Assignee's Exhibit No. 14
FCC Form 314
Section III, Paragraph 6

In this application, MBC Grand Broadcasting, Inc. ("MBC Grand"), proposes to acquire radio station KSTR-FM, Montrose, Colorado, from Leggett Broadcasting, Inc. ("Leggett"). This application unquestionably complies with Section 73.3555 of the Rules. The purpose of this exhibit is to set out the applicable rule and sufficient additional information to demonstrate compliance with the rule.

Text and Relevant History of Section 73.3555. Section 73.3555(a)(1) of the Rules provides, in pertinent part:

> (a)(1) Local radio ownership rule. A person or single entity (or entities under common control) may have a cognizable interest in licenses for AM or FM radio broadcast stations in accordance with the following limits:
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> (iii) In a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations, not more than 6 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM) . ...

In its *Report and Order* in MM Docket Nos. 03-127, etc., *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13712-13 (2003)(the "*Biennial Review Report and Order*"), the FCC, among other changes to its multiple ownership rules, revised its definition of a radio market for purposes of determining the maximum number of stations that a single entity may own, operate or control. Since 1992, radio markets, for purposes of the local ownership limitations, were defined by the FCC by reference to the overlapping principal community contours of the stations proposed to be commonly owned. *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387, 6395 (1992). The revised 2003 rule defined radio markets, generally, in light of the geographic limits recognized by the Arbitron ratings service as a "Metropolitan Survey Area" or "Metro."

The revised rules, however, were stayed by an order of the U.S. Court of Appeals for the Third Circuit, pending judicial review. In an opinion released June 11, 2004, the Appeals Court reversed the FCC's decisions to relax certain of the multiple ownership rules and affirmed the FCC in other respects, including the change in the definition of a radio market. *Prometheus Project v. FCC*, 2004 LEXIS 12720, 143 (2004). Notwithstanding that it had upheld several aspects of the *Biennial Review Report and Order*, the Appeals Court specifically left its stay Order in effect pending FCC action on remand and possible further review. *Id.*, 2004 LEXIS 12720, 171. The effect of the Court's decision, therefore, is to leave the pre-2003 rules in place and applicable to this application.

The numerical limits in the local ownership rule are themselves the consequence of an explicit Congressional mandate in the Telecommunications Act of 1996, P.L. 104-104, § 202(b), 110 Stat. 110, to wit:

> The Commission shall revise section 73.3555(a) of its regulations (47 C.F.R. 73.3555) to provide that–
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> * * * * *
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> (C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM) . . ..

In Section 202(h) of the same act, Congress further mandated the FCC to periodically review all of its multiple ownership regulations with an eye toward further relaxation of the rules specified by Congress:

> (h) Further Commission Review.--The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

When the FCC amended Section 73.3555 of the Rules in response to the new statute, it did not even solicit comments on how to implement the Congressional mandate. *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996; Order*, 11 FCC Rcd 12368 (1996).

Notwithstanding Congress's unambiguous direction in the 1996 Act, commencing in 1998, the FCC began "flagging" certain radio assignment applications that would result in one entity controlling fifty percent or more of radio advertising revenues in the relevant market or two entities receiving seventy percent or more of market revenues. Underlying this practice was the assumption that, notwithstanding the rules Congress directed the agency to adopt, the FCC was somehow empowered to deny applications that were in unquestioned compliance with the numerical limits. Several assignment applications were designated for hearing on this doubtful premise, which was adopted without notice to the public or opportunity for comment, as required by the Administrative Procedures Act. In MM Docket No. 01-317, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, Notice of Proposed Rule Making*, 16 FCC Rcd 19861 (2001) (the "*Local Markets NPRM*"), the FCC acknowledged the irregularity of the flagging practice: "Because this . . . [the flagging practice] developed out of decisions issued in specific cases, the Commission never received the benefit of public input that a rulemaking proceeding would have afforded." 16 FCC Rcd at 19871.

The FCC further admitted that the flagging practice had “led to unfortunate delays that do not serve well the interests of the agency, the parties or the public.” 16 FCC Rcd at 19870.

Even in the face of the admitted shortcomings of “flagging” individual applications, one FCC proposal In the *Local Markets NPRM* was to incorporate its case-by-case review of otherwise grantable applications into its rules. The FCC also sought comments on how to deal with “failing stations” in the course of such case-by-case evaluations, suggesting criteria similar to those used to evaluate requests for waivers of the television duopoly rule, including: (1) one of the stations has had low all-day audience share; (2) one of the merging stations is in poor financial condition, i.e., has had negative cash flow for the three previous years; (3) the transaction will produce tangible public interest benefits; (4) the proposed buyer is the only reasonably available candidate willing and able to acquire and operate the station. 16 FCC Rcd at 19891-92. Pending completion of the rulemaking proceeding, the FCC declared that, as an “interim policy,” it would continue its flagging policy; it further directed the staff to seek additional information in certain specified areas concerning “flagged” applications, including “efficiencies and other public interest benefits” that would result from the proposed transaction. 16 FCC Rcd 19895-97. Pursuant to that “interim policy,” the FCC has reviewed, and granted, certain applications under the “failing station” criteria proposed in the *Local Markets NPRM*. E.g., *Birmingham Christian Radio, Inc.*, 18 FCC Rcd 7909 (2003); *Daugherty Broadcasting Company, LLC*, 17 FCC Rcd 18468 (2002).

The *Local Markets* proceeding was consolidated with the *Biennial Review* proceeding (MM Docket No. 03-127), the comprehensive biennial review of the multiple ownership rules required by Section 202(h) of the 1996 Act. In its *Report and Order* at the conclusion of the *Biennial Review* proceeding, the FCC determined that the flagging practice should be abandoned. The FCC acknowledged that the flagging practice imposed substantial additional costs on buyers and sellers of radio properties and made the outcome of particular transactions difficult if not impossible to predict. "Bright-line" rules, the FCC concluded, would permit better planning of financial transactions, ease application processing and minimize regulatory costs. *2003 Biennial Review Report and Order*, supra, 18 FCC Rcd at 13645-46.

The Third Circuit did not comment on this aspect of the 2003 revisions of the local radio ownership rule in either its stay order or the more recent opinion. The FCC staff, however, and without any public notice, has resumed its practice of undertaking extended economic analyses of applications that trigger the fifty/seventy percent thresholds (although it no longer "flags" such applications in the public notices accepting the applications for filing), even though the practice has never been part of the rules and is not mandated by the opinion of the Court of Appeals.

On seven separate occasions, in three different docketed proceedings, MBC Grand has set forth, at length, its position that the "flagging" practice, the extended economic analyses, and the underlying assumption that the FCC has authority to refuse to grant applications that conform to the rules it adopted at the direction of Congress are all unlawful and should be terminated. MBC Grand has been far from alone in taking that position, and the FCC's flagging practice was not endorsed by the Court of Appeals in any respect. The flagging practice ignore the express language of the 1996 statute and flies in the face of the legislative history. In the only proceeding in which it was subject to public notice and comment, the FCC stated, at the outset and at the conclusion of the proceeding, that it disserved both the public's and the agency's interests.

The point being made is that the FCC staff should conserve its and the parties resources, eschew an unlawful and ultimately pointless analysis of supposed economic consequences of this transaction, and expedite the improvements in service that will result from MBC Grand's acquisition of KSTR-FM, by granting this application without delay beyond the 30-day public notice period required by Section 309 of the Act. The only issue legitimately before the FCC is whether the application complies with the numerical limits of the multiple ownership rules, which it does.

Compliance With Numerical Limits. Whichever definition of radio markets is applied, this application conforms to the numerical limits set forth in Section 73.3555 of the Rules. Attached hereto is an exhibit prepared by MBC Grand Broadcasting, Inc.'s consulting engineer, Larry H. Will, P.E., consisting of an engineering statement and a map. The exhibit shows that, under the pre-2003 rules, the Grand Junction-Montrose, Colorado, radio market (defined as the overlapping principal community contours of KSTR-FM and KMGJ(FM), KJYE-FM, KMOZ-FM, KNZZ(AM) and KTMM(AM), all owned by MBC Grand and licensed to Grand Junction, Colorado, plus all other full power radio stations with a principal community contour that intersects or overlaps the principal community contour(s) of any of the above stations) consists of 22 commercial radio stations.[1] Under the revised rule adopted in the *Biennial Review Report and Order*, according to information maintained

[1] For convenient uploading to the CBDS electronic-filing web site, the file comprising the map has been compressed. A full-size paper version of the map is available if requested by the FCC staff.

by the FCC staff, the relevant market consists of twenty radio stations. Whichever definition is applied, a single entity may own, operate or control up to six radio stations in the market, no more than four of which may be AM stations or FM stations.

MBC Grand is currently the licensee of AM radio stations KNZZ and KTMM, Grand Junction, and KDTA, Delta, Colorado, and FM stations KMGJ, KJYE and KMOZ-FM, all Grand Junction. The principal community contour of KDTA overlaps the principal community contours of the three FM stations and KNZZ but not that of KTMM. MBC Grand thus currently holds six stations in the Grand Junction market (three AM, three FM). Contemporaneously with the filing of this application, MBC Grand will be filing an application for consent to the assignment of the KDTA license to United Ministries.[2] Upon completion of the acquisition of KSTR-FM and the divestiture of KDTA, MBC Grand would still own six stations in the market -- two AM stations and four FM stations -- and would be in compliance with the numerical limits of the local ownership rule.

Public Interest Factors Served by a Grant of this Application. In the event the staff extends its review beyond the narrow question of compliance with the numerical limits of the local ownership rules, the criteria considered in the *Birmingham Christian Radio* and *Daugherty* cases clearly dictate a grant of this application.

!. *KSTR-FM's Low Market Share*. In the November 2003 Arbitron survey, KSTR-FM registered its third consecutive decline, to a 1.4 rating, making it the twelfth-ranked in the Grand Junction market (and the lowest-ranked station among stations with

[2] United Ministries is a Pennsylvania non-stock, not-for-profit organization that is also the licensee of AM station KJOL, Grand Junction. MBC Grand's sale of KDTA, if required to achieve compliance with the local ownership rule, is a condition of the Asset Purchase Agreement between MBC Grand and Leggett Broadcasting.

any reported listening). Previous ratings were 5.0 in May 2002, 4.2 in November 2002, and 3.2 in May 2003. The station's sustained decline in listenership is attributable to unstable programming (fifteen format changes over a period of five years), the inability to hire quality local talent, a lack of financial resources for station promotions, and recurrent technical problems that have often required KSTR-FM to operate at less than power or from its auxiliary transmitter site with reduced coverage.[3]

2. *Poor Financial Condition of KSTR-FM*. The factors that have led to the sharp and sustained decline in KSTR-FM's audience are the direct consequence of verifiable and irreversible financial difficulties. Under separate cover, with appropriate requests for confidential treatment, the parties will submit detailed financial statements compiled by the licensee's certified public accounting firm, documenting the licensee's history of operating losses over several years. Obviously, a licensee cannot continue to operate and sustain financial losses indefinitely. KSTR-FM's recent history foreshadows further deterioration in the station's ability to serve the public and, if the station is not acquired by a financially viable entity, a loss of service.

3. *Public Interest Benefits Flowing From this Transaction*. MBC Grand's acquisition of KSTR-FM, however, will have immediate benefits for both advertisers and the listening public, especially advertisers and listeners in the station's community of license.

A. *Benefits to advertisers.* Advertisers will benefit through more convenient access and more efficient utilization of advertising dollars. KSTR-FM currently has no sales staff.

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[3] A leading publication does not count KSTR-FM as a "viable FM" station in the Grand Junction market.

By contrast, MBC Grand has sales representatives in the Montrose area on a daily basis. In addition, advertisers will be able to purchase time, in combination and at a discount, on not only KSTR-FM but also any of the other MBC Grand stations, making it possible to reach broader as well as different demographic groups. MBC Grand also has a much larger music library, and the resources to utilize the services of talented music consultants, which will enable the station, and advertisers, to reach a much larger audience. KSTR-FM has only minimal facilities for the production of local advertising announcements while MBC Grand has complete production facilities and announcers that include the most recognized voices in the market. MBC Grand is already a sponsor of a number of Montrose events, including the annual Montrose Showcase, staged by the Montrose Area Merchants Association. Many of these events will be shifted to KSTR-FM, making the station more of a local presence in Montrose.

B. *Benefits to listeners*. Listeners, and the general public, will also benefit in several respects. As the FCC has recognized in other cases, the acquisition of a stand-alone station by a group owner already established in the market is likely to result in a number of operating efficiences, through shared facilities, engineering, administrative personnel, traffic and accounting functions, among others. These efficiencies in turn permit the delivery of a better-quality product. *See*, e.g., *Daugherty Broadcasting Company, LLC*, supra, 17 FCC Rcd 18468 at 18480. Working with its outside consultants, MBC Grand will identify music programming that more closely reflects the interests of KSTR-FM's listeners. The technical quality of the station's broadcasts will improve through the purchase and installation of a new transmitter, utilization of up-to-date audio processing equipment, and construction of a new studio and console dedicated to programming for KSTR-FM.

Listeners, and the community of Montrose in particular, who currently receive no news or weather information from KSTR-FM, will have access to regular local newscasts (eight newscasts daily, produced by KNZZ's three-person local news department) and up-to-date weather forecasts (four times each hour during the morning and twice hourly at other times). Last, in meeting its obligations under the FCC's equal employment opportunities rules, MBC Grand will participate in a Montrose job fair.

4. *MBC Grand is the Most Suitable Buyer*. The sale of KSTR-FM to any other buyer would yield, at best, a depressed selling price. The licensee of KSTR-FM has made active and serious efforts to sell the station and the MBC Grand offer is by far the best offer received for the station. As set forth in the attached statement by media broker Jody McCoy, KSTR-FM has been listed for sale since the January 2004.[4] Mr. McCoy is a broker with more than ten years of experience, who has handled approximately 100 radio station sales. He is affiliated with Media Services Group, a national brokerage firm with eight regional offices across the country and a track record of brokering more radio station sales than any other brokerage firm over the past five years. Mr. McCoy's efforts, which included prepared presentations to fourteen qualified buyers, circulation among the other directors and associates of Media Services Group, and a listing on the Media Services Group web site, elicited a grand total of three offers, one of which was withdrawn because

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[4] Prior to entering into a listing arrangement with Media Services Group, the president of the licensee attempted to sell the station without a broker. See the attached statement of Brad Leggett. According to Mr. Leggett, at least five broadcasters visited the station and reviewed its financial information but were not interested in purchasing the station because it did not make financial sense to attempt to operate a stand-alone station in the Grand Junction market. At the time the station was listed with Mr. McCoy, Mr. Leggett states, the station "face[d] the possibility of financial ruin."

of the offeror's inability to identify satisfactory management. The MBC Grand offer was 20 percent higher than the remaining offer and included payment of the deferred portion of the purchase price over a significantly shorter period of time.[5]

The sale of KSTR-FM to MBC Grand will have no significant effect on competition in the Grand Junction market. According to published estimates of radio advertising sales in the Grand Junction market, KSTR-FM represents less than five percent of total market revenue.[6] On the other hand, acquisition of KSTR-FM by MBC Grand will provide badly-needed programming stability, financial resources and technical improvements, and result in important benefits to advertisers and listeners throughout the market and, especially, in the station's community of license.

The transaction complies with the numerical limits of Section 73.3555; for that reason, and the reasons stated above, the assignment application should be granted expeditiously.

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5 Section 310(d) of the Communications Act provides that, in reviewing a proposed assignment of a broadcast station license, "the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee."

6 These estimates are from the same source relied upon by the FCC staff for similar purposes.