REQUEST FOR CONTINUED SATELLITE EXCEPTION

This application seeks Commission consent to assign the licenses for the following television stations from Elcom of South Dakota, Inc. ("Elcom") to South Dakota Television License Sub, L.L.C. ("SDTV"): KSFY-TV, Sioux Falls, South Dakota; KABY-TV, Aberdeen, South Dakota; and KPRY-TV, Pierre, South Dakota (collectively, the "Stations"). KABY-TV and KPRY-TV (collectively, the "Satellites") have operated as satellite stations of KSFY-TV since at least September 7, 1993.[1] When Elcom acquired the Stations on March 31, 1995, it demonstrated that the Satellites continued to qualify for the satellite exception contained in Note 5 to Section 73.3555 of the Commission's rules.[2] 47 C.F.R. §73.3555, Note 5. For the reasons set forth below, Elcom and SDTV (collectively, the "Applicants") hereby request the continuation of the Note 5 satellite exception contained in Section 73.3555 of the Commission's rules so that SDTV may own and operate the Satellites as well as KSFY-TV following consummation of the proposed assignment.

The Satellites as well as primary Station KSFY-TV, Sioux Falls, serve the Sioux Falls (Mitchell) Designated Market Area (the "Sioux Falls DMA"). Both Satellites currently retransmit substantially all of KSFY-TV's programming pursuant to the satellite exception contained in Note 5 to Section 73.3555 of the Commission's rules. In light of the nature of the

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1 *See* Letter dated September 7, 1993 from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, to New Vision Television I, Inc. (reply ref. 1800E1-ME) (granting, *inter alia*, File Nos. BALCT-930716KQ-KS).

2 *See* File Nos. BALCT-19941201KM-KO (the "Elcom Application"); Letter dated February 13, 1995 from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, to Elcom, *et al.* (copy appended hereto as Exhibit A).

Sioux Falls DMA, including the operation of the other commercial television stations in the market, the Applicants respectfully submit that the continued common ownership of KSFY-TV and the Satellites would serve the public interest and satisfy the satellite exception contained in Section 73.3555 of the Commission's rules.

In the *Report and Order* in MM Docket No. 87-8, *Television Satellite Stations Review of Policy and Rules*, 6 FCC Rcd 4212 (1991), *on recon., Second Further Notice of Proposed Rule Making*, 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*"), the Commission adopted a presumption that television satellite operations are in the public interest if an applicant can satisfy the following public interest criteria: (1) there is no city-grade overlap between the parent station and the proposed satellite station; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is "ready and able" to construct or to purchase and operate the satellite as a full-service stand-alone facility. 6 FCC Rcd at 4213-14. As demonstrated below, both Satellites satisfy the above criteria and qualify for the presumption that continued operation as a satellite would serve the public interest.

1. No City-Grade Overlap.

In granting the Elcom Application, the Commission determined that the city-grade contours of KABY-TV and KPRY-TV do not overlap the city-grade contour of KSFY-TV. *See* Exhibit A at 2. None of the Stations has modified its authorized technical facilities since the Commission's grant of Elcom's request for a continued satellite waiver in February 1995. Thus, both of the Satellites continue to satisfy the first criterion in the *TV Satellite Order* for a satellite exception to Section 73.3555 of the rules.

2. The Satellites Provide Service to Underserved Areas.

The second criterion set forth in the *TV Satellite Order* is that the satellite station(s) must serve an underserved area. An applicant can demonstrate that an area is underserved using either of two tests. Under the "transmission test," a satellite community is considered to be undeserved if there are two or fewer full-service stations licensed to that community. *TV Satellite Order*, 6 FCC Rcd at 4215.

In the Elcom Application, Elcom demonstrated that *KDSD-TV, Channel 16, is the only other television station licensed to Aberdeen. Similarly, *KTSD-TV, Channel 10, is the only other station licensed to Pierre. *See* Exhibit A at 2. KDSD-TV and KTSD-TV continue to be the only other stations licensed to these communities. Therefore, because each of the Satellites continue to provide service to underserved areas, they continue to satisfy the second criterion for the satellite exception contained in Section 73.3555 of the rules.

3. No Alternative Buyer is Ready and Able to Operate the Satellites as Stand-alone Stations.

The third criterion established in the *TV Satellite Order* requires that there be no alternative buyer that is ready and able to purchase and operate the proposed satellite as a full-service, stand-alone station. *See, e.g., Roy M. Speer*, 11 FCC Rcd 14147, 14165-66 (1996) (reauthorizing satellite exemption in connection with transfer of control application even without evidence of efforts to sell satellite station separately when satellite was not "a financially viable stand-alone station"), *aff'd*, 11 FCC Rcd 18393 (1996). An analysis of the current Sioux Falls

DMA demonstrates that neither Aberdeen nor Pierre is economically capable of supporting a stand-alone station.

The primary factor which precludes the Satellites from being able to operate as stand-alone stations is that there are not enough viewers in their respective service areas to generate sufficient advertising revenue to support the stations. The Sioux Falls DMA, which currently is ranked as the 112th largest television market,[3] is one of the most sparsely-populated television markets in the country. There are only 244,310 television households scattered throughout the entire DMA, which covers more than half the state of South Dakota and, collectively, 58 counties in South Dakota, Iowa, Minnesota and Nebraska. *Id.* The Sioux Falls market extends from Osceola County (Iowa) in the east to Cherry County (Nebraska) in the west (approximately 368 miles), and from the South Dakota/North Dakota border in the north to Cherry County (Nebraska) in the south (approximately 270 miles).[4] The average population density of the entire DMA is fewer than three television households per square kilometer.[5] The most populated county in the DMA has only 59,290 television households.[6]

The geographic nature of the market itself demonstrates the necessity of having satellites serve the remote and sparsely-populated areas of the Sioux Falls DMA. With the

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[3] *See Broadcasting & Cable Yearbook* (2003-2004) at B-205.

[4] The approximate geographic area of the Sioux Falls DMA was calculated based on rough estimates using the mileage figures contained in *Rand McNally Road Atlas* (1997).

[5] The approximate television household density of the Sioux Falls DMA was calculated based on (i) the number of TV households in the market (as reflected in *Television & Cable Yearbook* (2003-2004) at B-205), and (ii) the geographic size of the various counties in the DMA (as set forth in Exhibit B hereto): (244,310/88,524.4 sq. km) = 2.76 TV households per square kilometer.

[6] *See Broadcasting & Cable Yearbook* (2003-2004) at B-205.

exception of Station KAUN(TV), Sioux Falls, each of the primary full-power commercial stations in the market has at least one satellite station because satellites offer the only feasible means of providing local, off-air television service to large segments of the DMA.[7] As a result, no qualified party has inquired about operating either Satellite as a stand-alone facility. Appended hereto as Exhibit C is a letter dated December 15, 2003 from Brian E. Cobb, an experienced media broker who currently serves as President of CobbCorp, LLC. Mr. Cobb previously provided a letter in support of Elcom's request for a satellite exception of the Commission's multiple ownership rule in connection with the Elcom Application. In his letter, Mr. Cobb states in pertinent part: "I reviewed this situation several years ago, and after reviewing it again now, it is still my opinion that the stations be permitted to remain as satellites." *See* Exhibit C. Mr. Cobb further states: "The two satellite stations are in small towns that would not be able to provide enough financial support to enable them to survive as stand alone facilities." *Id.* In light of the imminent and substantial costs of constructing and operating digital facilities for each of the Stations, as well as the current economic recession which has adversely affected the entire broadcast industry, it is not feasible for any party to operate either Satellite as a stand-alone facility.[8] Accordingly, the Applicants respectfully submit that neither KABY-TV nor KPRY-TV could survive as a stand-alone operation.

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[7] *See Television & Cable Factbook* (2003) at A-1439 to A-1457.

[8] *See, e.g.*, Steve McClellan, *Through a Crystal Ball Darkly, Broadcasting & Cable* at 5-8 (rel. September 10, 2001) (detailing continued depressed forecasts for television advertising market that is as bad as some analysts have ever seen).

CONCLUSION

As demonstrated above, the facts and circumstances concerning the Stations establish that: (1) there is no city-grade contour overlap between KSFY-TV and the Satellites; (2) both Satellites serve an underserved area; and (3) neither Satellite would be economically viable as a stand-alone station. A grant of this request would not diminish diversity or competition in the Sioux Falls DMA, but would merely preserve the status quo by maintaining the Satellites' long-established relationship with KSFY-TV. Given the rural and sparsely-populated nature of the Sioux Falls market, there is every reason to believe that, absent their parent-satellite relationship with KSFY-TV, the Satellites would be unable to survive, and, thus, many residents of central and eastern South Dakota would lose their only ABC-network television service. Therefore, the public interest would be served by maintaining the status quo and permitting Stations KABY-TV and KPRY-TV to continue to operate as satellites of KSFY-TV pursuant to Note 5 of Section 73.3555 of the Commission's rules.

EXHIBIT A

<u>Letter Dated February 13, 1995 from Barbara A. Kreisman, Chief, Video Services Division, Mass Media Bureau, to Elcom of South Dakota, Inc.</u>

Public Reference Rm
BALCT-941201KM
Rm 239

Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

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FEB 13 1995

DISPATCHED BY

1800E3-KC

Elcom of South Dakota, Inc.
c/o Joseph Godles, Esq.
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036

Elcom of Hattiesburg, Inc.
c/o Joseph Godles, Esq.
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New Vision Television Licenses
of South Dakota
c/o Todd M. Stansbury, Esq.
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

New Vision Television Licenses
of Hattiesburg
c/o Todd M. Stansbury, Esq.
Wiley, Rein and Fielding
1776 K Street, N.W.
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Re: KSFY-TV, KABY-TV, KPRY-TV, K07QL
(File Nos. BALCT-941201KM-KO)
WHLT(TV)
(File No. BALCT-941201KI)

Gentlemen:

This is in reference to the above-captioned applications for the assignment of the licenses of KSFY-TV, KABY-TV, KPRY-TV, and K07QL from New Vision Television Licenses of South Dakota ("NVTV Lic. of SD") to Elcom of South Dakota, Inc. ("Elcom-SD"), and the license of WHLT(TV) from New Vision Television Licenses of Hattiesburg ("NVTV Lic. of Hattiesburg") to Elcom of Hattiesburg, Inc. ("Elcom-Hattiesburg"). Stations KABY-TV, Aberdee, SD, and KPRY-TV, Pierre, SD, are authorized to operate as satellites of KSFY-TV, Sioux Falls, SD, and WHLT(TV) is authorized to operate as a satellite of WJTV(TV), Jackson, MS. Elcom-SD and Elcom-Hattiesburg propose to continue satellite operation of the stations, and they request grant of the applications pursuant to the exception to the duopoly prohibition for satellite operations as set forth in Note 5 of Section 73.3555 of the Commission's Rules.

In support of their request, Elcom-SD and Elcom-Hattiesburg contend that the continued operation of KABY-TV, KPRY-TV and WHLT(TV) as satellites meets the three criteria established by the Commission in its Report and Order, Television Satellite Stations, 6 FCC Rcd 4212 (1991), (petitions for partial stay and reconsideration pending). Pursuant to that policy an applicant for satellite status is entitled to a presumption that the proposed operation is in the public interest if it meets the following three criteria: (1) there is no City Grade contour overlap between the parent and satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service station. 6 FCC Rcd at 4213-14. Applicants meeting this criteria, when unrebutted, will be viewed favorably by the Commission. Id. at 4214. For the reasons set forth below, we find that the continued operation of KABY-TV and KPRY-TV as satellites of KSFY-TV, and WHLT(TV) as a satellite of WJTV(TV), is consistent with our satellite policy.

With respect to the first criterion, a review of the authorized facilities of the stations demonstrates that the City Grade contours of KABY-TV and KPRY-TV do not overlap the City Grade contour of KSFY-TV, nor does the City Grade contour of WHLT(TV) overlap the City Grade contour of WJTV(TV). With respect to the second criterion, an applicant can use two different tests to demonstrate that an area is underserved. Under the "transmission test," a proposed satellite community of license is considered underserved if there are two or fewer full-service stations already licensed to it. Order, 6 FCC Rcd at 4215. Our records show that KTSD-TV, Channel 10, is the only other station licensed to Aberdeen, SD, and KDSD-TV is the only other station licensed to Pierre, SD. WHLT(TV) is the only station licensed to Hattiesburg, MS. Therefore, the areas are underserved.

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 station. In 1993, when the Commission granted the previous applications to assign these licenses to New Vision TV, L.P. (FCC File Nos. BALCT-930716KO et al.), it relied on a statement that Brian E. Cobb, an experienced broadcast broker, had supplied.[1] Mr. Cobb had concluded that the stations were not in large enough communities to be viable as stand-alone stations, and that attempting to find a buyer for the satellites on a stand-alone basis would be futile. In those applications, the Commission found that continued operation of the facilities as satellites satisfied the Commission's criteria in its Order, including the third criterion.

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[1] See Letter from Barbara A. Kreisman, Chief, Video Services Division, to NVTV (Sept. 7, 1993).

Elcom-SD and Elcom-Hattiesburg assert that Mr. Cobb has made a contemporaneous review of market conditions and has reaffirmed his original conclusions. Elcom-SD and Elcom-Hattiesburg had requested that Mr. Cobb review his earlier opinions as to the viablity of the satellites as stand-alone stations, and have submitted a copy of Mr. Cobb's response. Mr. Cobb states that the satellites would not be viable as stand-alones. He contends that the two stations are perfect examples of satellites because they provide free over the air network television to small outlying communities which otherwise would be deprived of such service. He states that his firsthand knowledge of operating television stations, particularly in the West, leads him to believe that due to the vast open and lightly populated terrain, the South Dakota satellites are a great benefit to the community. He asserts that he has personally brokered numerous sales of television stations, and his experience leads him to conclude that no one would be a viable buyer for any of the current satellites. He concludes that the stations are not in large enough communities to have enough economic viability to survive as stand-alones, and he respectfully declines the opportunity to take a listing on the stations.

Based on the above, we believe that a sufficent basis has been established for allowing continued operation of KABY-TV and KPRY-TV as satellites of KSFY-TV, and WHLT(TV) as a satellite of WJTV(TV). Accordingly, having determined that the applicants are qualified in all other respects, the applications to assign the licenses of KSFY-TV, KABY-TV, KPRY-TV, and K07QL from NVTV Lic. of SD to Elcom-SD; and the license of WHLT(TV) from NVTV Lic. of Hattiesburg to Elcom-Hattiesburg, ARE GRANTED.

Sincerely,

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

EXHIBIT B

Sioux Falls DMA TV Household Data

SIOUX FALLS (MITCHELL), SOUTH DAKOTA DMA (112)			
State	**County**	**TV Households**[1]	**Area (sq. km)**[2]
Iowa	Lyon	4,150	946.2
	Osceola	2,750	642.0
Minnesota	Lincoln	2,550	864.1
	Murray	3,670	1,132.8
	Nobles	7,950	1,150.5
	Pipestone	4,020	749.8
	Rock	3,860	777.2
Nebraska	Cherry	2,460	9,591.8
South Dakota	Aurora	1,120	1,139.2
	Beadle	7,010	2,025.9
	Bon Homme	2,570	905.9
	Brookings	10,700	1,277.6
	Brown	14,280	2,756.4
	Brule	1,980	1,317.9
	Buffalo	480	757.9
	Charles Mix	3,200	1,766.8
	Clark	1,580	1,541.5
	Clay	4,850	662.9
	Codington	10,360	1,107.1
	Davison	7,470	700.0
	Day	2,460	1,655.8
	Deuel	1,780	1,004.1
	Dewey	1,850	3,705.8
	Douglas	1,260	698.3
	Edmunds	1,680	1,844.0
	Faulk	970	1,609.1
	Grant	3,070	1,099.0

[1] Source: *Broadcasting & Cable Yearbook* (2003-2004) at B-205.

[2] Source: U.S. Census Bureau (2000).

SIOUX FALLS (MITCHELL), SOUTH DAKOTA DMA (112)			
State	**County**	**TV Households**	**Area (sq. km)**
South Dakota	Gregory	1,960	1,634.8
	Hamlin	2,020	815.8
	Hand	1,480	2,312.3
	Hanson	1,080	700.0
	Hughes	6,660	1,192.3
	Hutchinson	3,140	1,308.2
	Hyde	680	1,385.4
	Jerauld	980	852.8
	Jones	490	1,562.4
	Kingsbury	2,370	1,348.4
	Lake	4,460	905.9
	Lincoln	9,620	930.1
	Lyman	1,380	2,638.9
	Marshall	1,750	1,348.4
	McCook	2,180	925.2
	McPherson	1,160	1,829.5
	Mellette	680	2,101.5
	Miner	1,190	917.2
	Minnehaha	59,290	1,303.4
	Moody	2,500	836.7
	Potter	1,090	1,393.5
	Roberts	3,630	1,771.6
	Sanborn	990	915.6
	Spink	2,770	2,420.1
	Stanley	1,070	2,321.9
	Sully	590	1,620.4
	Todd	2,420	2,233.4
	Tripp	2,470	2,597.1
	Turner	3,520	992.8
	Walworth	2,470	1,139.2

SIOUX FALLS (MITCHELL), SOUTH DAKOTA DMA (112)			
State	**County**	**TV Households**	**Area (sq. km)**
South Dakota	Yankton	8,140	840.0
Totals		**244,310**	**88,524.4**

EXHIBIT C

Letter Dated December 15, 2003 From Brian E. Cobb

CobbCorp, LLC

Brian E. Cobb, *President*

5811 Pelican Bay Blvd. Suite 210 • Naples, Florida 34108
202-478-3737 • Facsimile: 941-596-0660 • briancobb@cobbcorp.tv

December 15, 2003

Mr. Daniel M. Kortick
Vice President
South Dakota Television License Sub LLC
c/o Wicks Television LLC
Suite 702
405 Park Avenue
New York, New York 10022

Dear Mr. Kortick:

CobbCorp has been requested to opine as to whether KABY-TV, Aberdeen, and KPRY, Pierre, South Dakota, satellites of KSFY-TV licensed to Sioux Falls, South Dakota would be viable as stand alone stations. It is my understanding that this letter will be submitted to the Federal Communications Commission in support of the proposed buyer's request that KABY-TV and KPRY-TV be permitted to remain as satellite stations.

I reviewed this situation several years ago, and after reviewing it again now, it is still my opinion that the stations be permitted to remain as satellites. The two stations in question fit the profile of the perfect situation of providing a service to the communities they serve by being satellites. They provide free over the air network television to small outlying communities which otherwise would be deprived of such service.

The two satellite stations are in small towns that would not be able to provide enough financial support to enable them to survive as stand alone facilities. Compounding the problem, I doubt the stations could garner an affiliation from any of the major networks thus damaging the station's ability to survive and depriving the local communities from the network fare. The networks would not be inclined to grant an affiliation to a station where there is already one in a larger community in the same DMA.

KSFY, the main provider of service to the satellites, would also be damaged financially trying to compete with other strong affiliates in the DMA that have the advantage of having satellites. With less revenue, this could cause them to reduce local service to their community similar to cases in other small markets.

I have been involved in the brokerage of more television stations than any other individual, and based on my deal making experience, I do not think there would be a credible buyer for any of the satellite facilities.

Sincerely,

Brian E. Cobb

Brian E. Cobb