

**Request for Continued Satellite Authority**

FoxCo Acquisition Sub, LLC ("Oak Hill"), proposed assignee of Fox Television Stations, Inc. ("FTS"), respectfully requests a continuation of the recently granted waiver of the Commission's local television ownership rules to permit Oak Hill to continue operation of KFCT(TV), Fort Collins, Colorado as a satellite of KDVR(TV), Denver, Colorado, pursuant to Note 5 of Section 73.3555 of the Commission's rules.<sup>1</sup> KFCT(TV) has operated as a satellite of KDVR(TV) since it filed its first license in June 1995,<sup>2</sup> and the Commission last consented to KFCT(TV)'s continued operation as a satellite station on October 6, 2006.<sup>3</sup> Since that time, none of the essential facts underlying the operations of these stations have changed. As such, the Applicants respectfully request that the Commission allow KFCT(TV) to continue to operate as a satellite of KDVR(TV).

**Background.** The Commission has long recognized the public interest benefits of permitting satellite service to sparsely-settled, underserved rural areas.<sup>4</sup> In its 1987 *Satellite Policy Inquiry*, the FCC noted that "it appears to us that from the point of view of the population in these [sparsely settled] areas that the advantages are likely to outweigh the disadvantages by a considerable margin."<sup>5</sup>

Pursuant to the Commission's satellite waiver policy, a proposed satellite operation is presumed to be in the public interest if it meets three requirements: (1) no City Grade contour overlap exists between the parent and the satellite; (2) the proposed satellite station will provide

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<sup>1</sup> 47 C.F.R. § 73.3555, Note 5 (2006).

<sup>2</sup> See FCC File No. BLCT-19950628KF; see also *Fox Television Stations, Inc., For Renewal of License of Station WNYW-TV, New York, New York*, 11 FCC Rcd 5714 ¶ 39 (1995) (referring to the "construction permit for satellite station KFCT(TV), Fort Collins, CO, File No. BAPCT-941130KF").

<sup>3</sup> See FCC File No. BTCCT-20050819AAF; *In the Matter of K. Rupert Murdoch and Fox Entertainment Group*, 21 FCC Rcd 11499 ¶ 9 (2006) ("2006 Waiver Order").

<sup>4</sup> See, e.g., *Basin TV Co.*, 13 RR 392 (1956).

<sup>5</sup> *Notice of Inquiry and Notice of Proposed Rule Making Concerning Television Satellite Stations*, 2 FCC Rcd 1359, 1362 (1987).

service to an underserved area; and (3) no alternative operator is ready and able to purchase and operate the satellite as a full-service station.<sup>6</sup> Alternatively, if an applicant cannot qualify under this presumptive waiver test, the Commission may employ an *ad hoc* approach to determine whether other compelling circumstances warrant grant of satellite status.<sup>7</sup> For the reasons set forth below, KFCT(TV) qualifies for satellite status under the presumptive waiver test. Thus, the Commission may authorize continuation of satellite status for KFCT(TV) without the need to consider other compelling circumstances that also warrant the grant.<sup>8</sup>

***No City Grade Overlap.*** As the Commission determined in 2006, the City Grade contours of KDVR(TV) and KFCT(TV) do not overlap.<sup>9</sup> The contours of KDVR(TV) and KFCT(TV) have not changed since September 2005, when the engineering statement used to obtain the 2006 waiver was produced. This request therefore satisfies the first requirement.

***Underserved Area.*** This request satisfies the second requirement because KFCT(TV)'s community of license, Fort Collins, Colorado, constitutes an "underserved" community for purposes of this analysis. Under the "transmission test," a proposed satellite community of license is considered "underserved" if two or fewer television stations (including commercial, noncommercial, and satellite stations) are already licensed to it.<sup>10</sup> KFCT(TV) remains the only full-power television station licensed to Fort Collins.<sup>11</sup> Thus, KFCT(TV) provides service to an underserved area.

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<sup>6</sup> See 47 C.F.R. § 73.3555, Note 5; *Satellite Order*, 6 FCC Rcd 4212 ¶ 12 (1991) ("*Satellite Order*") (subsequent history omitted).

<sup>7</sup> *Id.*

<sup>8</sup> Should the Commission determine for some reason that the presumptive waiver test is not satisfied in this case, Oak Hill requests that the Commission evaluate this waiver request under the *ad hoc* approach.

<sup>9</sup> *2006 Waiver Order*, 21 FCC Rcd 11499 ¶ 9; see also Engineering Statement of Kevin T. Fisher, dated Sept. 12, 2005, attached hereto as *Exhibit A*.

<sup>10</sup> *Satellite Order*, 6 FCC Rcd 4212 ¶ 19.

<sup>11</sup> NTSC Table of Allotments, 47 C.F.R. § 73.606(b); see also *2006 Waiver Order*, 21 FCC Rcd 11499 ¶ 9.

***Inability to Sustain Full-Service Operation.*** This request satisfies the third requirement because no alternative operator would be available to operate KFCT(TV) as a full-service television station. The economic prospects for any television station in Fort Collins are extremely poor, and accordingly, there are no buyers interested in KFCT(TV) as a stand-alone, full-service television station.

As an attachment to its 2005 satellite waiver application, FTS submitted the expert opinion of Brian E. Cobb on the viability of KFCT(TV) as a stand-alone, full-service television station. In that letter, Mr. Cobb explained that “there would be virtually no opportunity” for KFCT(TV) “to garner a network affiliation.”<sup>12</sup> Mr. Cobb also observed that the “intense” competition in the Denver DMA would mean that as an independent station, KFCT(TV)’s “opportunity to procure programming attractive to viewers and of the quality that it currently airs would be negligible.”<sup>13</sup> As a result, Mr. Cobb concluded that operation of KFCT(TV) as a non-network affiliated, independent station also would not be financially feasible and stated that he would have “little interest” in listing the station for sale as a stand-alone.

Market conditions have not materially improved since the time of Mr. Cobb’s statement.<sup>14</sup> ABC, NBC, CBS, Fox, ION, MyNetworkTV, and CW each have a full-power affiliate licensed in or near Denver.<sup>15</sup> Spanish-language networks Univision, TeleFutura, and Telemundo also have full-power affiliates within the Denver DMA whose Grade B contours overlap that of KFCT(TV).<sup>16</sup> This makes it extremely unlikely that KFCT(TV) would be able to obtain a network affiliation. KFCT(TV) also would be unable to survive financially as an independent station. Its

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<sup>12</sup> See FCC File No. BTCCT-20050819AAF Attachment 18.

<sup>13</sup> *Id.*

<sup>14</sup> Oak Hill intends to amend this waiver request shortly to supply a supplemental statement from Mr. Cobb confirming that market conditions have not materially improved since 2005.

<sup>15</sup> See BROADCASTING AND CABLE YEARBOOK 2007 at B-152 (listing all full service television stations licensed to communities within the Denver DMA and their network affiliation).

<sup>16</sup> See *id.*

Grade B contour does not reach Denver and the nearby cluster of cities,<sup>17</sup> which had a total population of over 1.1 million people in 2006.<sup>18</sup> In contrast, Fort Collins, Longmont, Loveland, and Greeley, the largest cities fully inside KFCT(TV)'s Grade B contour, together contained less than 375,000 people.<sup>19</sup>

KFCT(TV)'s lack of value as a stand-alone station has been confirmed again as recently as this fall when FTS and Allen & Company conducted a months-long public auction of ten of FTS's full-power television stations, including KFCT(TV).<sup>20</sup> As explained in the attached letter from Allen & Company, no buyers expressed interest in acquiring KFCT(TV) as a stand-alone, full service station.<sup>21</sup> Furthermore, Allen & Company would not recommend marketing KFCT(TV) as a stand alone station.<sup>22</sup>

In short, KFCT(TV) cannot be sustained as a full-service television station and no alternative operator would be ready, able, or willing to operate KFCT(TV) as a full-service station. Only by continuing to permit KFCT(TV) to operate as a satellite of KDVR(TV) will the Commission enable KFCT(TV) to maintain its economic viability and its ability to provide service to the surrounding underserved area. KFCT(TV) consequently satisfies the three requirements under which continued operation as a satellite presumptively serves the public interest.

***Commission Precedent.*** Continuation of KFCT(TV)'s satellite status would be consistent with Commission precedent. In November 2006, the Commission granted continued satellite authority to KABY-TV in Aberdeen, South Dakota and KPRY-TV in Pierre, South Dakota.<sup>23</sup> In that case, the parent and satellite stations had no City Grade overlap, and the satellite stations were the only commercial full-power television stations in their communities of license. As in this case,

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<sup>17</sup> Aurora, Thornton, Littleton, Broomfield, and Arvada.

<sup>18</sup> See Bureau of the Census American FactFinder database, <http://factfinder.census.gov>.

<sup>19</sup> *Id.*

<sup>20</sup> See Letter of Allen & Company LLC, attached hereto as *Exhibit B*.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Letter to Hoak Media of Dakota License, LLC, 21 FCC Rcd 13438 (2006).

the applicants there submitted a report from a media broker explaining that when the satellite stations were offered for sale, potential buyers expressed no interest in them as stand alone stations.<sup>24</sup>

**Conclusion.** Oak Hill has demonstrated that this request for continued satellite authority satisfies all three prongs of the FCC's presumptive waiver test and that grant of the instant waiver request is consistent with Commission precedent. Operating KFCT(TV) as a full-service independent station is simply not feasible given KFCT(TV)'s limited coverage area and poor prospects for financial success except as a satellite station. Accordingly, the public interest again would be served by the Commission's authorization of the continued operation of KFCT(TV) as a satellite of KDVR(TV). Based upon the foregoing, Oak Hill respectfully requests a waiver of the local television ownership rules to permit the assignment of KFCT(TV)'s license and the continued operation of KFCT(TV) as a satellite station of commonly-owned KDVR(TV).

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<sup>24</sup> *Id.* at 13439.

**EXHIBIT A**

**Engineering Statement**

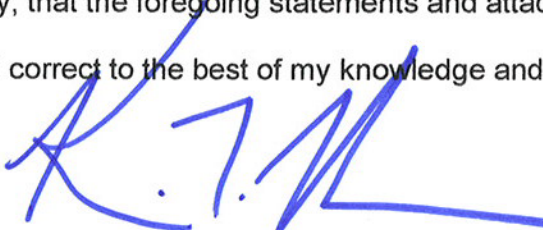
EXHIBIT A

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of FOX TELEVISION STATIONS, INC., licensee of television station KDVR(TV) on Channel 31 in Denver, Colorado, and satellite station KFCT(TV) on Channel 22 in Fort Collins, Colorado.

Attached is a map upon which the city-grade (80 dBu) contours of KDVR and KFCT have been plotted. As shown, there is no overlapping of these two contours.

I declare, under penalty of perjury, that the foregoing statements and attached map, which was prepared by me, are true and correct to the best of my knowledge and belief.

A handwritten signature in blue ink, appearing to read 'K. T. Fisher', is written over the text of the declaration.

KEVIN T. FISHER

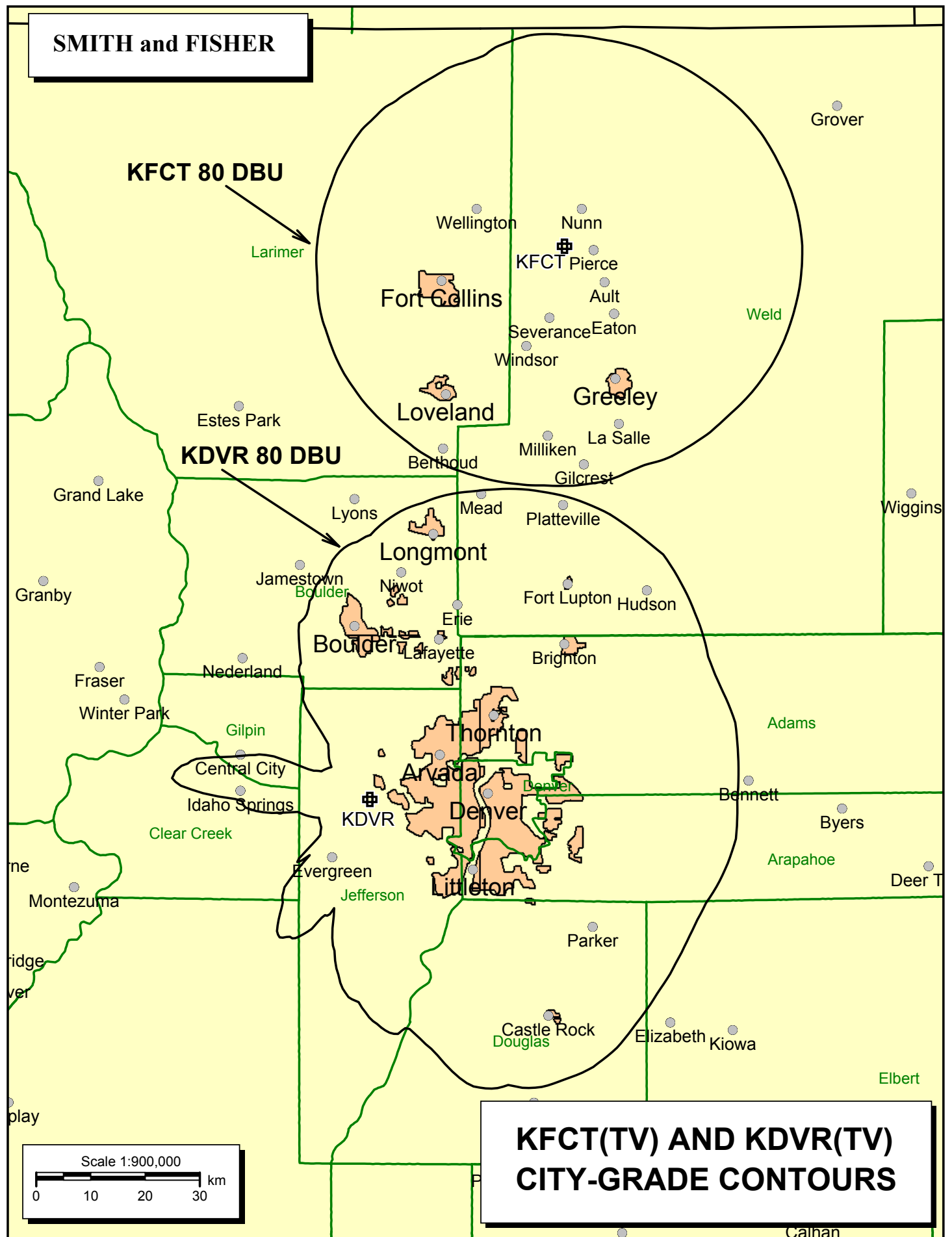
September 12, 2005

**SMITH and FISHER**

**KFCT 80 DBU**

Larimer

**KDVR 80 DBU**





**EXHIBIT B**

**Letter from Allen & Company**

# ALLEN & COMPANY LLC

711 FIFTH AVENUE · NEW YORK, N.Y. 10022 · (212) 832-8000

January 10, 2008

Ms. Barbara Kreisman  
Chief, Video Division  
Media Bureau  
Federal Communications Commission  
445 Twelfth Street SW  
Washington, D.C. 20554

Re: KFCT(TV), Fort Collins, Colorado

Dear Ms. Kreisman:

Allen & Company LLC has been requested to provide its views concerning the feasibility of selling KFCT(TV), Fort Collins, Colorado as a stand-alone television station. Allen & Company is a nationally recognized investment banking firm specializing in the entertainment and media sectors. The firm regularly provides brokerage, underwriting, and private placement services to media companies, and in doing so, has developed expertise in the market for television stations.

In June 2007, News Corporation publicly announced its plan to sell nine of its full-service television stations, which includes the Fort Collins satellite station and the related auxiliary facilities used by these nine full-service television stations. Allen & Company was retained by News Corporation to advise it in connection with the sale, and in such capacity solicited numerous strategic buyers and private equity firms over several months. In late December 2007, News Corporation reached an agreement with FoxCo Acquisition Sub, LLC to purchase eight of these full-service television stations. Throughout this process, Allen & Company received no expressions of interest in KFCT(TV) as a stand-alone station. To our knowledge, all interested parties evaluated KFCT(TV) only as a satellite of KDVR(TV) and Allen & Company would not recommend that KFCT(TV) be marketed for sale as a stand-alone station.

Respectfully submitted,



Kenneth M. Siskind  
Managing Director