "underserved" an area with two or fewer full-service stations already licensed to the community.³ Benedek has certified that KTVS(TV) is one of only two full-service stations licensed to Sterling, Colorado;⁴ and KSTF(TV) is one of only two full-service stations licensed to Scottsbluff, Nebraska. It maintains that this fact is reflected in the Television Table of Allotments. Further, Benedek has shown that KGWR-TV is the only full-service station licensed to Rock Springs, Wyoming; and KGWL-TV is one of only two television stations licensed to Lander, Wyoming. Accordingly, these stations also meet the second criterion for the satellite presumption.

As to the third criterion to qualify for the presumption, an applicant must demonstrate that no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service stand-alone station. In this regard, Benedek has submitted a statement by Brian E. Cobb, a media broker and a founding partner of Media Venture Partners, a media brokerage firm. In that statement, dated December 21, 1995, Mr. Cobb asserts that the satellite stations "serve sparsely settled rural areas which lack the resources to support full-service operations unrelated to the parent stations' more populous (but still very small) communities." He states that the stations serve very small television markets which have each declined one DMA rank since last year: Cheyenne, Wyoming-Scottsbluff, Nebraska-Sterling, Colorado has dropped to the 193rd ranked DMA market; and Casper-Riverton, Wyoming has dropped to the 194th ranked DMA market. Mr. Cobb contends that while small in population, "the markets are geographically large, requiring use of satellites to cover the market area." Further, the media broker points out that each of the four satellite stations serves only a small community. Finally, Mr. Cobb states that the circumstances recited in his letter dated August 29, 1994, and relied on by the Commission in granting the transfer of control of these stations from Stauffer to Morris, continue to exist. See Stauffer Communications, Inc., 10 FCC Red 5165 (1995). In that letter, Mr. Cobb stated that based on the small communities served he did not believe the applicants would be able to obtain a

³ We have also defined an "underserved area" in terms of a "reception test," but that test is not material here. See Television Satellite Stations, 6 FCC Red at 4215.

⁴ The other Sterling allotment is noncommercial Channel 18, which is vacant.

bona fide national sales representation firm willing to represent them in an effort to gain additional revenues. He explained that, to be competitive in a market covering such a large geographic area, a station must serve the largest community. With regard to KGWL (Lander, Wyoming) and KGWR (Rock Springs, Wyoming), neither of these stations, even if operating with maximum facilities, would be able to cover Casper, the main population center in the market. Likewise, with regard to KSTF (Scottsbluff, Nebraska) and KTVS (Sterling, Colorado), neither of these stations, even if operating with maximum facilities, would be able to cover Cheyenne, the main population center in its market. Mr. Cobb claimed that each station's inability to serve the largest community in the market would render the stations non-competitive, force them to go dark, and leave their own small communities unserved or underserved. Thus, as he stated one year ago, Mr. Cobb continues to maintain that if approached he would refuse to list the four satellite stations for sale because he considers such efforts to be futile, and a misuse of time given the sparsity of revenue available in each area. It remains his professional judgment that the communities of Scottsbluff, Sterling, Rock Springs, and Lander "would likely lose the service provided by the stations if the [Commission] did not allow the stations to operate as satellites."

Based upon the above, we believe that the applicants have adequately demonstrated the unlikelihood of finding an alternative operator willing and able to operate the four satellite stations as full-service stand-alone facilities. See P.P.D. & G., Inc., 8 FCC Rcd 8229 (1993). Thus, we conclude that the applicants have satisfied the third criterion and that allowing continued operation of KGWL-TV and KGWR-TV as satellites of KGWC-TV, and KSTF-TV and KTVS-TV as satellites of KGWN-TV would, therefore, be in the public interest.

DUOPOLY WAIVER

Benedek has also requested a waiver of our duopoly rule, Section 73.3555(b), so that it may acquire KMIZ(TV), Columbia, Missouri, despite the overlap of the Grade B contour of that station with the Grade B contour of Benedek's station KHQA-TV, Hannibal, Missouri. In support of its waiver request, Benedek has submitted an engineering exhibit which purports to show that the overlap area created by the intersection of the Grade B contours of the stations encompasses 49 square kilometers and 700 persons, in a sparsely populated rural area. This overlap constitutes .46 percent of the area and .21 percent of the population within the Grade B contour of KHQA-TV and .68 percent of the area and .17 percent of the population within the Grade B contour of KMIZ(TV). Benedek maintains that the overlap percentages in this case meet the Commission's de minimis standard, and are therefore in the range of overlaps that have been authorized by the Commission.³

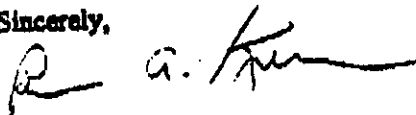
³ Benedek also notes that KHQA-TV and KMIZ(TV) operate in separate markets, Quincy, Illinois-Hannibal, Missouri-Keokuk, Iowa (ranked 157) and Columbia-Jefferson, Missouri (ranked 149), respectively. It further states that the stations have different network affiliations resulting in a continued offering of diverse programming.

In adopting the duopoly rule's fixed standard of prohibiting overlap of Grade B service contours, the Commission also acknowledged the need for "flexibility" in that rule's application, noting that waivers should be granted where rigid conformance to the rule would be "inappropriate." Multiple Ownership of Standard FM and Television Broadcast Stations (Multiple Ownership), 45 FCC 2d 1476 n.1, recon. granted in part, 3 RR 2d 1554 (1964). To that end, the Commission has allowed common ownership of stations with overlapping Grade B contours where signal overlap is de minimis, see e.g. Hubbard Broadcasting, Inc., 2 FCC Red 7374 (1987), or where the public interest benefits to be gained from waiving the rule would be greater than any detrimental effects resulting from the overlap. See e.g. Capital Cities Communications, Inc., 59 RR 2d 451 (1985). Our past waiver cases have characterized a de minimis signal overlap as one in which the overlap area represents less than one percent of both the area and the population of the Grade B contour of each station. Hubbard Broadcasting, Inc., 2 FCC Red 7374. Upon review of the applicant's engineering exhibit, we agree that the overlap area is de minimis. Accordingly, we find that grant of Benedek's duopoly waiver request would be in the public interest.

In view of the foregoing, and having determined that the applicants are qualified in all respects, we conclude that grant of the instant applications would serve the public interest, convenience and necessity.

Accordingly, acting pursuant to delegated authority, the request for continued operation of stations KSTF(TV), Scottsbluff, Nebraska, KTVS(TV), Sterling, Colorado, KGWR-TV, Rock Springs, Wyoming and KGWL-TV Lander, Wyoming, pursuant to the satellite exception to Section 73.3555 of the Commission's Rules, IS GRANTED. Further, the request for permanent waiver of the Commission's duopoly rule, Section 73.3555(b), to permit the common ownership and/or control of television stations KHQA-TV and KMIZ(TV) also IS GRANTED. Finally, upon finding that the public interest would be served thereby, the above-noted applications ARE GRANTED this day.

Sincerely,



Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

APPENDIX B

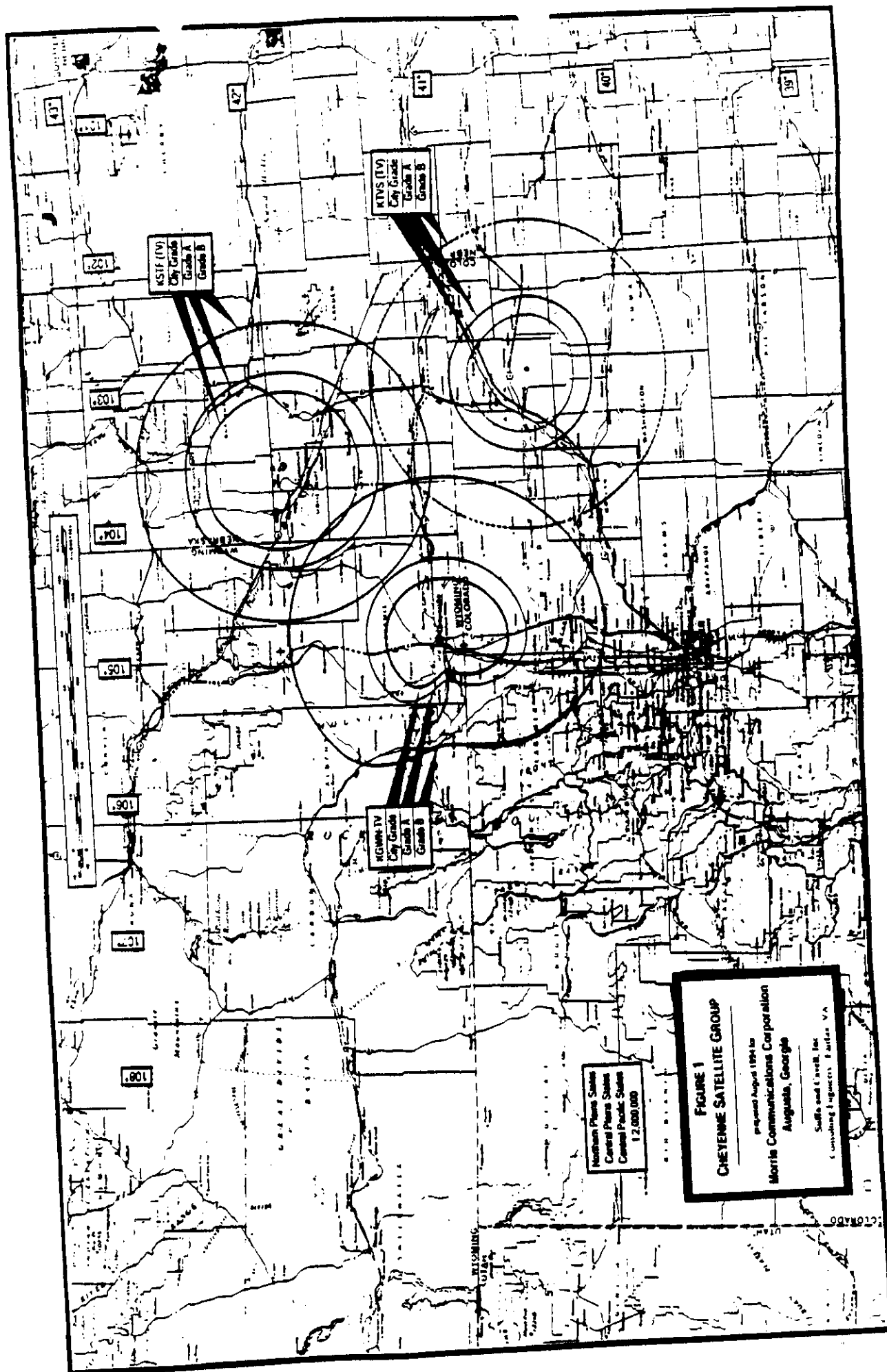
ENGINEER STATEMENT

Appendix I
Contour Methodology
Area and Population Determination Methodology
prepared for
Morris Communications Corporation
Augusta, Georgia

In preparing the maps of Figures 1 and 2 which accompany the Engineering Statement to which this is attached as Appendix I, pertinent data on each station were extracted from the FCC's engineering databases. Specifically, the database information regarding the antenna elevation above mean sea level, geographic coordinates, effective radiated power, and, where appropriate, directional antenna patterns were used from each station's record. A conservative assumption of maximum power in the horizontal plane was employed for the purposes of this showing. Distances to contours were determined using NGDC TPG-0050 30-second terrain data along each of the 8 standard 45-degree spaced radials from the transmitter site and an implementation of the Commission's TVFMFS computer program which simulates the TV propagation curves. For directional antennas, the radials were spaced every 10 degrees, in addition to the standard 45-degree spaced radials. The distances to contours were then fed into a computer algorithm¹ which interpolates distances to contours for one degree of azimuth (ie: 360 distanced per contour file). This data from this algorithm was used, in turn, to drive a digital plotter to produce the contours shown on the maps attached herewith.

The land area served by each proposal was determined by numerical integration of the contour distances determined by the above method. The area within the overlap regions was determined by compensating polar planimeter measurement. The populations contained within the pertinent service contours and overlap areas was determined by using a computer program which sums the population of the 1990 Census enumeration districts and blocks whose centroids fall within the area of interest.

¹ The specific method used is based on Algorithm 433 of the Association for Computing Machinery; see **Communications of the ACM**: Volume 15, Number 10; October 1972.



APPENDIX C

MEDIA VENTURE PARTNERS STATEMENTS

1. *Chlorophyll a* and *Chlorophyll b* contents were determined by the method of Lichtenthaler and Whistler (1973).

Buffer TV Station

Abstract

[illegible]

MEDIA VENTURE PARTNERS
WASHINGTON D.C. • IRLAND • SAN FRANCISCO

August 29, 1994

Mr. Clay C. Pendarvis
Chief-Television Branch
Federal Communications Commission
1919 M Street
Room 700
Washington, D.C.

Re: KGWN(TV), Cheyenne, Wyoming,
KSTF(TV), Scottsbluff, Nebraska and
KTVS(TV), Sterling, Colorado

Dear Mr. Pendarvis:

In connection with the above referenced stations, I have been asked by the parties to supply you with information related to the continued operation of KSTF(TV) and KTVS(TV) as satellites of KGWN(TV). This letter will address the feasibility of operating and marketing the stations as stand alones rather than as satellites.

In reference to my background, I have over thirty years of experience in the broadcast industry as an owner, manager and broker of broadcast properties. I am a founding partner of Media Venture Partners, a nationally recognized media brokerage firm with offices in four cities in the United States. I specialize in television brokerage for Media Venture Partners and during the last seven years, I have personally been involved in the brokerage of more television stations than any other broker in this country. Currently, I serve as President of the National Association of Media Brokers.

I am familiar with the Cheyenne market, and I feel that I am qualified to reach certain conclusions concerning the viability of the satellites in that market as stand alone operations.

From the enclosed copy of information from BIA's Investing in Television, you can see that there is estimated to be only \$3,700,000 in net revenue in 1993 to be divided among three network affiliated stations. In my opinion, this is a very small amount of revenue to be apportioned among three stations.

Mr. Clay C. Pendarvis
August 29, 1994
Page Two

With the three properties each averaging about \$1,250,000 in net revenue, there is hardly room for another station to operate as a full service facility without at least one of the stations' survival becoming suspect.

I do not think that there are any foreseen changes in the market that would enable KSTF or KTVS to operate successfully as full service stations. Both KSTF and KTVS serve small communities that could not support a full service facility. Due to the distance from the Cheyenne market, they would not be able to cover the main population center in order to garner additional revenue, nor could they find a bonified national sales representation firm that would be willing to represent them. To be competitive in a market with such a large DMA, a station must serve the largest community. Neither of these would. Their coverage of the major population center would be inferior. My fear is that if an entity attempted to operate them as stand alones, they would have a good probability of going dark leaving the Scottsbluff and Sterling communities unserved.

In summary, as a result of the insufficient signals to cover the main population center, the large geographical area to be covered, and the lack of prospects for them to each have affiliate compensation, it is my opinion that KSTF and KTVS could not operate as stand alone stations. For the stations to survive, they need to operate as satellites of a more viable facility.

If the owners of KSTF and KTVS approached me to list these stations for sale, Media Venture Partners would not have an interest in doing so. I would consider listing these stations to be futile. Furthermore, I do not think that any competent brokerage firm would take on such a project, as it would be a misuse of time.

If I can answer any questions regarding my opinion, I would be happy to respond.

Sincerely,



Brian E. Cobb

Enclosure

rhain
11/11

Cheyenne-Scottsbluff-Sterling Market Overview

DMA Rank: 192

Demographic and Economic Overview

(000s., except Retail Sales and EBI in \$000,000s.)

	1987	Growth		1992	1997	Rate
		Rate	Rate			
ADJ Population	125	125	0.0%	125	132	1.1%
Households	48	49	0.4%	49	52	1.2%
Retail Sales	976	1,032	1.1%	1,032	1,551	8.5%
EBI	1,407	1,740	4.3%	1,740	2,541	7.9%
Pop Rank #200	ADJ Counties					
HH Rank #197	3 White 97.0%					
RS Rank #199	48 Black 2.0%					
EBI Rank #198	70% Asian 1.0%					
	80% Spanish Speaking 11.6%					
	Avg Household \$35,510					
	Per Capita \$13,920					

Market Television Financials

(all figures in 000s., except percentages)

ESTIMATED NET REVENUES	1987	1988	1989	1990	1991	1992	Δ 87-92																
	\$ - -	- -	3,300	3,400	3,300	3,400																	
4	Δ 92-93	1993	1994	1995	1996	1997	Δ 93-97																
	4.0% \$	3,500	3,700	3,900	4,200	4,400	5.5%																
<table><tr><td>Estimated Breakouts</td><td>% Network 10.0%</td><td>% Natl/Regl 40.0%</td><td>% Local 50.0%</td></tr><tr><td>1987</td><td></td><td></td><td></td></tr><tr><td>Revenue/Retail Sales</td><td>n/a</td><td>\$ 3.29/1,000</td><td>\$ 2.82/1,000</td></tr><tr><td>Revenue/Capite</td><td>n/a</td><td>\$27.20</td><td>\$33.18</td></tr></table>								Estimated Breakouts	% Network 10.0%	% Natl/Regl 40.0%	% Local 50.0%	1987				Revenue/Retail Sales	n/a	\$ 3.29/1,000	\$ 2.82/1,000	Revenue/Capite	n/a	\$27.20	\$33.18
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Revenue/Capite	n/a	\$27.20	\$33.18																				

Cheyenne-Scottsbluff-Sterling Competitive Overview

Calls	City of License	Visual Power (kW)	Date	Date Acq	Est '93 Revenue (\$000)	Est '93 Power Ratio	Avg 93 LCS	SHARE SUMMARY 9:00 AM - MIDNIGHT											
								May 94	Jun 94	Jul 94	Aug 94	Sep 94	Oct 94	Nov 94	Dec 94	Jan 95	Feb 95	Mar 95	Apr 95
KDUN	Scottsbluff, NE	4	100	2,000	ABC	Katz	Duhamel Bcstg	58	8607	54	8607	54	8607	54	8607	54	8607	54	8607
KGUN	Cheyenne	5	100	620	CBS	Katz	Stauffer Comm	54	8607	54	8607	54	8607	54	8607	54	8607	54	8607
KLWY	Cheyenne	27	4,270	760	IND	Blair	Wynmedia Corp	MOA	9005	100 d	9005	100 d	9005	100 d	9005	100 d	9005	100 d	9005
KXIU	Cheyenne	33	253	486	NBC	Blair	Eastern Broadcasting	68	9406	68	9406	68	9406	68	9406	68	9406	68	9406
KIVS	Sterling, CO	3	61	760	SAT	Katz	Stauffer Comm	63	8607	63	8607	63	8607	63	8607	63	8607	63	8607
KSIF	Scottsbluff, NE	10	240	840	SAT	Katz	Stauffer Comm	55	8607	55	8607	55	8607	55	8607	55	8607	55	8607
*KINE	Alliance, NE	13	316	1,540	PIV		ME ETV Comm	66											
ADJACENT MARKET STATIONS								2	2	2	2	2	2	2	2	2	2	2	2
Total								35	34	35	34	36	35	36	35	36	35	36	32
HUT %								73%	68%	73%	65%	70%	75%	71%	65%	73%	68%	73%	65%

Other allocations: Ch 16, Scottsbluff, NE Note: KXIU is a satellite of K1UD Casper, WY.

* Indicates a change since last edition.

1/ See Introduction section for interpretation of revenue estimates.

Investing in Television 1994, 3rd Edition. Copyright ©1994 BIA Publications, Inc. All rights reserved. (703) 810 2425.

DMA Rank: 192

APPENDIX D

DECLARATION OF MR. K. JAMES YAGER

DECLARATION OF K. JAMES YAGER

I, K. James Yager, declare the following:

1. I, K. James Yager, am President and Chief Operating Officer for Benedek License Corporation and its parent, Benedek Broadcasting Corporation (collectively referred to herein as “Benedek”).

2. In June 1996, Benedek acquired stations KGWN-TV (Cheyenne, Wyoming) and its satellite stations, KSTF(TV) (Scottsbluff, Nebraska) and KTVS(TV) (Sterling, Colorado), together with certain other television stations, from Stauffer Communications, Inc. In 1999, Benedek sold KTVS to Channel 20 TV Company, licensee of Denver television station KTVD(TV), which planned to operate KTVS as a satellite of KTVD. (Logan County, where Sterling is located, is part of the Denver market—the 18th ranked Designated Market Area (“DMA”), according Nielsen Market Research).

3. At the time of Benedek’s acquisition, KSTF had long operated as a satellite of the Cheyenne parent station, and the FCC authorized Benedek to continue to own and operate it as a satellite of KGWN-TV. The FCC found, based partly on information and analysis previously supplied by veteran media broker Media Venture Partners, that the areas served by KSTF did not provide a sufficient economic base to generate revenues to operate the station on a stand-alone basis and that the nature of the geographically large but sparsely populated DMA necessitated the continued operation of KSTF as a satellite in order to provide program service to the outlying portions of the television market. The circumstances leading to that conclusion continue to exist today.

4. KGWN-TV and KSTF serve the Cheyenne-Scottsbluff Nielsen DMA. That DMA is ranked 197th, one of the least-populated television markets in the country. The market

currently includes only three counties with a total of less than 51,000 TV households. Since Benedek contracted to acquire the stations, the DMA has shrunk materially from its then-market rank of 193. Because Cheyenne is located more than 80 miles from Scottsbluff, it is not possible for KGWN-TV (Cheyenne) to cover Scottsbluff and other distant outlying portions of the DMA (nor, of course, could KSTF (Scottsbluff) cover the distant community of Cheyenne).

5. KSTF has experienced losses for many years. Despite substantial cost-cutting measures, KSTF has been unable to produce enough revenue on its own to cover its expenses, and KSTF remains unable to operate on its own as a full-service, stand-alone station.

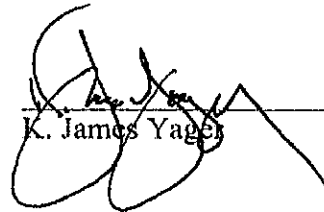
6. Benedek has made serious, but unsuccessful, attempts to sell KGWN-TV and KSTF. Despite these efforts, Benedek has not received any offer to purchase KSTF for operation as a full-service, stand-alone facility. As noted, in 1999, Benedek was able to sell KTVS to Denver station KTVD to be operated as a satellite in Sterling, Colorado. Based on KTVD's showing that the former Cheyenne satellite continued to be unable to operate on a stand-alone basis, the FCC in 1999 granted a waiver of its main studio requirements for KTVS. (See Channel 20 TV Company (KTVS, Sterling, Colorado, BALCT-990520IA), Letter of Chief, Television Branch, 1800EI-VL, Aug. 31, 1999.)

7. The prospect of finding a qualified buyer to own and operate KSTF as a stand-alone facility is made especially remote by the requirement to convert KSTF and KGWN-TV to digital operations. As noted in Benedek's FCC Form 337 Requests for Extension of the May 1, 2002, digital construction deadline (File Nos. BEPCDT-20020301AAK and BEPCDT-20020228ACX), the conversion of each station will require an investment of about \$750,000 per station. In view of the small size of the market and of its economic base, the digital conversion

of the stations does not appear realistic without continued operation of the parent-satellite combination.

I declare, under penalty of perjury, that the foregoing Declaration is true and correct to the best of my knowledge, information and belief.

June 3, 2002


K. James Yager