

Hoak Media of Colorado, LLC (“Hoak”), the proposed assignee, hereby certifies that the proposed assignment complies with the Commission’s multiple ownership rules and cross-media ownership limits. The stations proposed to be acquired in the proposed transaction are: full-power commercial television station KREX-TV, Grand Junction, Colorado (“KREX”); satellite television station KREY-TV, Montrose, Colorado (“KREY”); satellite television station KREG-TV, Glenwood Springs, Colorado (“KREG”); and low power Class A television station KGJT-LP, Grand Junction, Colorado (“KGJT”). The proposed transaction also includes assignment of a local marketing agreement (“LMA”) with respect to the programming and operations of full-power commercial television station KFQX-TV, Grand Junction, Colorado (“KFQX”).

**I. The Proposed Transaction Complies with the Commission’s National Television Ownership Rule and the Commission’s Cross-Media Limits**

First, with respect to the national television ownership rule and limits on cross-media ownership, Hoak does not own any broadcast authorizations or hold any media interests other than those proposed to be acquired in the instant transaction. Accordingly, Hoak is in compliance with Section 73.3555 of the rules of the Federal Communications Commission (“Commission”), 47 C.F.R. § 73.3555, and the national television ownership and cross-media ownership limits set forth in the Commission’s *Report and Order* in MB Dockets 02-277 and 03-130 and MM Dockets 00-244, 01-235 and 01-317, FCC 03-127 (rel. July 2, 2003) (“Biennial Review Order”).

**II. The Proposed Transaction Complies with the Commission’s Local Television Ownership Rule**

Second, with respect to local television ownership, Hoak also is in compliance with Section 73.3555 of the Commission’s rules, 47 C.F.R. § 73.3555, and the local television ownership limits set forth in the Biennial Review Order. As indicated above, Hoak does not own any television stations other than those proposed to be acquired in the instant transaction. The stations proposed to be acquired in the instant transaction all are assigned to the Grand Junction-Montrose Nielsen Designated Market Area (“DMA”). KFQX also is assigned to the Grand Junction-Montrose DMA. However, as further discussed below, ownership of all four stations and the right to program under the KFQX LMA will not violate the Commission’s local television ownership rule because (a) KGJT is a low-power television (“LPTV”) station, which is not counted for purposes of the Commission’s ownership limits (b) KREY and KREG are, and should continue to be, satellite stations, which are not counted for purposes of the Commission’s ownership limits, and (c) the KFQX LMA is grandfathered and, thereby, non-attributable. Accordingly, none of these stations count toward the local television ownership limit for Hoak.

Therefore, for purposes of applying the Commission's local television ownership rule, Hoak's proposed ownership in the Grand Junction-Montrose market is limited to KREX and is in compliance with the Commission's rules.

A. Ownership of KGJT is Non-Attributable Because KGJT is an LPTV Station

Interests in LPTV stations are not counted as attributable ownership interests under the Commission's local television ownership rule.<sup>1</sup> Therefore, Hoak's acquisition of KGJT through the proposed transaction will not cause Hoak to violate the local television ownership rule.

B. Ownership of KREY and KREG is Non-Attributable Because KREY and KREG Are, and Should Continue to be, Satellite Stations of KREX

The Grade B contours of KREY and KREG overlap the Grade B contour of KREX, which overlap generally would implicate the Commission's local television ownership rule. However, KREY and KREG currently are operated as satellite stations of KREX and Hoak proposes to continue to operate both Stations as satellite stations of KREX. Interests in satellite stations are not counted as attributable ownership interests under the Commission's local television ownership rule.<sup>2</sup>

The Commission requires that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with the satellite waiver policy that is applicable to new satellite stations.<sup>3</sup> Pursuant to the Commission's satellite waiver 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 station will provide service to an underserved area; and (3) no alternative operator is ready and able to either construct or to purchase and operate the satellite as a full-service station.<sup>4</sup> An applicant seeking Commission consent to the assignment

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<sup>1</sup> 47 C.F.R. § 73.3555(b).

<sup>2</sup> Satellite stations are exempt from the Commission's multiple ownership rules. As such, operation of KREY and KREG as satellites of KREX will not violate the Commission's local television ownership rule. See Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, Television Satellite Stations Review of Policy and Rules, Report and Order, MM Docket No. 87-8, FCC 99-209, 14 FCC Rcd. 12903 (1999).

<sup>3</sup> See Television Satellite Stations, 6 FCC Rcd. 4212, 4215 (1991) ("Satellite Order").

<sup>4</sup> Id.

or transfer of a station that previously has been granted satellite status must demonstrate that these three criteria are applicable or, in the alternative, that compelling circumstances exist to warrant continued satellite status.<sup>5</sup> If an applicant cannot qualify for the presumption, the Commission will evaluate the proposal on an ad hoc basis, and grant the application if there are compelling circumstances that warrant approval.<sup>6</sup> Both of the Stations meet all three of the satellite waiver criteria and thus should continue to qualify as satellite stations following the consummation of the proposed assignment.

First, as the attached engineering exhibit demonstrates, no overlap exists between the city grade contours of KREX and its two satellite stations, KREY and KREG.<sup>7</sup> Second, the communities of license of the Stations – Montrose, Colorado and Glenwood Springs, Colorado – constitute “underserved” communities for purposes of satellite status analysis. A proposed satellite community of license is considered “underserved” if there are two or fewer television stations, including commercial, noncommercial, and satellite stations, already licensed to it.<sup>8</sup> Glenwood Springs and Montrose each have been allotted only two television allotments, one of which is reserved for non-commercial use.<sup>9</sup> Both non-commercial allotments currently are vacant. Therefore, each of the two communities is served by only one local station. Thus, the proposed satellite stations would continue to provide service to underserved areas.

Third, it is clear that no alternative operator is ready and able to purchase and operate either satellite station as a full-service station. KREY has been operating as a satellite of KREX since at least 1969.<sup>10</sup> KREG has been operating as a satellite of KREX since 1987, when it was acquired by W. Russell Withers, Jr. from Western Slope Communications, Ltd., Debtor-in-Possession.<sup>11</sup> In granting satellite status to KREG (then KCWS(TV)) in 1987, the Commission

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> See Engineering Exhibit.

<sup>8</sup> See Satellite Order at 4215.

<sup>9</sup> See 47 C.F.R. § 73.606(b).

<sup>10</sup> See Application of Storm King Television, Inc., Montrose, Colo. for a Construction Permit for a New VHF Television Broadcast Translator Station, 19 FCC 2d 876 (1969) (“Station KREY-TV operates as ‘primarily a satellite’ of station KREX-TV, Grand Junction, Colo., rebroadcasting all of station KREX-TV’s programming except for ‘an approximate average of 1 hour each week’ of programming originated locally at station KREY-TV”).

<sup>11</sup> Direction Letter from William J. Tricarico, Secretary, Federal Communications Commission to W. Russell Withers, Jr., c/o William P. Bernton, Esq., Gardner, Carton & Douglas (June 10, 1987) (cited as 2 FCC Rcd 3460).

concluded that a sufficient showing “ha[d] been made to justify authorization of a satellite operation in Glenwood Springs.”<sup>12</sup> Specifically, the Commission found that the information submitted “support[ed] the contention that it is unlikely that the Glenwood Springs area will support a full-service station.”<sup>13</sup> The Commission noted that “[t]he terrain in the area limits the extent of the [Grade B contour] overlap with [KREX], and the small overlap area is sparsely populated.”<sup>14</sup> Because KREG had been required to cease broadcasting due to an inability to operate as a stand-alone station prior to Withers’ acquisition of the station, the Commission concluded that grant of satellite status “represent[ed] the only likely means by which the station [would] be restored to the air.”<sup>15</sup> The terrain and small market status of KREY and KREG are similar.

Because KREY and KREG both cover small population areas within the Grand Junction-Montrose DMA, neither station would be able to gain access to network or syndicated programming without operating as a satellite of another station in the market. Further, the four major broadcast networks already have affiliates in the Grand Junction-Montrose DMA and are likely to have DMA-wide exclusivity for such programming, as is typical in affiliation agreements. Given the small market and level of revenues available in such a market, neither station operating as a stand-alone station would be able to afford to purchase licensing rights for local programming such as college sports events. It also is unlikely that either station operating as a stand-alone station could afford to produce and air local news such as that aired throughout the Grand Junction-Montrose DMA on KREX and its satellite stations. For all of these reasons, KREY and KREG have been operating as satellite stations for 33 and 16 years, respectively. Continued satellite status is warranted based on the same factors that have kept KREY and KREG as satellite stations for so long.<sup>16</sup> Accordingly, the Commission should grant continued satellite status for these stations. Assuming such status is granted, the stations will not be attributable to Hoak for purposes of the local television ownership rule.

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<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Hoak intends to supplement this exhibit with additional information to show further that KREY and KREG would be unable to operate as stand-alone stations.

C. The Right to Program Under the KFQX-TV LMA are Non-Attributable Because The KFQX LMA is Grandfathered

LMAs generally are attributable under the Commission's local television ownership rule.<sup>17</sup> However, the LMA to be acquired in the instant transaction was entered into on August 23, 1994.<sup>18</sup> Accordingly, the LMA does not violate the Commission's local television ownership rule, because LMAs entered into before November 5, 1996 are not attributable if cognizability of the LMA would result in violation of an ownership rule.<sup>19</sup> In fact, under the Commission's "grandfathering" policy with respect to such LMAs, during the period up to and during the Commission's 2004 biennial ownership review, LMAs entered into prior to November 5, 1996 may remain in full force and effect and may be transferred and/or renewed by the parties.<sup>20</sup> The Commission recently affirmed this grandfathering policy in the Biennial Review Order.<sup>21</sup> Accordingly, the KFQX LMA, as renewed, is not attributable to Hoak for purposes of the local television ownership rule.

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<sup>17</sup> 47 C.F.R. § 73.3555, note 2(j).

<sup>18</sup> In accordance with the Commission's grandfathering policy, the LMA was renewed on August 28, 1999.

<sup>19</sup> Review of the Commission's Regulations Governing TV Broadcasting, TV Satellite Stations Review of Policy & Rules, 14 FCC Rcd 12903 (1999) ("Local TV Ownership Report and Order") at ¶¶ 139-149; Further Notice of Proposed Rule Making, 10 FCC Rcd 3524 (1995) at ¶89.

<sup>20</sup> Local TV Ownership Report and Order at ¶ 146.

<sup>21</sup> Biennial Review Order at ¶ 492 ("In our *Local TV Ownership Report and Order*, we grandfathered LMA combinations that were entered into prior to November 5, 1996, through the end of our 2004 biennial review. We do not alter this policy. These LMAs are not affected by the grandfathering policy adopted herein").