

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Horizon Broadcasting Group, LLC	)	File Nos.: 0000162367
For Renewal of License FM Station KWPK-FM	)	Facility ID: 59365
Sisters, Oregon	)	

To: The Commission  
Attn: Media Bureau, Audio Division

**OPPOSITION TO PETITION TO DENY**

Horizon Broadcasting Group, LLC (Horizon), by counsel and pursuant to Section 73.3584(b) of the Commission’s Rules,<sup>1</sup> respectfully submits this Opposition to Petition to Deny (Opposition) responding to the Petition to Deny (Petition) filed in the captioned proceeding by Western Radio Services Co. (Western) and its President Richard L. Oberdorfer (Oberdorfer) on December 28, 2021.

**I. Introduction**

The Commission should dismiss Western’s Petition because it is procedurally flawed and substantively baseless. As an initial matter, Western and Oberdorfer lack standing. Moreover, the Communications Act of 1934, as amended, (Act) and the Commission’s rules require a petition to deny to “contain specific allegations of fact” showing that grant of an application would not serve the public interest.<sup>2</sup> Absent specific factual allegations, Horizon is unable to provide a detailed response to the Petition’s claims, and the Commission lacks a basis upon which it can evaluate the Petition. Based on these procedural defects alone, the Commission must dismiss the Petition and should grant KWPK-FM’s (KWPK) renewal application. In addition, the general

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<sup>1</sup> 47 C.F.R. § 73.3584(b).

<sup>2</sup> 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

and conclusory statements in the Petition have no basis in fact. Under Oberdorfer's leadership, Western has a history of making spurious interference claims to suit its litigation strategy and policy agenda. Now, it has filed a wave of petitions to deny against a number of broadcast licensees in Central Oregon. Each of those petitions repeats generic claims of interference without offering detailed support or identifying any source of interference. Western also alleges that there is pending litigation involving Horizon and KWPK's tower site. Horizon is unaware of any such litigation. In sum, the Petition lacks sufficient detail to deny KWPK's renewal application, and to the extent the Petition makes any specific allegations, Western is either fabricating or misrepresenting the nature of those allegations.<sup>3</sup>

## **II. Discussion**

### **a. Western and Oberdorfer Lack Standing**

Because the Petition does not make a *prima facie* showing that either Western or Oberdorfer is a party in interest, Western and Oberdorfer lack standing, and the Petition must be dismissed. Section 309(d) of the Act limits the ability to file a petition to deny to parties in interest.<sup>4</sup> "Under this provision of the Act, a party in interest must essentially meet the same requirements as those required for standing to appeal a Commission decision to a federal court."<sup>5</sup>

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<sup>3</sup> Horizon would note that Western is a Commission licensee. *See e.g.*, ULS File No. 0008540034 (seeking renewal of call sign KKB562). As a licensee, Western may be in violation of the Commission's rules if any statements in the Petition are untruthful, inaccurate, or misleading. *See* 47 C.F.R. § 1.17.

<sup>4</sup> *See* 47 U.S.C. § 309(d)(1); *see also* 47 C.F.R. 1.939(d); 47 C.F.R. § 73.3584(a).

<sup>5</sup> *Timothy K. Brady, Esq., et. al.*, Letter, 20 FCC Rcd. 11987, 11990 (Audio Division 2005) (citing, *inter alia*, *In re Application of MCI Communications Corp., Transferor, and Southern Pacific Telecommunications Company, Transferee for Consent to Transfer Control of Qwest Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 7790, 7794 (1997) (*MCI Communications*)) (*Brady*); *see also In re the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), et. al. for Transfer of Control of Tribune Media Company to Nexstar Media Group, Inc., and Assignment of Certain Broadcast Licenses and Transfer of Control of Certain Entities Holding Broadcast Licenses*, Memorandum

Thus, a person or entity claiming standing “must allege and prove three elements: (1) personal injury; (2) the injury is ‘fairly traceable’ to the challenged action; and (3) there is a substantial likelihood that the relief requested will redress the injury claimed.”<sup>6</sup>

The Petition does not allege or prove any of the elements required to satisfy the Commission’s party in interest or standing requirements. While the Petition generally claims that Western and Oberdorfer have been harmed by interference at Awbrey Butte, a petition “must contain *specific* allegations of fact sufficient to show that the petitioner is, in fact, a party in interest.”<sup>7</sup> Simply put, the Petition contains no specific factual allegations regarding a personal injury suffered by Western, Oberdorfer, or any other party due to purported interference at Awbrey Butte.<sup>8</sup> Even if the Petition did make factual allegations of interference or some other injury, there is no showing that the injury is fairly traceable to KWPK. In fact, KWPK is mentioned only twice in the Petition: in the first paragraph indicating that the Petition seeks the denial of KWPK’s renewal application and in the final paragraph again asking that KWPK’s renewal be denied. Finally, because Western and Oberdorfer fail to provide any specific

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Opinion and Order, 34 FCC Rcd. 8436, ¶ 23, n.103 (2019) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), *MCI Communications*, 12 FCC Rcd. at 7790, and *Brady*, 20 FCC Rcd. at 11987).

<sup>6</sup> *Brady*, 20 FCC Rcd. at 11990 (citing *Lujan*, 504 U.S. at 555, *MCI Communications*, 12 FCC Rcd. at 7794, and *In re Authorization of Conn-2 RSA Partnership, et. al.*, 9 FCC Rcd. 3295, 3297 (1994)).

<sup>7</sup> *In re Liberman Television of Dallas License LLC, Debtor-in-Possession, et. al.*, Order, 34 FCC Rcd. 8543, 8546 (Video Division 2019) (emphasis added).

<sup>8</sup> Horizon would note that the Commission has set out several categories that it typically accords party in interest status to in the broadcast context including (1) market competitors suffering signal interference, (2) market competitors suffering economic harm, and (3) residents of the station’s service area or regular listeners or viewers of the station. *Id.* at 8547. However, these categories cannot supersede the general party in interest and standing requirements. In other words, even if Western or Oberdorfer claim to fall into one of these categories, they still must make specific factual allegations showing they meet the all three standing elements.

allegations regarding their injury or its traceability to KWPK, there can be no substantial likelihood that grant of the Petition will redress the injury claimed.

**b. The Petition Should Be Dismissed Because It Fails to Provide Any Specific Allegations of Fact Making It Procedurally Deficient**

Because the Petition's generic allegations do not satisfy the requirements of the Act or the Commission's rules, the Petition should be dismissed. In assessing the merits of a petition to deny, the Commission engages in a two-step analysis. As a threshold matter, "the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity."<sup>9</sup> In conducting this threshold inquiry, the Commission must consider the petition and its supporting affidavits alone and take the *specific* facts set forth in the petition as true.<sup>10</sup> However, "nebulous statement are not specific allegations of fact."<sup>11</sup>

The Petition can best be described as a nebulous statement and is, therefore, procedurally deficient. Even taken as true, the statements in the Petition do not constitute specific allegations of fact. Instead, the Petition alludes to an increase in the noise floor at Awbrey Butte caused by spurious emission from FM stations.<sup>12</sup> However, the Petition provides no information regarding how Western evaluated the noise floor, when it did so, the equipment it used, or why it believes KWPK is a source of spurious emissions. The Petition also fails to offer specific factual allegations concerning the adverse effect on Western's CMRS stations.

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<sup>9</sup> Letter from Peter H. Doyle, Chief, Audio Division FCC, to William Johnson, *et. al.*, 27 FCC Rcd. 1471, 1472 (Feb. 13, 2012) (citing 47 U.S.C. 309(d) and *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (DC Cir. 1988)); *see also* 47 U.S.C. § 309(d); 47 C.F.R. § 1.939(d).

<sup>10</sup> *See Astroline*, 857 F.2d at 1561.

<sup>11</sup> *In re Application of WWOR-TV, Inc. for Transfer of Control of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, Memorandum Opinion and Order, 6 FCC Rcd. 193, 199 (1990).

<sup>12</sup> Petition at 1.

Likewise, the Petition alludes generally to interference to public safety and public service communications without offering any particular factual allegations.<sup>13</sup> Again, the Petition fails to identify Horizon or KWPK specifically as sources of interference and fails to identify any single specific instance of interference or impairment to CMRS licensees or users.

Finally, the Petition lumps Horizon into an unnamed cartel of broadcasters that have ignored court rulings and refused to cooperate with Western's interference mitigation efforts.<sup>14</sup> However, the Petition again fails to provide even the most basic details regarding its claims. It does not identify any court case, Western filing, or Deschutes Circuit Court order involving Horizon or KWPK, and the Petition fails to document any instance of Horizon or KWPK operating outside the Commission's technical rules or refusing to address interference concerns related to KWPK. Therefore, the Petition should be dismissed because its nebulous statements do not satisfy the requirements of the Act and the Commission's rules that a petition to deny be supported by specific allegations of fact.

**c. To the Extent the Petition Makes Any Specific Allegations, Those Allegations Misrepresent the Facts or Are Outright Fabrications**

Even if the Petition's claims are sufficiently specific to satisfy the threshold requirements discussed above, the claims made by the Petition misrepresent the facts and do not justify denial of KWPK's renewal application. For example, the Petition suggests that unnamed members of a group of broadcasters have refused to install cavity bandpass filters.<sup>15</sup> With respect to KWPK, that allegation is flatly untrue. Horizon installed a bandpass filter at KWPK's transmission

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

<sup>14</sup> *Id.* at 2.

<sup>15</sup> Petition at 2.

facilities.<sup>16</sup> Horizon certified KWPK's compliance with the Commission's technical regulations in the station's renewal application.<sup>17</sup> Horizon now reaffirms that certification.<sup>18</sup>

The Petition wrongly claims that indefinite FM station interference has caused unspecified impairment to public safety and public service communications. It is Horizon's understanding that the public safety agencies with communications systems located on Awbrey Butte have almost entirely moved away from 158 MHz. According to Tim Beuschlein, the Public Safety Systems Supervisor for the Deschutes County 9-1-1 Service District, public safety agencies in and around Deschutes County, Oregon had largely transitioned to 800 MHz spectrum by 2019.<sup>19</sup> As the Commission knows, public safety agencies across the country have transitioned to 800 MHz spectrum to upgrade their communications technology. Horizon is not aware of any interference complaint regarding KWPK by a public safety agency and would promptly respond to any such properly filed interference complaint.

The Petition also incorrectly implies that Horizon has ignored a court order compelling arbitration regarding interference mitigation and that Horizon may be at risk of contempt of court. Horizon believes that the litigation referenced in the Petition does not describe active litigation. Horizon's counsel was unable to identify an active case as described in the Petition. Moreover, to the extent Western or Oberdorfer are currently involved in litigation regarding interference mitigation at Awbrey Butte, Horizon is either not a party or was never served.<sup>20</sup>

The litigation discussed in the Petition may refer to a 2012 dispute among Western, a group of other tower owners at Awbrey Butte, and Awbrey Towers, LLC (a company formed by

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<sup>16</sup> See Ex. A Declaration of Keith Shipman at 2 (Shipman Decl.); *see also* Ex. B.

<sup>17</sup> See File No. 0000162367.

<sup>18</sup> See Ex. A Shipman Decl. at 1.

<sup>19</sup> See Ex. C.

<sup>20</sup> See Ex. A. Shipman Decl. at 2.

those tower owners and Western to coordinate the lease interests of several parties operating facilities at Awbrey Butte).<sup>21</sup> Horizon was not a party to that case, but Horizon would note that the court briefly addressed the nature of Western's interference claims.

Western Radio has frequently complained of RF interference ("Interference") affecting its low-power transmission from Western Radio's tower on the Awbrey Butte Property. Several of the Other Members have voluntarily undertaken, at considerable expense to them, testing and mitigation steps to determine the cause of and reduce the possibility of Interference with Western Radio. In one case, the Interference has been eliminated. In some cases, Western Radio, without much support, has disagreed with the findings of technicians who tested for Interference. In one case, the FCC determined that the source of Interference could not be determined. However, Western Radio continued to contend in improper forums that the Other Members are causing Interference which materially interferes with the business of [Awbrey Towers, LLC].

The Operating Agreement and the Lease provide specific mechanisms for resolving Interference claims. Western Radio properly obtained an order of the Deschutes County Circuit Court compelling arbitration of one of its Interference claims. However, Western Radio unreasonably refused to advance the fees of the arbitrator pending a determination by the arbitrator of who the "offending party" behind the Interference was. This had the effect of stopping the arbitration and preventing resolution of the Interference claim. Western Radio's refusal to agree upon the terms for advancing the arbitrator's fees was unreasonable and had resulted in the Interference claim remaining pending for four years. This has deprived [Awbrey Towers, LLC] of a final resolution of the underlying issues in the required forum.<sup>22</sup>

Even if the litigation described in the Petition is not related to the prior Awbrey Towers, LLC dispute, Western's approach here is startlingly similar. Again, it has offered no evidence regarding its claims of interference or identifying its source. Western also apparently has not availed itself of the Commission's interference reporting processes and, instead, filed an unsupported petition to deny KWPK's license renewal application. Horizon stands ready to resolve any credible interference concerns raised by another party, including by Western.<sup>23</sup>

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<sup>21</sup> See Deschutes County Circuit Court Case No. 13CV0287. The general judgment in the case is attached as Ex. D.

<sup>22</sup> See Ex. D. at 11.

<sup>23</sup> See Ex. A Shipman Decl. at 2.

However, the Commission should not permit its processes to be abused by a serial frivolous litigator to air unsubstantiated interference complaints.

### **III. Conclusion**

In light of the forgoing, Horizon respectfully requests that the Commission dismiss or deny the Petition and grant the pending KWPK renewal application.

Respectfully submitted

s/ Matthew H. McCormick

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*Counsel for Horizon Broadcasting Group,  
LLC*

January 27, 2022

## **Exhibit A**

DECLARATION OF  
KEITH SHIPMAN

I, Keith Shipman, declare that:

1. I am the President and CEO of Horizon Broadcasting Group, LLC (Horizon), and I am authorized to make this declaration.
2. Based on my position with Horizon, I have personal knowledge and experience regarding its facilities and their operations, including the facilities located at Awbrey Butte and Grizzly Mountain.
3. Horizon is a long-time Federal Communications Commission (FCC) licensee. In its capacity as a broadcaster and FCC licensee, Horizon has served the public interest for decades. Horizon is currently the licensee or permittee seven FCC authorizations, including KLTW-FM, Prineville, OR (Facility ID No. 27168) (KLTW), KQAK, Bend, OR (Facility ID No. 31175) (KQAK), KWPK-FM, Sisters, OR (Facility ID No. 59365) (KWPK), K227DC, Prineville, OR (Facility ID No. 27170) (K227DC), and K245BC, Prineville, OR (Facility ID No. 151166) (K245BC).
4. Through the years, Horizon has ensured that its FCC licensed facilities comply with the relevant technical rules, and I reaffirm the certifications made in renewal applications for Horizon's licenses that each of the facilities operates according to the FCC's rules. Specifically, I reaffirm that KLTW, KQAK, KWPK, K227DC, and K245BC were operating according to the technical parameters authorized by their licenses at and before the filing of their license renewal applications and that those facilities continue to operate according to their licenses. Horizon's facilities, including K227DC and K245BC, operate at their authorized power levels.

5. Horizon takes seriously its obligation to comply with the FCC's rules and, therefore, has installed bandpass filters at a number of its facilities where technically appropriate. KLTW, KWPK, KQAK, K227DC, and K245BC have each had bandpass filters installed. The bandpass filter for KLTW was installed in August 2012, and the bandpass filter for the combined facilities for KQAK and KWPK was installed in May 2001.
6. As part of its obligation to comply with the FCC's rules, it is Horizon's policy to quickly respond to any credible interference complaint. Horizon is not aware of any pending interference complaints regarding its facilities, nor is it aware of any interference complaints by public safety or public service communications users regarding its facilities. Horizon stands ready to work with and address interference issue raised by another party to the extent such interference is fairly traceable to Horizon's facilities.
7. In my capacity as President and CEO of Horizon, I would have knowledge of pending litigation involving Horizon. I am not aware of any pending litigation involving Horizon and Western Radio Services Co. (Western). To the extent that Western has initiated or pursued litigation regarding interference issue related to radio facilities located at Awbrey Butte or Grizzly Mountain, Horizon is not a party to that litigation, or it has not been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of January 2022.

/s/ Keith Shipman  
Keith Shipman  
President and CEO  
Horizon Broadcasting Group, LLC

## **Exhibit B**



104.1 MPa

Shively Labs  
Branched Combustor

OUTPUT

Shively Labs  
Branched Combustor

OUTPUT

## **Exhibit C**



## SERVICE DISTRICT

*Pride  
Professionalism  
Dedication*

**Mailing Address**

Post Office Box 6005  
Bend, Oregon 97708

**Street Address**

20355 Poe Sholes Drive, Suite 300  
Bend, Oregon 97703

**Phone (541) 388-0185**

**Fax (541) 382-5767**

**[www.deschutes.org/911](http://www.deschutes.org/911)**

January 7, 2022

Mr. Keith Shipman, President & CEO  
Horizon Broadcasting Group, LLC.  
KQAK-FM / KLTW-FM / KRCO-AM / KBNW-AM  
PO Box 18036  
Spokane, WA 99228

To Whom It May Concern;

The Deschutes County 9-1-1 Service District provides radio service for more than 24 agencies in and around Deschutes County. One of the primary sites for this system is located on Awbrey Butte in Bend Oregon, and contains the main simulcast cell for our L3Harris P25 Phase 2 system. Deschutes County owns the building and property but has an agreement with the United States Forest Service for access to their tower located adjacent to the property.

In 2016, the new L3Harris system installation began using the previous licensed 800 MHz spectrum from the Motorola analog trunked system. The project was completed mid-2017 with law enforcement and general government being the users of the system. Fire agencies in Deschutes County moved to the new trunked system in 2019 and no longer use any VHF repeated systems for primary dispatch communications. VHF is an interoperable communication platform and is used as simplex channels or portable repeaters during wildfire, conflagrations or mass incidents, and usually includes state and federal agencies with spectrum coordination for the event.

In 2021, the L3Harris system network routers and application code for the core servers were upgraded to current versions. No changes to the radio frequency equipment at the radio sites were made during this process. The project had a completion date of December 31, 2021.

Deschutes County 9-1-1 Service District has no radio shelters or equipment in other shelters on Gray Butte or Grizzly Mountain communications sites.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Beuschlein', is written over a horizontal line.

Tim Beuschlein  
Public Safety Systems Supervisor  
Deschutes County 9-1-1 Service District

## **Exhibit D**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF DESCHUTES

AMERICAN TOWERS, INC., OREGON )  
PUBLIC BROADCASTING, THE )  
CHACKEL FAMILY , LLC, nka TALENTS, )  
LLC, GCC BEND, LLC, NPG OF OREGON, )  
INC. and TERRY A. COWAN, dba COWAN )  
BROADCASTING CO., )  
Claimants/Respondents, )  
v. )  
WESTERN RADIO, INC., )  
Respondent/Third Party )  
Claimant-Respondent, )  
v. )  
AWBREY TOWERS, LLC, )  
Third Party Respondent/Petitioner. )  
\_\_\_\_\_ )

Case No. 13CV0287

**GENERAL JUDGMENT**

The court having granted Petitioner's petition for an order confirming arbitration award, and said order having been entered of record;

**I. PROCEDURAL STATUS**

Claimants seek a declaration that the LLC is operating under a valid operating agreement; seek to expel Western Radio from the LLC; and seek damages for breach of duty exceeding \$75,000.

Western Radio seeks a declaration that disputed operating agreement terms are void; seeks a dissolution of the LLC; asserts claims from breach of fiduciary duty and duties of loyalty, care and good faith and fair dealing; and seeks an accounting.

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1 Western Radio originally filed its claims in Deschutes County Circuit Court Case  
2 No. 11CV0252ST.

3 Ultimately, Claimants and Western Radio stipulated through the Arbitration Service of Portland  
4 to arbitration before a single arbitrator and, again through the Arbitration Service of Portland, stipulated  
5 to David Wade as the single arbitrator.

6 The LLC was added as a Third-Party Respondent in order to ensure complete relief among the  
7 parties. The LLC denies the claims of Western Radio and asserts various affirmative defenses to those  
8 claims. The LLC joined in the stipulation to arbitration before David Wade acting as the single  
9 arbitrator.

10 The parties' stipulation to arbitration by David Wade as a single arbitrator was confirmed at the  
11 arbitration hearing.

12 The arbitration hearing was conducted from 9:00 a.m. to 5:00 p.m. on January 14, 2013 and  
13 from 8:30 a.m. to 7:10 p.m. on January 15, 2013. The arbitration hearing was conducted in Bend,  
14 Oregon.

15 Because of the nature of the claims asserted and remedies sought by the parties, the arbitrator  
16 allowed the parties wide latitude to introduce evidence on a wide range of conduct and events, including  
17 matters decided (and binding) in previous proceedings between some or all of the parties. As a result,  
18 all parties introduced a wealth of evidence on matters occurring from before the inception of the LLC  
19 through a capital accounting in December 2012.

20 At the hearing, there was testimony from principals or employees of Western Radio and four of  
21 the other members; Western Radio's CPA and real estate broker expert; the LLC's CPA; and the land  
22 use attorney and planner for Other Member The Chackel Family, LLC, nka Talents, LLC ("Chackel").  
23 The declarations of Jim Gross, President of Other Member GCC Bend, LLC and Kevin Fielder, a  
24 supervisor for Other Member American Towers, Inc., were also submitted without objection other than  
25 as to weight. Together, the parties submitted over 50 exhibits.

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1           The Court hereby makes the following findings of fact, conclusions of law and applications of  
2 law to fact:

3           **II. FINDINGS OF FACT**

4           Respondent Western Radio, Inc. ("Western Radio") is a member of Third-Party Respondent  
5 Awbrey Towers, LLC (the "LLC"). Claimants are the other members of the LLC ("Claimants" or  
6 "Other Members"). Claimants and Western Radio are together referred to as the "Members."

7           **A. Operating Agreement & Governance Issues.**

8           1. Before formation of the LLC, Western Radio and each of the Other Members except  
9 Chackel owned and operating transmission towers on Awbrey Butte under separate leases with  
10 Deschutes County. At that time, Deschutes County owned the single parcel of land upon which all the  
11 towers sat (the "Awbrey Butte Property"). Deschutes County refused to renew the leases and insisted  
12 on selling the Awbrey Butte Property to one purchaser, rather than partitioning it and selling it to each  
13 of the lessees.

14           2. Chackel had no lease with Deschutes County, but did lease space for its antenna on the  
15 tower owned by Other Member Oregon Public Broadcasting ("OPB"). Because the FCC was requiring  
16 OPB to upgrade its equipment to accommodate digital transmission, OPB could no longer accommodate  
17 Chackel's antenna and it was contemplated by all the LLC members that Chackel would construct its  
18 own tower on the Awbrey Butte Property.

19           3. As a result, the Members formed the LLC to purchase the Awbrey Butte Property from  
20 Deschutes County and to own and operate a "tower farm" on the property. The purpose of each member  
21 in entering into the LLC was to protect its right to own and operate a tower on the Awbrey Butte  
22 Property and to prevent a third party from obtaining control of the Awbrey Butte Property and extracting  
23 excessive rent or forbidding operation of the Members' towers on the Awbrey Butte Property.

24           4. After negotiations and several drafts of the Operating Agreement, the Members each  
25 separately signed the Operating Agreement for the LLC in which paragraph 10.05 is entitled  
26 "Construction" and in which there is no requirement for unanimous consent of the members to amend

1 the Operating Agreement (“Operating Agreement”). Some of the Other Members signed the Operating  
2 Agreement on page 20. GCC Bend and Western Radio signed on page 21. The discrepancy is the result  
3 of GCC Bend and Western Radio signing a black line version of the Operating Agreement in which  
4 former paragraph 10.05 requiring unanimous consent of the members to amend the Operating  
5 Agreement had been struck out. Those signing page 20 of the Operating Agreement signed the  
6 Operating Agreement without the black line, but were advised in writing of the black line changes.

7 5. Western Radio consulted with its counsel before signing the Operating Agreement.  
8 Western Radio signed the Operating Agreement unwillingly, but, based upon the advice of counsel,  
9 decided that there was no choice because the alternative was to risk loss of Western Radio’s tower site  
10 on the Awbrey Butte Property.

11 6. At the time it signed the Operating Agreement, Western Radio knew or should have  
12 known that the provision requiring unanimous consent of the members to amend the Operating  
13 Agreement had been struck out.

14 7. The purpose of the LLC, as agreed to and understood by all Members, was to own and  
15 manage a tower farm.

16 8. While the Members compete with each other in various transmission businesses such as  
17 television, radio and cell phone co-location, none of the Members compete with the LLC in the business  
18 of owning and managing a tower farm in the Bend area.

19 9. The LLC is a member managed LLC. By the unanimous written consent of the members  
20 of the LLC effectively dated the 28<sup>th</sup> day of September, 2000, the Members delegated to Terry Cowan  
21 (“Cowan”) and Jim DeChant (“DeChant”) the limited powers listed in the consent. Western Radio’s  
22 subsequent claims that no such authority had been delegated were untrue and materially interfered with  
23 the business of the LLC.

24 10. At a meeting on August 14, 2007, the LLC members, by the required vote of 6 to 1, with  
25 Western Radio being the no vote, adopted the First Amended and Restated Operating Agreement of the  
26 LLC (“Amended Operating Agreement”). The Amended Operating Agreement was properly adopted

1 and is the currently effective operating agreement of the LLC.

2 11. In *Western Radio, Inc. v. Cowan, et al.*, Deschutes County Circuit Court Case  
3 No. 11CV0252ST (the "Fraud Case"), Western Radio alleged that Other Members had defrauded  
4 Western Radio into believing that the Operating Agreement contained a provision requiring unanimous  
5 consent of the Members to amend the Operating Agreement. This claim was false, was filed without an  
6 objectively reasonable basis, and materially interfered with the operations of the LLC.

7 12. Western Radio has failed to attend any LLC Member Meetings since 2007 despite  
8 receiving notices of the meetings.

9 **B. Lease Issues.**

10 1. After its formation, the LLC closed on the purchase of the Awbrey Butte Property from  
11 Deschutes County and took ownership of the entire Awbrey Butte Property subject to a trust deed in  
12 favor of Deschutes County.

13 2. After its formation, the LLC entered into an Amended and Restated Communications  
14 Site Lease Agreement (the "Lease") with each Member. Each Lease recited that:

15 "Lessee has previously installed (or will install) a communications antenna tower on  
16 the Property together with certain other improvements (such tower and other  
17 improvements collectively referred to as "Improvements") necessary to the operation  
18 of such tower pursuant to a lease with the County. The location of Lessee  
Improvements is as depicted on the plot plan noted as Exhibit "B" and attached  
hereto (the "Site")."

19 3. Each Lease provides that: "Lessor does hereby lease to Lessee the Site and the right to  
20 use such other portions of the Property as is reasonably necessary in Lessor's discretion for Lessee to  
21 use the Site employing the equipment described in Exhibit "D" attached hereto."

22 4. Exhibit B attached to each lease consists of a copy of a much reduced engineer's survey  
23 of the Awbrey Butte Property showing each of the Members' Improvements and access roads to them.  
24 Overlaying this survey, a representative of Other Member NPG of Oregon, Inc. ("NPG") drew boxes  
25 around the Improvements and labeled each box with a name of one of the Member lessees.

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1           5. The Lease is vague and subject to conflicting interpretations as to what the word "Site"  
2 means. Claimants and the LLC contend it means only the property underneath the Lessee  
3 Improvements. Western Radio contends it means the areas depicted in the boxes on Exhibit B to the  
4 Lease.

5           6. The boxes on Exhibit B are not drawn to scale and it cannot be determined from  
6 Exhibit B what the borders of any exclusive lease area would be. In addition, Exhibit B clearly shows  
7 guy wire anchors of some Members in the Exhibit B area of other Members. Also, the access roads  
8 cross the Exhibit B areas of several of the Members. No easement provisions are made in the Lease or  
9 Operating Agreement providing for access across another Member's area or the installation of guy wire  
10 anchors on another Member's area. Paragraph 5 of the Lease references only easements the LLC has the  
11 right to use for access to the Property presumably across adjoining properties.

12           7. Therefore, the language of the Lease, taking into account testimony of the parties and all  
13 of the information on Exhibit B, shows that the intention of each Lease was that each Member would  
14 have the exclusive use only of the Property underneath its Improvements and otherwise would have the  
15 right to use such other portions of the Awbrey Butte Property as the LLC lessor determined in its  
16 reasonable discretion.

17           8. Western Radio refused to sign its lease on the grounds that Chackel (fka "Combined  
18 Communications") should not be allowed to occupy the space between Western Radio's Improvements  
19 and OPB's Improvements as indicated in the drawing of the boxes on Exhibit B.

20           9. Approximately three years after all other Member lessees had signed their leases,  
21 Western Radio signed its lease in reliance upon a letter from Chackel stating that Chackel "hereby  
22 releases any right to have its tower located at the location depicted in the current Exhibit B area."

23           10. Taking the facts as a whole, Western Radio's Lease does not provide an exclusive area  
24 for Western Radio as depicted on Exhibit B or otherwise, but instead provides for Western Radio to  
25 have the exclusive use of the Property under Western Radio's Improvements as the LLC determines  
26 necessary in its reasonable discretion. Western Radio has the right to exclude construction of a new

1 tower by Chackel or any other Member or third party between Western Radio's Improvements and  
2 OPB's Improvements as depicted on Exhibit B to Western Radio's Lease. Western Radio has no other  
3 right to exclude the LLC or, with the LLC's consent, any other Member, from the areas depicted on  
4 Exhibit B not under Western Radio's Improvements.

5 11. The LLC and Chackel complied with Western Radio's Lease by constructing its tower in  
6 an area that is clearly outside the location depicted on Exhibit B. In addition, Chackel obtained the  
7 consent of Western Radio and the LLC to construct the Chackel Tower at or near its current location.

8 **C. Land Use Planning Issues.**

9 1. Despite having given its consent, Western Radio adamantly opposed land use approvals  
10 for construction of the Chackel tower resulting in tens of thousands of dollars of expenses to Chackel  
11 for land use planning that would otherwise have not been necessary and years of delay in constructing  
12 its tower. Western Radio's opposition materially interfered with the business of the LLC in owning and  
13 managing the tower farm.

14 2. Western Radio also sought to replace its tower on Awbrey Butte. Other Members also  
15 desired to make changes in their Improvements on Awbrey Butte. In some cases, conditional use  
16 approvals from the City of Bend were required to construct or alter the members' towers. In some  
17 cases, including Western Radio, site review approvals and building permits from the City of Bend were  
18 required before construction could begin.

19 3. As a condition to any land use review, the City of Bend Planning Department demanded  
20 that the Members submit their land use plans in one Master Plan phasing the development of the  
21 Awbrey Butte property over the next ten years (the "Master Plan"). The LLC complied with this  
22 requirement in part by using portions of pre-existing work paid for by Chackel and reimbursed Chackel  
23 for those costs. Ultimately, the hearings officer determined that no Master Plan was required or  
24 appropriate and instead handled each of the Members' land use applications separately.

25 4. Despite approval by the LLC of the LLC's land use submissions, Western Radio filed  
26 objections to the LLC's land use submissions and filed a petition for review with LUBA of the decision

1 on the LLC's submissions, raising RF Interference issues required by its Lease and the Operating  
2 Agreement to be resolved in other forums. Western Radio's objections and petition forced the LLC to  
3 incur substantial expenditures for attorney fees and land use planning it would not otherwise have  
4 incurred and delayed implementation of tower construction by years. By pursuing its objections and  
5 petition for review, Western Radio materially interfered with the business of the LLC in owning and  
6 managing the tower farm on the Awbrey Butte Property.

7 **D. Capital Calls and Accounting Issues.**

8 1. Under the Operating Agreement and Amended Operating Agreement, the LLC is  
9 required to credit to each member's capital account any additional capital contributions, the member's  
10 distributive share of profits, and the member's distributive share of losses. The Agreements require the  
11 LLC to maintain and make available to the Members its records to the extent provided in the ORS and  
12 to provide K-1s at the end of each taxable year.

13 2. All members, including Western Radio, paid for their own site review work and building  
14 permits. Western Radio strenuously objected to the LLC issuing capital calls to pay for the Master Plan  
15 expenditures. This required the LLC to sue to recover those capital calls resulting in a Limited  
16 Judgment against Western Radio for \$51,310.20 in capital calls ("Limited Judgment") that was affirmed  
17 on appeal in *Awbrey Towers LLC v. Western Radio Services, Inc.*, 249 Or App 500, rev.den. 288 P.3d  
18 275 (2012) (the "Capital Calls Case"). By failing to pay the capital calls, Western Radio materially  
19 breached the Operating Agreement.

20 3. On January 9, 2009, the Court signed a supplemental judgment in the Capital Calls Case  
21 (the "2009 Supplemental Judgment") requiring Western Radio to pay the LLC's attorney fees at trial.  
22 The Court caused to be credited against the attorney fee judgment amounts already covered by Western  
23 Radio's share of the capital calls.

24 4. The Court entered a second supplemental judgment in the Capital Calls Case (the  
25 "Second Supplemental Judgment") requiring Western Radio to pay the LLC the attorney fees incurred  
26 by the LLC on the appeals of the Capital Calls Case. Western Radio and the LLC have been unable to

1 agree on what, if any, sum is to be credited against the Second Supplemental Judgment reflecting  
2 Western Radio's 1/7<sup>th</sup> share of the capital calls issued for payment of those attorney fees. The 2009  
3 Supplemental Judgment provides precedent for requiring such credit. If the LLC and Western Radio  
4 cannot agree on that credit, then Western Radio may seek to have the Deschutes County Circuit Court  
5 determine the amount of credit, if any, and enter an appropriate order providing for that credit.

6           5. The attorney fees incurred by the LLC in the Capital Calls Case, both at trial and on  
7 appeal, were well within the purpose of the LLC in owning and managing the tower farm and the LLC  
8 correctly assessed Western Radio its 1/7<sup>th</sup> share of all capital calls required to pay those attorney fees.

9           6. In March 2009, Western Radio paid to the LLC all amounts awarded in favor of the LLC  
10 in the Limited Judgment and in the 2009 Supplemental Judgment. The LLC's accountants correctly  
11 credited the amounts paid by Western Radio for the \$51,310.28 in capital calls to Western Radio's  
12 capital account. The accountants also correctly credited the amounts paid by Western Radio for attorney  
13 fees and costs and interest to LLC income.

14           7. The LLC correctly held Western Radio's March 2009 payments in a suspense account  
15 pending resolution of Western Radio's appeals in the Capital Calls case. In 2012, once the appeals were  
16 final, the LLC's CPA correctly applied Western Radio's payments. The LLC's CPA has confirmed that  
17 all amounts paid by Western Radio in attorney fees and interest have been credited to the LLC's income  
18 and that Western Radio's capital account will be credited with Western Radio's 1/7<sup>th</sup> share of that  
19 income in the ordinary course.

20           8. By checks dated August 31, 2012, Western Radio paid to the LLC amounts equal to  
21 those awarded against Western Radio in the Second Supplemental Judgment. However, Western Radio  
22 designated these payments as "capital contributions" on the checks and the LLC's CPAs correctly  
23 credited those amounts to Western Radio's capital account and not to the Second Supplemental  
24 Judgment.

25           9. All amounts paid or to be paid by Western Radio for attorney fees and costs and interest  
26 pursuant to the Supplemental and Second Supplemental Judgments are properly treated as income to the

1 LLC and not as capital contributions. Any other treatment would have the effect of voiding the two  
2 judgments because if credited to Western Radio's capital account, the LLC would then owe back to  
3 Western Radio all amounts that Western Radio was required to pay by those two judgments.

4 10. The LLC's CPAs have now credited Western Radio's August 31, 2012 checks to the  
5 capital call amounts demanded in the LLC's September 17, 2012 letter to Western Radio. Therefore,  
6 the LLC's balance sheet as of December 31, 2012, Arbitration Exhibit 218, correctly reflects Western  
7 Radio's capital account as being \$89,599.32, subject to adjustment for net income incurred by the LLC  
8 in 2012, including the net income of \$34,092.50 reflected on that balance sheet which, in turn, includes  
9 Western Radio's payment of attorney fees and costs and interest in satisfaction of the Limited Judgment  
10 and the 2009 Supplemental Judgment.

11 11. Western Radio has stated that it will not pay future capital calls on the grounds that,  
12 under the decisions in the Capital Calls Case, payment of any capital calls ratifies all capital calls, even  
13 those that Western Radio contends do not serve an LLC purpose. This reasoning is not persuasive. The  
14 decision in the Capital Calls Case stated that prior payments of capital calls ratified the means by which  
15 the LLC had previously agreed upon capital calls. There was no holding that payment of some capital  
16 calls ratifies all capital calls no matter their purpose. *Awbrey Towers, LLC, supra*, 249 Or App at 506-  
17 08. Western Radio's refusal to pay future capital calls is an anticipatory breach of the Amended  
18 Operating Agreement and materially interferes with the business of the LLC.

19 12. Western Radio has alluded to the possibility of three future lawsuits against the LLC or  
20 Claimants, including the lease disputes and capital call disputes.

21 13. As of December 31, 2012, the LLC had cash of \$76,036.71 as reserves against the LLC's  
22 agreed minimum cash reserves of \$15,308.79. However, the attorney fees being incurred by the LLC in  
23 this proceeding, and Western Radio's alluding to three more potential lawsuits involving the LLC, make  
24 it reasonable for the LLC to maintain its current level of reserves.

25 14. Except for crediting 2012 net income to Western Radio's capital account in the ordinary  
26 course, and except for Western Radio's right to seek a credit for capital call payments against the

1 Second Supplemental Judgment, the LLC has properly accounted for all matters raised by Western  
2 Radio in this arbitration proceeding.

3 **E. RF Interference Issues.**

4 1. Western Radio has frequently complained of RF interference (“Interference”) affecting  
5 its low-power transmissions from Western Radio’s tower on the Awbrey Butte Property. Several of the  
6 Other Members have voluntarily undertaken, at considerable expense to them, testing and mitigation  
7 steps to determine the cause of and reduce the possibility of Interference with Western Radio. In one  
8 case, the Interference has been eliminated. In some cases, Western Radio, without much support, has  
9 disagreed with the findings of technicians who tested for Interference. In one case, the FCC determined  
10 that the source of Interference could not be determined. However, Western Radio continued to contend  
11 in improper forums that the Other Members are causing Interference which materially interferes with  
12 the business of the LCC.

13 2. The Operating Agreement and the Lease provide specific mechanisms for resolving  
14 Interference claims. Western Radio properly obtained an order of the Deschutes County Circuit Court  
15 compelling arbitration of one of its Interference claims. However, Western Radio unreasonably refused  
16 to advance the fees of the arbitrator pending a determination by the arbitrator of who the “offending  
17 party” behind the Interference was. This had the effect of stopping the arbitration and preventing  
18 resolution of the Interference claim. Western Radio’s refusal to agree upon the terms for advancing the  
19 arbitrator’s fees was unreasonable and had resulted in the Interference claim remaining pending for four  
20 years. This has deprived the LLC of a final resolution of the underlying issues in the required forum.

21 **F. Land Disputes.**

22 1. There are significant areas of land owned by the LLC not currently occupied by any  
23 Improvements of any Member. Some of this land may or may not be developable into view lots  
24 depending on whether access and water issues can be cured. The unoccupied portions of the LLC’s land  
25 between the Members’ Improvements and adjoining subdivisions to the north are useful as a buffer.  
26 However, the LLC remains open to proposals for partitioning, subdividing or otherwise selling portions

1 of the LLC's property not being used for Improvements or potential future Improvements. No such  
2 proposal has been forthcoming to date.

3           2. Western Radio has installed boulders blocking use of an access road located between  
4 Western Radio's Improvements and OPB's Improvements. The boulders were placed in an area not  
5 exclusively leased to Western Radio. The boulders interfere with access by OPB to its guy wire  
6 anchors. The boulders trespass on LLC property and materially interfere with the LLC's ability to  
7 manage the tower farm.

8           3. Western Radio has occupied an LLC building previously occupied by Arch Paging. The  
9 building is not a Western Radio Improvement and is not on land exclusively leased to Western Radio.  
10 Western Radio occupied the Arch Paging building without notice to or consent of the LLC. Western  
11 Radio continues to occupy it despite the LLC's notice of objection. Western Radio's occupancy of the  
12 Arch Paging building without the consent of the LLC is a trespass and materially interferes with the  
13 LLC's management of its tower farm.

14           **G. Motives.**

15           1. Western Radio is justifiably frustrated by the loss of its Deschutes County exclusive  
16 lease area; Deschutes County's refusal to sell that exclusive lease area to Western Radio; the City of  
17 Bend's wrongful imposition of the Master Plan requirement; and the FCC's policy of setting noise  
18 floors that disadvantage low power transmitters such as Western Radio. However, none of this is the  
19 fault of the LLC or the Other Members and none of this justifies Western Radio's willful and persistent  
20 breaches of agreements and duties and interference with the business of the LLC.

21           2. Western Radio is justifiably galled by having to pay 1/7<sup>th</sup> of the legal fees incurred by the  
22 LLC in opposing Western Radio in court and in arbitration, but that is the way LLCs work. If the  
23 litigation serves an LLC purpose, then all members must contribute their share of the legal fees. The  
24 same would be true if the LLC sued one of the Other Members for unpaid rent and forced that Other  
25 Member to pay 1/7<sup>th</sup> of the legal fees incurred by the LLC in doing so.

26 ///

**H. Summary.**

1. Despite the persistent and willful breaches and interference by Western Radio, the LLC has been able to carry on its business of owning and managing a tower farm that serves the purposes of the LLC and its Members by protecting their rights to own and operate a tower on the Awbrey Butte Property and to prevent a third party from obtaining control of that Property. The LLC has a strong balance sheet and substantial cash reserves.

2. Dissolving the LLC would cause substantial and irreparable harm to the LLC and all of its Members, including Western Radio. It could lead to foreclosure of the Awbrey Butte Property and loss of all of the Members' Leases or sale to a third party and loss of control of the Property.

3. There has been a complete loss of trust and confidence by Western Radio in the LLC and its Other Members and by the Other Members and the LLC in Western Radio. As a result, the LLC is subject to constant threat of litigation and interference which substantially increases the cost of doing business for the LLC and delays implementation of its decisions, sometimes for years.

4. Since at least 2007, Western Radio has been functioning like an assignee, rather than a member of the LLC by refusing to pay capital calls and abdicating its right to vote on LLC issues.

5. Therefore, expulsion of Western Radio would not substantially harm Western Radio or even change the status quo. Upon expulsion, Western Radio becomes an assignee and under ORS 63.249(4) retains its capital account and its rights to distributions in compliance with Oregon law, but otherwise loses its management and voting rights and is exempted from its obligation to pay future capital calls.

6. Expulsion does not trigger the purchase provisions under paragraph 8.2 of the Amended Operating Agreement. After expulsion, Western Radio retains all of its rights under its Lease. Although Recital D of the Lease recites that Western Radio owns a membership interest in the LLC and is a party to the Operating Agreement, that recital is not made a condition of the Lease and there is no provision in the Lease providing for its termination upon expulsion of Western Radio from the LLC.

///

1           7. Claimants have presented no evidence from which any reasonable estimate of damages  
2 suffered by Claimants or the LLC could be determined.

3           8. Western Radio has presented no evidence from which any reasonable estimate of  
4 damages suffered by Western Radio could be determined even if Western Radio had proved any of its  
5 claims for breach of fiduciary duty or duties of loyalty, care and good faith and fair dealing, which it has  
6 not proved.

### 7           **III. CONCLUSIONS OF LAW**

8           1. In commercial contracts, absent fraud, a party signing a written agreement is bound by  
9 that agreement and any person signing it is presumed to be familiar with its contents. *Pokorny v.*  
10 *Williams*, 199 Or 17, 33 (1953); *Northwestern Pacific Indemnity Co. v. Junction City Water Control*  
11 *District*, 295 Or 553, 557 N.4 (1983).

12           2. Under ORS 63.155(1), each member of a member managed LLC owes a duty of loyalty  
13 to the LLC.

14           3. Under ORS 63.661, an LLC may be dissolved only “if it is established that it is not  
15 reasonably practical to carry out the business of the limited liability company in conformance with its  
16 articles of organization or any operating agreement.”

17           4. ORS 63.209(b) permits expulsion of an LLC member where: (a) the member has been  
18 guilty of wrongful conduct that adversely and materially affects the business or affairs of the limited  
19 liability company; or (b) the member has willfully or persistently committed a material breach of the  
20 articles of organization or any operating agreement or otherwise breached a duty owed to the limited  
21 liability company or the other members to the extent that it is not reasonably practical to carry on the  
22 business or affairs of the limited liability company with that member.

23           5. Under ORS 63.265(1) and (2)(a), an LLC member, upon expulsion, becomes an  
24 assignee. Under ORS 63.249(3) and (4), an expelled LLC member thereby retains its capital account  
25 and its right to distributions in compliance with Oregon law; is exempted from its obligation to pay  
26 future capital calls; and loses its management and voting rights in the LLC.

1           6. Under ORS 63.771 and 63.777, an LLC member has the right to inspect and copy  
2 financial records of the LLC. There is no requirement to deliver them to the LLC members. Under  
3 ORS 63.185, profits and losses are allocated in the manner provided in the operating agreement and  
4 otherwise equally.

5           **IV. APPLICATION OF LAW TO FACTS.**

6           1. The Operating Agreement and the Amended Operating Agreement were properly  
7 adopted by the Members of the LLC.

8           2. The Operating Agreement was the valid operating agreement of the LLC until adoption  
9 of the Amended Operating Agreement and the Amended Operating Agreement is, and has been since its  
10 adoption, the valid operating agreement of the LLC.

11          3. No provisions of the Operating Agreement or the Amended Operating Agreement to  
12 which Western Radio objected in this proceeding are void and there is no requirement for unanimous  
13 consent of the Members to amend the operating agreements of the LLC.

14          4. All versions of the Operating Agreement, even the one advocated by Western Radio,  
15 provide for prevailing party attorney fees and costs regardless of whichever party, including the LLC,  
16 prevailed and regardless of which party brought the lawsuit. *Awbrey Towers, LLC, supra*, 249 Or App  
17 at 513.

18          5. Western Radio has presented no evidence establishing any breach of fiduciary duty or  
19 duties of loyalty, care and good faith and fair dealing of the LLC or the Other Members, or any damage  
20 therefrom.

21          6. The LLC has provided all accountings required of it to Western Radio and has correctly  
22 accounted for all matters challenged by Western Radio in this arbitration proceeding except for crediting  
23 2012 net income to Western Radio's capital account in the ordinary course and, if so ordered by the  
24 Deschutes County Circuit Court, providing a credit on the Second Supplemental Judgment for attorney  
25 fees and costs previously paid by Western Radio through capital calls.

26 ///

1           7. There has been no showing that it is not reasonably practical for the LLC to carry out its  
2 business in conformance with its articles and operating agreement.

3           8. Western Radio has been guilty of wrongful conduct, including trespass, improper  
4 litigation and misrepresentation that adversely and materially affected the business of the LLC.

5           9. Western Radio has willfully and persistently breached the Operating Agreement and  
6 Amended Operating Agreement and breached its duty of loyalty to the LLC and the Other Members to  
7 the extent that it is not reasonably practical to carry on the business or affairs of the LLC with Western  
8 Radio.

9           10. Expulsion of Western Radio does not trigger the purchase provisions under  
10 paragraph 8.2 of the Amended Operating Agreement.

11           11. Expulsion of Western Radio does not affect Western Radio's rights under its Lease.

12           12. Claimants have not presented evidence sufficient to justify an award of any damages  
13 against Western Radio.

## 14       **V. JUDGMENT**

15       The undersigned enters its Judgment as follows:

16       1. Western Radio's request to dissolve the LLC is denied and dismissed with prejudice.

17       2. Claimants' request to expel Western Radio is granted and Western Radio is hereby  
18 expelled from the LLC, effective January 29, 2013.

19       3. Upon expulsion, Western Radio retains its capital account and its rights to future  
20 distributions in compliance with Oregon law.

21       4. Upon expulsion, Western Radio is no longer required to pay capital calls.

22       5. Upon expulsion, Western Radio loses all management and voting rights in the LLC.

23       6. Expulsion of Western Radio has no effect on Western Radio's Lease which continues in  
24 effect according to its terms.

25       7. Expulsion of Western Radio triggers no right in the LLC to purchase Western Radio's  
26 interest in the LLC.

**1            8. Claimants' request for damages is denied and dismissed with prejudice.**

2           9. Western Radio's claims for breach of fiduciary duties and duties of loyalty, care and  
3   good faith and fair dealing are denied and dismissed with prejudice.

10. Western Radio's request for an accounting is denied and dismissed with prejudice except that the LLC will credit Western Radio's capital account with its share of 2012 net income in the ordinary course and Western Radio may seek an order of the Deschutes County Circuit Court crediting its capital call payments to the Second Supplemental Judgment.

11. The LLC and Claimants are entitled to an award of their attorney fees and costs as provided in the Amended Operating Agreement.

10 DATED this 9<sup>th</sup> day of April, 2013.

11

12 /s/A. Michael Adler  
Circuit Court Judge

13

**14** Submitted by:

15

16

17 Terrence B. O'Sullivan, OSB #681225  
Of Attorneys for Petitioner Awbrey Towers, LLC  
Trial Attorney: Terrence B. O'Sullivan  
18 Phone: 541-389-1770 Fax: 541-389-1777  
19 Email: Terry@merrill-osullivan.com

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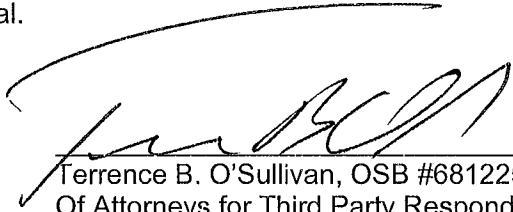
## CERTIFICATE – TRUE COPY

I hereby certify that the foregoing:

- **GENERAL JUDGMENT**

is a complete and exact copy of the original.

Dated this 5<sup>th</sup> day of April, 2013.

  
Terrence B. O'Sullivan, OSB #681225  
Of Attorneys for Third Party Respondent/Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing:

- **GENERAL JUDGMENT**

on the following parties:

MICHAEL B MERCHANT  
BLACK HELTERLINE LLP  
805 SW BROADWAY STE 1900  
PORTLAND OR 97205  
Of Attorneys for Claimants/Respondents

MARIANNE DUGAN  
ATTORNEY AT LAW  
259 E FIFTH AVE STE 200-D  
EUGENE OR 97401  
Attorney for Respondent-Third Party Claimant/Respondent

by faxing copies to said parties on Monday, April 2, 2013 and by mailing via first class mail to said parties true and correct copies thereof on the date stated below:

Dated this 5<sup>th</sup> day of April, 2013.

/s/ TERRENCE B. O'SULLIVAN

---

Terrence B. O'Sullivan, OSB #681225  
Of Attorneys for Third Party Respondent/Petitioner

MERRILL O'SULLIVAN, LLP  
805 SW INDUSTRIAL WAY, SUITE 5 – BEND OR 97702  
(541) 389-1770 Fax: (541) 389-1777

CERTIFICATE OF SERVICE

## **Certificate of Service**

I, Seth L. Williams, hereby certify that I have, this 27th day of January, 2022, cause a copy of the foregoing "Opposition to Petition to Deny" to be sent via U.S. Mail or electronic mail, as indicated below, to:

Albert Shuldiner  
James Bradshaw  
Tom Hutton  
Federal Communications Commission  
Media Bureau  
Audio Division  
[Albert.Shuldiner@fcc.gov](mailto:Albert.Shuldiner@fcc.gov)  
[James.Bradshaw@fcc.gov](mailto:James.Bradshaw@fcc.gov)  
[Tom.Hutton@fcc.gov](mailto:Tom.Hutton@fcc.gov)

### **Service by Email**

Richard L. Oberdorfer  
P.O. Box 2450  
Carefree, AZ 85377

### **Service by U.S. Mail**

s/ Seth L. Williams  
Seth L. Williams