

Statement With Respect To Non-Competition and Non-Solicitation Agreement

The Assignor and Assignee have agreed in paragraph 6.12 of the Asset Purchase Agreement that Assignor and its shareholders will not compete with the Assignee for a period of five years within the Columbus-Tupelo-West Point, Mississippi Designated Market Area (“DMA”), which is the market of the station. The station is also carried on cable systems and DBS systems in its DMA.

Question 6 of Worksheet No. 2 of the instructions to the FCC Form 314 require the parties to provide an explanation when the geographic area of a covenant not to compete extends beyond the “Grade B” contour for TV stations. Because the area in which the Non-Competition and Non-Solicitation Agreement is in effect will extend beyond the service contour of WTVA, the agreement could be construed not to comply with Question 6 of Worksheet No. 2 of the instructions to the FCC Form 314. The agreement in the present case is not contrary to Commission policy, however, inasmuch as it does not unduly inhibit competition.

The use of the Grade B (or noise limited) contour of a TV station to define the area within which a party entering into a non-competition agreement cannot compete does not take into account the fact that competing stations can be located outside of the service contour of the TV station being purchased and still place a signal over the area served by the station being purchased. Other stations in the DMA also compete through their carriage on cable and satellite systems. The use of a specific geographic area, such as a DMA, to delineate the area within which a non-competition agreement is to be in effect eliminates this problem with reliance on the Grade B service contour and thus better describes the area of legitimate business concern than does the service contour. Moreover, using a defined geographic area to describe the area within which a non-compete agreement is to be in effect lends itself to greater certainty and clarity than does the use of a service contour because the parties understand the precise boundaries. Thus, the DMA has less of an inhibiting effect than does the use of a service contour, which is subject to varying engineering interpretations. In sum, the use of the DMA to define the area within which the non-compete agreement is to be in effect more accurately defines the area of concern and thus better protects the buyer’s legitimate business interests without unduly restricting competition. As a result, the non-compete agreement contemplated by the parties in the present case actually better serves the public interest than it would if it merely relied upon the use of the Grade B service contour of the station.