

Exhibit 18: Request for Satellite Waiver for KNHL(DT)

On May 21, 2018, Legacy Broadcasting, LLC (“Legacy”) entered into an Asset Purchase Agreement with Gray Television Group, Inc. and Gray Television Licensee, LLC (“Gray”) whereby Gray would acquire KNHL(DT), Hastings, Nebraska. Gray intends to operate KNHL(DT) as a satellite of its station, KSNB-TV, Superior, Nebraska.¹ KSNB-TV’s over-the-air signal serves the southeast portion of the Lincoln & Hastings-Kearney, Nebraska Designated Market Area (“Lincoln & Hastings-Kearney DMA”), but it does not reach the western parts of the market. Gray, therefore, seeks to operate KNHL(DT) as a satellite so Gray can extend the over-the-air signal to additional viewers in the Lincoln & Hastings Kearney DMA. Accordingly, the applicants respectfully request that KNHL(DT) receive an authorization to operate as a television satellite station of KSNB-TV.²

Lincoln & Hastings-Kearney DMA

The Lincoln & Hastings-Kearney DMA is the 106th ranked DMA in the country. It is comprised of 48 counties across central and southeast Nebraska, as well as two counties in Kansas and spans an area of 37,684 square miles. Although Nielsen considers it to be one DMA, it is, in fact, two distinct markets that Nielsen has joined together. The Lincoln metro area is the main population and economic hub of the DMA. Meanwhile, the Hastings-Kearney metro area is approximately 100 miles to the west.³ Indeed, in the early television era, because of the vast distance between Lincoln and Hastings-Kearney, the communities were considered separate markets.

Most of the major television networks have separate stations serving the Lincoln and Hastings-Kearney sides of the market. CBS has KOLN(DT) in Lincoln and KGIN(DT) serving Grand Island. ABC has KLKN(DT) in Lincoln and KHGI-TV in Kearney.⁴ FOX is available on

¹ Gray also owns and operates KOLN(DT), Lincoln, Nebraska and its full power television satellite station KGIN(DT), Grand Island, Nebraska. Gray uses KGIN(DT) to rebroadcast the signal of KOLN(DT) as it plans to do with KNHL(DT) and KSNB-TV.

² The local television ownership rule does not apply to cases involving authorized television satellite stations. *See* 47 C.F.R. § 73.35555, Note 5; *see also* Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission to Colins Broadcasting Corporation, DA 13-233 n.1 (Feb. 15, 2013).

³ Nielsen uses an ampersand in the name of the Lincoln & Hastings-Kearney DMA to signify the DMA is actually two separate and distinct metro areas: Lincoln and Hastings-Kearney. If all three cities were part of a single metro area, Nielsen would have used a hyphen between each city (*i.e.*, Lincoln-Hastings-Kearney). *See* US Media Policy and Guidelines, *Local Reference Supplement*, The Nielsen Company 2-3 (1st Ed. Dec. 2017).

⁴ As a historical anomaly dating back several decades, KHGI-TV and KLKN(DT) are separately owned and operated, but it is only through affiliating with both stations that ABC has been able to reach the entire DMA. Citadel operates KLKN(DT), which serves as the ABC affiliate for the eastern portion of the DMA including Lincoln. Sinclair acquired KHGI-TV from Pappas

KFXL-TV in Lincoln, and during its early years was broadcast by KTVG(TV) in Grand Island. Today, FOX is broadcast on a multicast channel for KHGI-TV in Kearney. Finally, PBS has KUON(DT) in Lincoln and KHNE(DT) in Hastings.

Meanwhile, the NBC affiliate for the market has been uniquely handicapped. Originally and for most of its history, KNHL(DT) was the NBC affiliate for the Hastings-Kearney side of the market,⁵ yet, as explained below, because of the vast size of the DMA, the station was not available on cable or over the air in Lincoln, which was the main population center and economic hub of the market. Instead, WOWT-TV in Omaha served as the de facto NBC affiliate for the Lincoln side of the market. As a result, despite being the market's NBC affiliate, KNHL(DT) was a competitive also-ran that could not be viewed in Lincoln.

In 2014, Gray acquired all of the programming assets, including the NBC affiliation, from KNHL(DT) and converted KSNB-TV into the market's NBC affiliate. KSNB-TV serves the more populous eastern side of the Lincoln & Hastings-Kearney DMA. To maintain over-the-air coverage in the Hastings-Kearney side of the market, Gray simulcasts KSNB-TV's NBC programming on a multicast channel for KGIN(DT). Thus, for the first time, the NBC affiliate for the Lincoln & Hastings-Kearney DMA was available in both Lincoln and Hastings-Kearney.

Despite NBC programming now being available on both sides of the market, viewers in the Lincoln & Hastings-Kearney DMA remain disadvantaged because NBC does not have its own station serving Hastings-Kearney like the CBS, ABC, and PBS affiliates. To reach viewers in Hastings-Kearney, Gray must simulcast KSNB-TV on a multicast channel for KGIN(DT). KGIN(DT) also broadcasts a third program stream. Thus, the excess bandwidth that KGIN(DT) would otherwise have is not available for other popular programming networks.

For example, the Lincoln & Hastings-Kearney DMA is the largest DMA in the country without its own CW affiliate. By operating KNHL(DT) as a satellite of KSNB-TV, Gray would be able to add the CW Network as a multicast channel for KNHL(DT). Moreover, with KNHL(DT) operating as a satellite of KSNB-TV, it is a more attractive proposition for the ION Network, which also would be broadcast on both stations. Gray would have the bandwidth to provide programming from both the CW and ION throughout the market, and both networks have agreed to affiliate with Gray to finally bring their popular programming to the Lincoln & Hastings-Kearney DMA.⁶ The potential to bring KSNB-TV and KNHL(DT) together as parent

Telecasting after Pappas declared bankruptcy. Sinclair is only able to operate KHGI-TV without serving Lincoln, because it operates a second full power top 4 affiliate in the market – KFXL-TV. Sinclair gains operational efficiencies by operating two Top-Four stations in the market, which makes ownership of a station that only serves the western portion of the Lincoln and Hastings-Kearney DMA possible.

⁵ As an NBC affiliate, KNHL(DT) operated with the call letters KHAS-TV.

⁶ Legacy and Gray recently entered into a Multicast Channel Agreement whereby Legacy will retransmit on a digital multicast stream the programming of Gray's KCWH-LP. A copy of the Multicast Channel Agreement is provided as an exhibit to the instant application. That

and satellite made these affiliations possible. By contrast, if both stations continue to operate separately, neither station standing alone is particularly attractive to a national network.

Satellite Waiver

The Commission's satellite policy sets out the following three criteria under which the Commission will presume that the common ownership of a main and satellite station is in the public interest:

1. there is no City Grade overlap between the parent and the satellite stations;
2. the proposed satellite will provide service to an underserved area; and
3. no alternative operator is ready and able to construct or purchase and operate the satellite as a full-service station.⁷

Alternatively, if the applicant cannot demonstrate the requirements to qualify for the presumption, the Commission reviews proposals on an *ad hoc* basis to determine whether compelling circumstances warrant grant of the application.⁸

With respect to the first criterion, due to the digital transition, the City Grade contour no longer exists.⁹ Gray notes, however, that before the digital transition, the predicted analog City Grade contours of KNHL(DT) and KSNB-TV did overlap.¹⁰ Today, the stations' predicted digital noise limited service contours and the principal community contours continue to overlap.¹¹ Since the first criteria cannot be satisfied due to the absence of a digital equivalent to the former analog Grade A contour, Gray demonstrates below that grant of the instant waiver is in the public interest under the Commission's *ad hoc* test.

With respect to the second criterion, KNHL(DT)'s community of license – Hastings, Nebraska – is underserved. An applicant may demonstrate that a proposed satellite station serves an underserved area by demonstrating either (a) that there are two or fewer television stations

agreement expires upon the earlier of the consummation of the KNHL(DT) Asset Purchase Agreement or August 31, 2019.

⁷ Television Satellite Stations Review of Policy and Rules, *Report and Order*, 6 FCC Rcd 4212, 4213 (1991). The Commission has adopted a *Notice of Proposed Rulemaking* that proposes to “streamline” certain requests to reauthorize a television satellite station in connection with the assignment or transfer of currently authorized satellite stations. See Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations, *Notice of Proposed Rulemaking*, FCC 18-34 (rel. Mar. 23, 2018).

⁸ *Id.* at 4214.

⁹ New Young Broadcasting Holding Company, Inc., *Opinion*, 25 FCC Rcd 7518, 7519 (MB 2010).

¹⁰ See Exhibit A.

¹¹ *Id.*

(including commercial, noncommercial, and satellite stations) licensed to the station's community of license (the "transmission test") or (b) that 25 percent or more of the area within the satellite station's Grade B contour, but outside the parent station's Grade B contour is served by four or fewer full-power television stations (the "reception test"). Application of the "transmission test" demonstrates that KNHL(DT) serves an "underserved" area. KNHL(DT) is one of two full power television station licensed to Hastings. Nebraska Educational Telecommunications Commission owns and operates KHNE-TV, the other station licensed to Hastings, as one of several full power stations in the Lincoln & Hastings-Kearney DMA that distribute PBS programming. Having satisfied the "transmission test," there is no need to examine the alternative "reception test."

Operation of KNHL(DT) meets the third prong of the FCC's presumptive standard, because no alternative operator is able to purchase the station to operate it on a stand-alone basis. KNHL(DT) simply serves too few households. Of the 707,500 people that live within the Lincoln & Hastings Kearny DMA, KNHL(DT) reaches just 273,586, which is less than 40% of the DMA's population. By comparison, KSNB-TV's predicted noise-limited service contour reaches 514,670 people.

In addition to serving fewer people, KNHL(DT)'s contour does not reach the economic engine of the DMA. The station does not provide over the air coverage in Lincoln (or even the suburbs of Lincoln). With a population of 258,379, Lincoln is by far the largest city in the Lincoln & Hastings-Kearney DMA.¹² It is also the state capital and the home to the state's flagship university. Meanwhile, Hastings, which is more than 100 miles away from Lincoln, has a population of only 24,907¹³, which makes it three-quarters the size of Olney, Maryland.¹⁴

Because KNHL(DT) does not place an over-the-air signal over Lincoln or its populated suburbs, the station cannot provide a good quality signal over the air to the cable systems' headends that serve the Lincoln area, and, therefore, the cable systems in the most populous and important region in its DMA are not required to carry KNHL.¹⁵ Without guaranteed cable

¹² *American Fact Finder, Lincoln city, Nebraska*, United States Census Bureau, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk#.

¹³ *American Fact Finder, Hastings city, Nebraska*, United States Census Bureau, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk#.

¹⁴ *American Fact Finder, Olney CDP, Nebraska*, United States Census Bureau, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk#.

¹⁵ KNHL(DT)'s carriage on Lincoln area cable systems currently is inconsistent. The station, for example, currently is carried by Charter, but it is not carried by Windstream or Allo Communications. The station currently is carried by the DIRECTV and DISH Network satellite systems. Because KNHL(DT) does not provide a good quality over-the-air signal to Charter to secure carriage on Charter's systems, the station provides its programming to Charter using an expensive fiber connection. If in the future the station is no longer able to afford the fiber connection, Charter is unlikely to carry the station on its systems in the Lincoln market.

carriage or over the air coverage in and around Lincoln, KNHL(DT)'s potential audience – and with it, the station's potential advertising revenue – is severely limited.

In short, KNHL(DT) displays the typical characteristics of a satellite station. It serves a rural outpost, far from the economic hub of the market. Its contour reaches less than forty percent of the viewers in its market, and other stations that serve the same area in fact operate multiple stations to reach viewers in other parts of the DMA.¹⁶

Given these extreme challenges, it is extremely unlikely that the station could obtain a major network affiliation that might improve its viability. In the Lincoln market, each of the major networks has affiliated with a station that covers Lincoln and each of those networks also has a separate option for serving the Hastings-Kearney area. Because KNHL(DT)'s over-the-air signal does not reach Lincoln (or have a satellite or translator that reaches Lincoln), a major network is unlikely to agree to affiliate with the station. Although Legacy previously solicited a proposal from CW, because of the limited population and advertising revenue in the market, the proposal was not financially viable for Legacy. Any major network will reasonably expect to reach both sides of the Lincoln & Hastings-Kearney DMA. As a stand-alone station KNHL(DT) cannot offer that.

Not surprisingly KNHL(DT) has struggled financially. KNHL(DT) currently has an affiliation agreement with SonLife Broadcasting Network, and the station therefore does not need to have a sales staff or purchase syndicated programming. Legacy retains an engineer on a contract basis but does not have extensive studio equipment or employ sales or administrative staff. For a new entrant to provide a viable independent local service in the Lincoln & Hastings-Kearney DMA, a purchaser would need to make a substantial investment to purchase additional equipment and software and hire additional personnel. In addition, to guarantee signal carriage, and enhance the station's revenue potential, any purchaser of KNHL(DT) would need to invest in acquiring additional satellite or low power stations or expensive fiber connections in order to provide an over-the-air signal to Lincoln and other parts of the Lincoln & Hastings-Kearney DMA. Thus, any entity that acquired KNHL(DT) to operate the station on a standalone basis would need to make significant capital investments in the facilities of the station to even have a chance at becoming competitive in the market. Because, even in the best of all worlds, the economic prospects of the station are so small, it is completely understandable that no rational buyer could expect to recoup the investment it would take to build out a station that could compete effectively in the market.

David Honing, President, MMTC Media and Telecom Brokers ("MMTC") provided the attached letter articulating his experience attempting to sell KNHL(DT) in his role as a broker for

¹⁶ Sinclair operates KWNB-TV as an authorized satellite station of KHGI-TV in the western portion of the DMA and KFXL-TV in the eastern portion of the DMA. See Pappas Telecasting of Central Nebraska, L.P., *Opinion*, 31 FCC Rcd 3347. Gray operates KGIN(TV) as a satellite station of KOLN. Finally, the Nebraska Educational Telecommunications Commission and the University of Nebraska operate four noncommercial television stations to distribute PBS programming across the DMA.

Legacy.¹⁷ During the course of MMTC's sale of the stations, it received limited expressions of interest in acquiring KNHL(DT) from out-of-market buyers; however, Legacy was unable to reach an agreement to sell KNHL(DT). This is unsurprising since in all the sweeps periods for each of the last four years, the station has not achieved any measurable ratings or audience share. Given the many struggles KNHL(DT) faces, Mr. Honig concludes in his letter that KNHL(DT) would "only be of interest to an in-market buyer, or to an out-of-market buyer but only at a severely depressed price."¹⁸

In other words, Legacy's lack of success in selling KNHL(DT) as a standalone station is dictated by the lack of financial prospects for KNHL(DT) as a standalone station. On the other hand, operating KNHL(DT) as a satellite of KSNB-TV is in the public interest because it will make KSNB-TV a stronger competitor in the market, on par with the other Lincoln stations that operate satellites that serve the Hastings-Kearney side of the market. KNHL-DT would expand KSNB-TV's over-the-air signal to more than 85,000 new viewers on the western side of the DMA. This will particularly benefit the public interest because the programming on KSNB-TV is of significant interest to KNHL(DT)'s viewers. When Gray launched KSNB-TV in 2014 as the market's NBC affiliate, Gray made the strategic decision for KSNB-TV's local newscasts to focus on the rural areas beyond Lincoln, including Superior and the Hastings-Kearney area, which Gray believed was underserved. With KNHL(DT), KSNB-TV will have its own satellite station that is positioned perfectly to further the station's local mission. KSNB-TV currently airs 22 hours of locally produced news programming per week, including coverage of issues, like local weather and sports, which are of importance to viewers in Hastings and the surrounding area. KSNB-TV also is able to pool its news assets in Lincoln with those of Gray's stations in the Omaha and North Platte markets to cover regional developments in more depth and at lower costs. Gray also operates a Washington, DC news bureau providing an important outlet for lawmakers in Washington to reach their constituents back home in Gray's markets – like the Lincoln & Hastings-Kearney DMA. KNHL(DT) currently airs no local news. Giving access to Gray's highly desirable programming on KSNB-TV to more than 85,000 viewers is clearly in the public interest and supports grant of the instant waiver request.

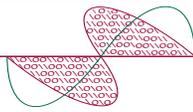
As demonstrated above, the Commission should permit KNHL(DT) to operate as an authorized television satellite station, because KNHL(DT) cannot operate as a viable standalone station in the market. Accordingly, Gray respectfully requests that the Commission grant the request for satellite waiver, because Gray meets its burden under the *ad hoc* test.

¹⁷ See Exhibit B.

¹⁸ *Id.*

Exhibit A

Contour Maps

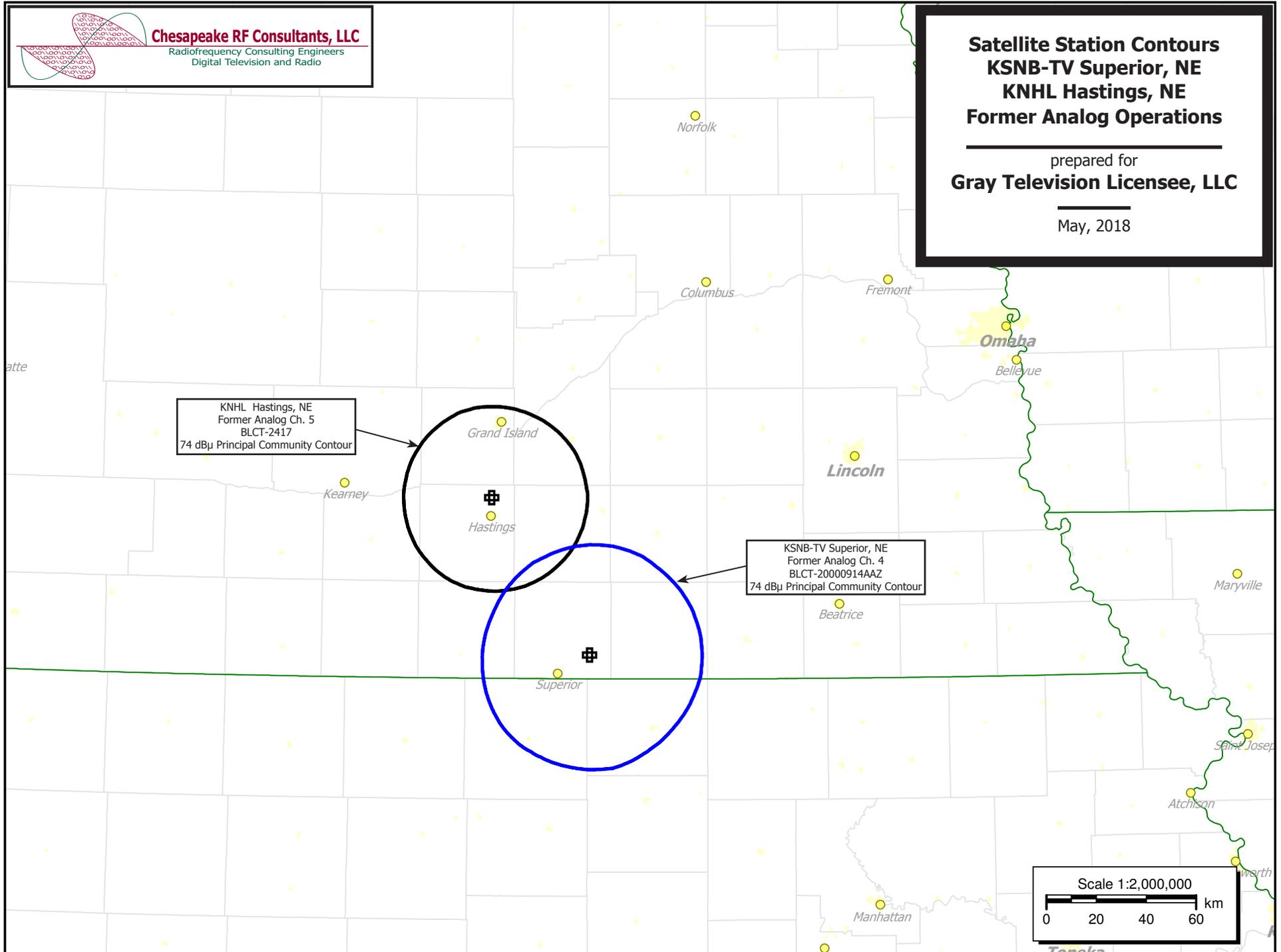


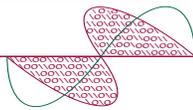
Chesapeake RF Consultants, LLC
Radiofrequency Consulting Engineers
Digital Television and Radio

**Satellite Station Contours
KSNB-TV Superior, NE
KNHL Hastings, NE
Former Analog Operations**

prepared for
Gray Television Licensee, LLC

May, 2018





Chesapeake RF Consultants, LLC

Radiofrequency Consulting Engineers
Digital Television and Radio

**Satellite Station Contours
KSNB-TV Superior, NE
KNHL Hastings, NE**

prepared for
Gray Television Licensee, LLC

May, 2018

KNHL
Ch. 5 Hastings, NE
BLCDT-20081205AFM
35 dBμ Principal Community Contour
28 dBμ Contour (NLSC)

KSNB-TV
Ch. 4 Superior, NE
BLCDT-20121001AOP
35 dBμ Principal Community Contour
28 dBμ Contour (NLSC)

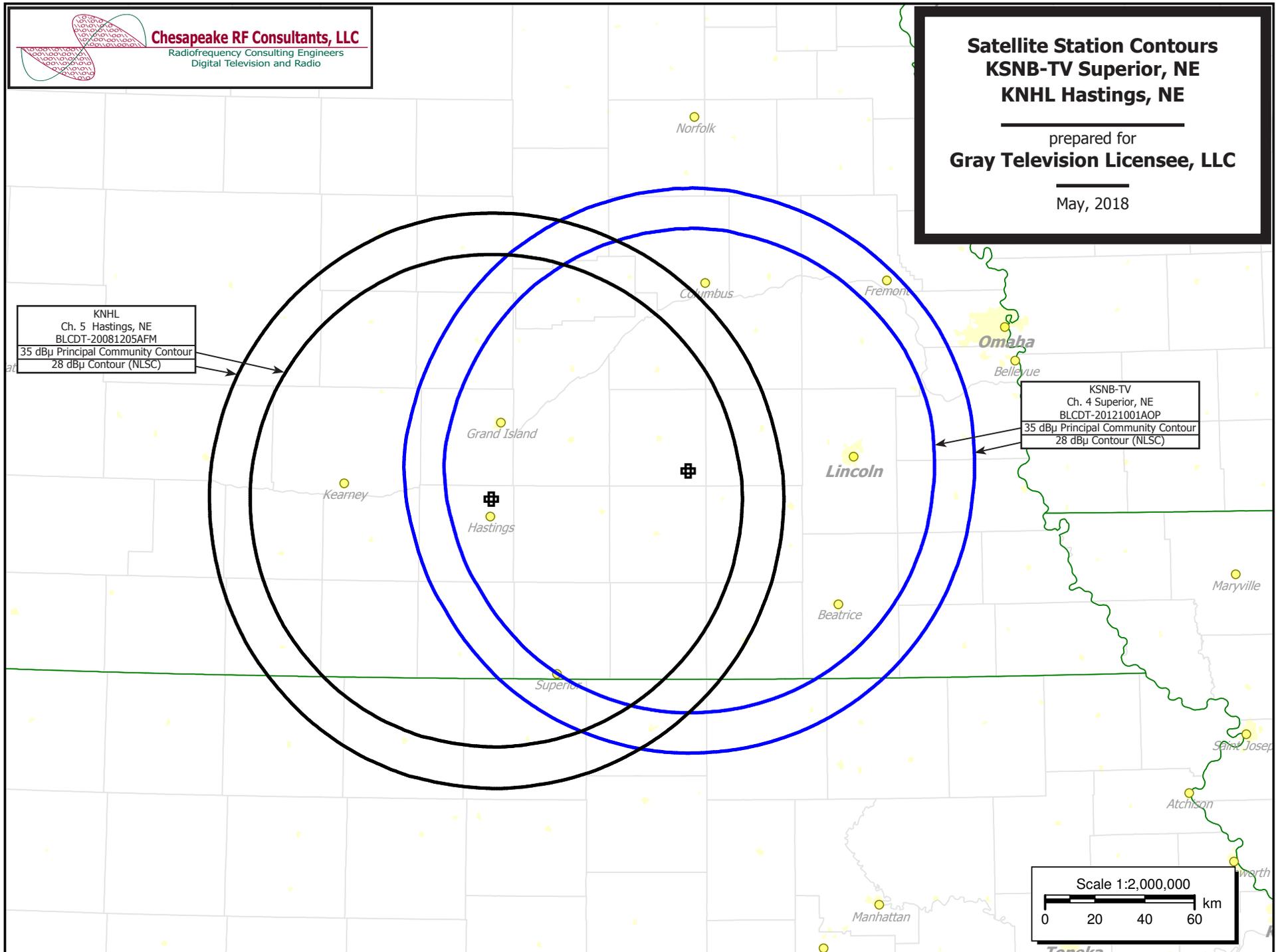
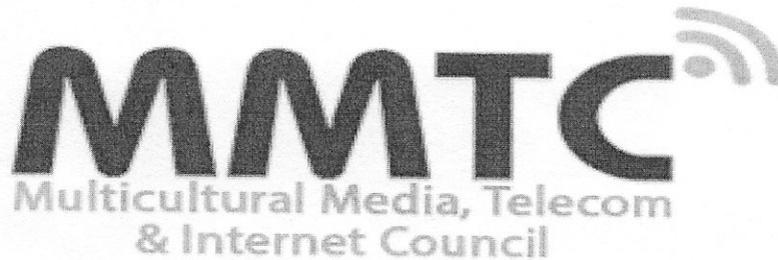


Exhibit B

Broker Letter from David Honig, President, MMTC Media and Telecom Brokers



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Washington, D.C. 20006
Phone: 202-332-0500
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September 10, 2018

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: KNHL (TV), Hastings, Nebraska (Facility ID No. 48003)

Dear Ms. Dortch:

The Multicultural Media, Telecom and Internet Council (MMTC) is a non-profit organization recognized by the IRS under 26 U.S.C. §501(c)(3). Since 1997, we have operated a media brokerage, MMTC Media and Telecom Brokers. I have served as President of the brokerage since its inception, and I have practiced broadcast law since 1983. I am familiar with the failing station rule, having helped the Kennard Administration at the FCC craft the rule.

In 2016, our brokerage was retained by Legacy Broadcasting, KNHL's licensee, to undertake to broker the sale of KHNL to out-of-market buyers.

Throughout most of 2017, MMTC held discussions with two qualified potential buyers, and lengthy negotiations ensued with one of them. However, the parties were unable to reach an agreement, and negotiations were terminated in November 2017. It became clear to me that no out-of-market buyer would ever offer anything close to the value of the station, for two reasons. First, the market is centered in Lincoln, which KNHL does not serve with an over-the-air signal; consequently, a company that operates KNHL as a stand-alone station would be forced to find ways to deliver its signal to cable and satellite operators in Lincoln. This distribution cost would make investing in programming and advertising sales difficult. Further, as the Sonlife affiliate for the Lincoln & Hastings-Kearney DMA, KNHL seldom achieves measurable ratings. It currently ranks behind the CBS, NBC, ABC, MeTV, and Fox affiliates for the market.

Marlene H. Dortch, Esq.

September 10, 2018

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Thus, based on my specific experience attempting to sell the station and on my more general knowledge of the broadcast television market, I believe KNHL would only be of interest to an in-market buyer, or to an out-of-market buyer but only at a severely depressed price.

Very truly yours,

By: _____

A handwritten signature in black ink, appearing to read "David Honig", written over a horizontal line.

David Honig

President

MMTC Media and Telecom Brokers