ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re:	)	
	)	
Parker Broadcasting of Dakota License, LLC	)	
	)	MB Docket No. 16-69
Must-Carry Complaint Regarding	)	CSR-8921-M
Television Station KRDK-TV,	)	
Valley City, North Dakota	)	

Accepted/Files
MAR 22 2016
Federal Communications Commission
Office of the Secretary

To: Office of the Secretary
Attn: Chief, Media Bureau

DOCKET FILE COPY ORIGINAL

COMMENTS

Gray Television Licensee, LLC ("Gray"), licensee of KVLY-TV, Fargo, North Dakota, hereby files these comments in response to the Must-Carry Complaint filed by Parker Broadcasting of Dakota License, LLC ("Parker") against Cable One, Inc. ("CableOne") seeking carriage of KRDK-TV on CableOne's cable systems in the Fargo designated market area (the "Fargo DMA"). For the reasons outlined below, the Complaint should be dismissed.

I. INTRODUCTION

In 2014, Parker's parent company, Major Market Broadcasting of North Dakota, Inc. ("MMBI"), purchased KRDK-TV as part of a larger transaction through which Gray acquired several stations previously owned by Hoak Media. Gray retained KRDK's affiliation with the CBS network and moved the CBS-affiliated programming to a digital subchannel of KVLY-TV, which broadcasts on Channel 11 in Fargo. Gray sought to avoid viewer confusion and to continue fulfilling Fargo viewers' expectation of receiving CBS-affiliated local service on channel 4 by branding its KVLY-TV subchannel as "KX4," and it has continued to provide that programming to local MVPDs for airing on channel 4. At the time Gray sold KRDK-TV to MMBI, it understood that Parker would not seek mandatory carriage for KRDK-TV on channel

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4, but would instead seek to find another mutually agreeable channel on MVPD systems serving Fargo.

The Complaint demonstrates that MMBI has reconsidered its position and seeks to enforce mandatory carriage rights for KRDK-TV on channel 4. As explained in Gray's Petition for Waiver and Request for Reassignment of PSIP Channels, filed October 7, 2015, permitting KRDK-TV to claim rights to MVPD carriage on channel 4 would be contrary to the public interest and would lead to substantial consumer confusion and dislocation.[1] Gray maintains that granting KRDK-TV must-carry rights on channel 4 would be contrary to the public interest. But as described below, the Complaint fails for the simpler reason that it is incurably out-of-time under the FCC's rules. Parker forfeited any rights it may have to mandatory carriage on any channel on CableOne's Fargo cable system, and the Complaint must be dismissed.

II. THE COMPLAINT IS TIME-BARRED AND MUST BE DENIED.

The Complaint concedes, as it must, that any must-carry complaint must be filed within sixty (60) days of a cable operator's denial of a carriage request or the expiration of the operator's thirty (30) day period to respond.[2] Parker then claims the Complaint is timely because it was filed within sixty (60) days of CableOne's February 11, 2016, denial of carriage.[3] But this claim leaves out crucial information that can be pieced together only from a careful review of the Complaint and its incomplete, but nonetheless decisive exhibits. Upon examination of Parker's own evidence, it is clear that Parker's time to file a carriage complaint expired in late 2015 and that the Complaint is incurably out of time.

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1 Gray's waiver request is referred to herein as the "PSIP Waiver."

2 47 C.F.R. §§ 76.61(a)(2), (a)(5).

3 *See* Complaint at 2 & Declaration of Ravi Kapur at para. 4.

The opening paragraph of Parker's January 25, 2016 demand for carriage acknowledges that it is "our second formal request for carriage[] under the mandatory carriage provisions of [the Communications Act and] the rules of the Federal Communications Commission."[4] The FCC's precedent is clear that a station's filing period for a carriage complaint runs from its initial carriage demand and that failure to file cannot be cured by sending a second carriage demand.[5] Thus, Parker's January 25, 2016 letter, which on its face acknowledges that it is a "second formal request" cannot form the basis for determining the date by which Parker's Complaint would be deemed timely filed.

The Complaint does not include Parker's first demand for carriage of KRDK-TV to Cable One, but it does include correspondence that establishes that Parker sent a carriage demand to BEK Communications no later than August 25, 2015.[6] Based on KRDK's reference to its earlier carriage demand to Cable One in its January 25 letter, Gray expects that Cable One also received a carriage demand from Parker on or around August 25, 2015. The Complaint also does not include any response that Cable One might have made within thirty (30) days of Parker's August 25 demand. But even assuming that Cable One did not respond, Parker's must-carry complaint would have been due at the FCC no more than ninety (90) days following August 25, 2015. In other words, to qualify as timely filed under the FCC's rules, Parker was required to file no later than Monday, November 23, 2015. Since the Complaint was not filed until March 2, 2016, it was more than three (3) months late.

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4 *See* Attachment 1 (originally attached to the Complaint as part of Exhibit 1).

5 *See, e.g.*, *Long Communications, LLC v. HPI Acquisition Co., LLC*, 21 FCC Rcd 10499, 10501-502 (Med. Bur. 2006).

6 *See* Attachment 2 (originally attached to the Complaint as part of Exhibit 1).

The FCC always has strictly enforced its procedural rules for filing must-carry complaints, and untimely filed complaints are routinely dismissed.[7] This case should be no different, and Parker's Complaint likewise should be dismissed.

III. THE COMMISSION SHOULD RESOLVE PARKER'S FUTURE MUST-CARRY RIGHTS BY GRANTING GRAY'S PENDING REQUEST FOR PSIP REASSIGNMENT.

Parker's forfeit of KRDK-TV's must-carry rights for the current election cycle means that KRDK-TV will not be able to frustrate Fargo viewers' expectation of finding their local CBS affiliate on channel 4 of local MVPD systems through the end of 2017. If the *status quo* remains unchanged, however, Parker would still be able to demand carriage on channel 4 for the next must-carry election period commencing January 1, 2018.

To ensure that Fargo viewers continue to enjoy the services that they have come to expect, the Commission should settle KRDK-TV's must-carry rights permanently. The PSIP Waiver proposed by Gray in the fall of 2015 would accomplish this by reassigning KRDK-TV to a new virtual channel where it can begin to build its own viewership on a new channel that would be uniform for both over-the-air and MVPD viewers.[8] The FCC can settle rights of KRDK-TV, KVLY-TV, and Fargo TV viewers by processing and granting Gray's PSIP Waiver.

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[7] *See, e.g.*, *Western Pacific Broadcast, LLC v. Service Electric Cable Television, Inc., et al.*, 28 FCC Rcd 10804, 10812-13 (Med. Bur. 2013); *Long Communications,* 21 FCC Rcd at 10501-02 (citing *Sage Broadcasting Corporation v. Brownwood Cable Television Services. Inc.*, 17 FCC Red 10567, 10568 (Med. Bur. 2002); *see also Family Stations. Inc. v. Time Warner Cable and RCN New York.* 18 FCC Red 15242 (Med. Bur. 2003), *recon. withdrawn; KM Television of El Dorado. L.L.C v. Cox Communications. Inc.*, 19 FCC Red 9889 (2004), *recon. denied.* 21 FCC Red 3906 (2006)).

[8] *See* Attachment 3.

III. CONCLUSION

For the foregoing reasons, the Complaint should be dismissed, and the Commission should grant the PSIP Waiver.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC

By: _____
Name: Robert J. Folliard, III
Title: Assistant Secretary

March 22, 2016

ATTACHMENT

1

January 25, 2016 Carriage Demand

KRDK-TV Channel 4
The Station For All.

Major Market Broadcasting of North Dakota, Inc.
Parker Broadcasting of Dakota Licensee, LLC
2118 Walsh Avenue, Suite 208
Santa Clara, California 95050
415.886.7284

January 25, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott Geston
Cable One Inc.
1024 Page Drive
Fargo, ND 58103

Re: KRDK-TV Must-Carry Demand

Dear Mr. Geston,

Television station KRDK-TV, FCC Facility ID 49134, Valley City, North Dakota, hereby exercises its must-carry rights on your cable television system or systems serving subscribers in the Fargo-Valley City Designated Market Area (DMA). This is our second formal request for carriage, under the mandatory carriage provisions of Section 614(b)(1)(B) of the Communications act of 1934, as amended, 47 U.S.C. § 534(b)(1)(B), and Section 76.56(b)(2) of the Rules and Regulations of the Federal Communications Commission (FCC).

KRDK-TV's community of license and your cable system are both located in the Fargo-Valley City DMA. Therefore, the Communications Act and the FCC's Rules require your cable system to carry KRDK-TV unless the station elects retransmission status. KRDK-TV either elected must-carry status by October 1, 2014, or failed to make any election, in which case it is a must-carry station by default under Section 76.64(f)(3) of the FCC's Rules.

KRDK-TV has the right to be carried on the cable channel which corresponds to its over-the-air virtual channel number, pursuant to Section 76.57(f) of the FCC's Rules. We request carriage on cable channel 4, which corresponds to the station's over-the-air virtual channel. The channel on which the station is carried must be included in your system's basic tier, distributed to all subscribers.

KRDK-TV is aware of the petition pending before the FCC to require the station to change its virtual channel number. We believe firmly that the petition has no merit; but in any event, the petition is irrelevant to your carriage obligations unless and until the FCC issues an order changing KRDK-TV's virtual channel number and such order becomes effective after completion of any appeal procedures. KRDK-TV has broadcast on analog Channel 4 or on digital virtual Channel 4 for more than 60 years, so the station's right to carriage on cable Channel 4 is neither new nor unusual. I have enclosed a copy of our response in the event you have not received it.

To the extent that we have previously communicated with you, it was to inform you of our election to be a must-carry station. In contrast, this letter is a formal demand for carriage consistent with our must-carry status. We request your response within 30 days, and sooner if possible. If you do not respond in 30 days, the FCC's rules consider that to be a rejection, starting the time clock for us to file a formal petition asking the FCC to order you to carry KRDK-TV on Cable Channel 4.

Very truly yours,

Ravi Kapur
KRDK-TV President

(00813881-2)

ATTACHMENT

2

August 25, 2015 E-mail from BEK Communications to Gray

From: Carmen Biesterfeld
Sent: Tuesday, August 25, 2015 11:43 AM
To: 'Dick Heidt'
Subject: BEK - notification of channel number change for CBS

Hi Dick,

I received a "must carry" notice requesting carriage on channel 4 in the Fargo-Valley City DMA. To comply with their request, I will need to move CBS from channel 4 to channel 3. This change should take effect the end of September, first part of October. When I get a more definitive date, I'll pass it along to you.

Thank you

Carmen Biesterfeld
Regulatory Reporting Coordinator
carmenb@bektel.coop
Office: 701-475-1260
Fax: 701-475-2100
BEK Communications
www.bektel.com

ATTACHMENT

3

PSIP Waiver

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re	)	
	)	
GRAY TELEVISION LICENSEE, LLC KVLY-TV, Fargo, North Dakota FCC Facility ID No.61961	)))	MB Docket No. ____
	)	
PARKER BROADCASTING OF DAKOTA LICENSEE, LLC KRDK-TV, Valley City, North Dakota FCC Facility ID No. 49134	))))	Accepted / Filed
	)	
Petition for Waiver of Commission Program and System Information Protocol (PSIP) Rules to Provide an Alternative PSIP Virtual Channel to KVLY-TV and to KRDK-TV	))))	OCT - 7 2015 Federal Communications Commission Office of the Secretary

To: Marlene Dortch, Secretary

Attention: Chief, Media Bureau

PETITION FOR WAIVER AND REQUEST FOR REASSIGNMENT OF PSIP CHANNELS

Gray Television Licensee, LLC ("Gray"), licensee of KVLY-TV, Fargo, North Dakota (FCC Facility ID No. 61961), hereby petitions for waiver of the FCC's Program and System Information Protocol ("PSIP") Rules[1] and requests assignment of alternative PSIP virtual channels to KVLY-TV and to separately owned KRDK-TV, Valley City, North Dakota, licensed to Parker Broadcasting of Dakota Licensee, LLC (FCC Facility ID No. 49134) ("Parker").[2]

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[1] ATSC A/65C ("ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C with Amendment No. 1, dated May 9, 2006") (the "*PSIP Standard*"), incorporated in the FCC's rules by 47 C.F.R § 73.682(d).

[2] Parker does not join in this request. Parker is owned by Major Market Broadcasting of North Dakota, Inc.

INTRODUCTION AND SUMMARY

Gray requests that the FCC waive its PSIP rules and assign virtual channel 4 to KX4, Gray's CBS-affiliated digital subchannel of KVLY-TV.[3] Because KRDK-TV currently is assigned virtual channel 4, the requested waiver and reassignment will require the FCC to assign a new virtual channel to that station. This result is necessary to avoid confusion among cable customers in the Fargo-Valley City, North Dakota Designated Market Area (the "Fargo DMA") and to effectuate the purposes of the Commission's adoption of virtual channel numbering system for DTV signals.

For many years, cable and satellite customers in the Fargo DMA have expected to find their local CBS Television Network affiliate on Channel 4. Last year, Gray acquired the network affiliation and re-launched the local CBS affiliate on a digital subchannel of KVLY-TV. The station remained on channel 4 for local MVPD customers. Recently, KRDK-TV, a local television station that currently is assigned virtual channel 4, announced that it will be returning to the air after a prolonged absence. KRDK-TV has demanded that local MVPDs provide it carriage on channel 4 of their systems, threatening to displace the programming that viewers expect to find on that channel. Allowing KRDK-TV to successfully obtain MVPD carriage on channel 4 in the Fargo DMA will confuse viewers and frustrate their rightful expectations.

Only the requested waiver can prevent that result. The *PSIP Standard* was adopted to (1) permit stations to retain the identification of their programming with a particular channel number; and (2) avoid confusing viewers who identify a particular channel number with

[3] KVLY-TV is assigned virtual channel 11.1, and KX4 currently is assigned virtual channel 11.2.

programming from a particular source.[4] Application of the existing rules to KVLY-TV and KRDK-TV will contravene both of these policies. Gray therefore requests that the FCC assign virtual channel 4 to KX4 and assign virtual channel 38 (or another appropriate virtual channel) to KDRK-TV.[5]

BACKGROUND

In the Fargo DMA, channel 4 has been identified with the local CBS affiliate for decades. Prior to the DTV transition, Fargo viewers received CBS-affiliated VHF analog service on RF channel 4 over what was then television station KRDK-TV (Facility ID No. 49134).[6] At the digital transition, the Commission assigned KRDK-TV to RF channel 38 but the station continued to provide its CBS-affiliated programming service to the market on virtual channel 4. KRDK-TV's CBS-affiliated station continued to be carried on channel 4 of local MVPDs.

In 2014, Gray acquired the Fargo CBS affiliation as part of a series of related transactions through which (i) Gray acquired KVLY-TV; (ii) Gray terminated the shared services and joint sales agreement for KRDK-TV; and (iii) the station was sold.[7] Gray then launched the CBS-affiliated KX4 on a digital multicast channel of KVLY-TV. On December 1, 2014, Parker took the then-unaffiliated KRDK-TV off the air and ceased being carried by Fargo MVPDs. To accommodate their customers' expectations, local MVPDs substituted KX4's CBS-affiliated

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[4] *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* Report and Order, 19 FCC Rcd 18279, 18346 (2004) ("*Second Periodic Review*").

[5] Gray undertook to file this request for waiver after learning that Parker was reactivating the former KXJB-TV and requesting cable carriage on channel 4 on cable television systems in the Fargo DMA.

[6] Prior to January 13, 2015, KRDK-TV was identified by the call sign KXJB-TV (1954-2014) and KNDF (2014-2015). For ease of reference, the station is referred to throughout this request by its current call sign, KRDK-TV.

[7] Hoak Media, LLC, 29 FCC Rcd 3640 (2014); *see also* File Nos. BTCCDT-20131220GUG *et al.*

programming channel for KRDK-TV on local channel lineups. Gray has continued to promote its CBS-affiliated programming service on KX4, preserving the legacy identification of the local Fargo CBS affiliate with channel 4 — and every local MVPD has carried KX4 on channel 4.

KRDK-TV returned to the air in January 2015, but did not initially claim any right to signal carriage and consequently has not been carried by local MVPDs since November of 2014, when it was the local CBS affiliate. Over the months since Parker acquired KRDK-TV, it has changed the station's call sign twice, acquired several diginet affiliations, and moved those affiliations around on the various sub-channels of KRDK-TV.[8] Given all these changes, Parker's KRDK-TV, to all intentions and purposes, is a new station entering the market. Fargo television viewers have had limited exposure to KRDK-TV's programming lineup, and MVPD viewers likely are unfamiliar with the station. Indeed, MVPD viewers have had no opportunity to associate KRDK-TV with channel 4, because the new KRDK-TV programming never has been delivered on that channel. Moreover, Parker has not had sufficient time to allow it to build any value in any viewers' association of KRDK-TV with channel 4.

Despite these changes and the break of any association in viewers' minds between KRDK-TV and channel 4, KRDK-TV presumptively retains virtual channel 4 under the *PSIP Standard*, while KX4 has a virtual channel assignment of channel 11.2. Gray has learned that in August 2015, KRDK-TV sent letters to MVPDs serving the Fargo DMA asserting its rights to mandatory carriage and requesting carriage on MVPD channel 4 in accordance with the *PSIP Standard*. If KRDK-TV retains virtual channel 4, MVPDs will likely place KRDK-TV on channel 4, displacing KX4, the incumbent on that channel.

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[8] KRDK was briefly identified by the call sign KNDF-TV in late 2014 and early 2015. In 2015, KRDK-TV acquired affiliations with the Cozi TV, Grit, and Escape networks. It has since added subchannels affiliated with the Heroes & Icons, Decades, Movies!, Laff, and Buzzr networks.

Given the strong, long-term public identification of channel 4 with Gray's CBS network programming, allowing Parker's use of virtual channel 4 for what is essentially a new station risks serious confusion among viewers and would deprive Gray of the value of viewers' identification of MVPD channel 4 with Gray's CBS-affiliated KX4 service.

On the other hand, assigning KRDK-TV to an alternative available virtual channel would cause no injury to viewers or disadvantage to Parker or its practically new station. KRDK-TV has not had time to make a substantial investment in virtual channel 4 and the public has not had the opportunity to identify Parker's programming with channel 4. The only apparent advantage that would accrue to KRDK-TV from the use of virtual channel 4 is increased traffic to KRDK-TV due to viewers' confusion between it and the CBS-affiliated service associated with channel 4 that Gray offers in Fargo.[9] The FCC should adopt to solution proposed by Gray, which will vindicate rather than frustrate viewers' expectations.

The requested waiver is technically feasible because no station with service contours overlapping those of KRDK-TV uses the virtual channel associated with KDRK-TV's over-the-air RF channel, 38, and other suitable channels are available, as well.[10] Under these circumstances, Gray's requested virtual channel reassignments would unquestionably serve the public interest and the FCC's policies far more than enforcement of the current assignments.

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[9] *See Declaratory Ruling, supra*, at paras. 5-6.

[10] *See* Exhibit A, Figure 1. The nearest stations using virtual channel 38 are located far from the Fargo DMA in Dickinson, North Dakota (Minot-Bismarck-Dickinson (Willison) DMA) and Saint Cloud, Minnesota (Minneapolis DMA).

ARGUMENT

Under Section 1.3 of the FCC's rules, waivers are justified when particular facts make insisting on strict compliance with the rules inconsistent with the public interest.[11] Specific considerations that can justify waivers include hardship, equity or more effective implementation of overall policy on an individual basis.[12] Waivers are appropriate if a party demonstrates special circumstances and deviation from the general rule will benefit the public interest.[13]

The FCC historically has viewed petitions for waiver of the *PSIP Standard* more favorably than those seeking waiver of most other rules, because the FCC foresaw when it adopted the *PSIP Standard* that there would be instances when the literal application of the standard would not advance the FCC's objectives or the public interest. In its *Second Periodic Review*, the FCC expressly recognized that waivers would be an important part of virtual channel regulation: "[t]o the extent broadcasters have a unique situation that is not provided for in PSIP, the Commission may grant exceptions on a case-by-case basis."[14] The Media Bureau (the "Bureau") has held that a waiver of the *PSIP Standard* is warranted if (i) the circumstances present a "unique situation" not accounted for by the standard and (ii) the requested waiver is technically feasible.[15]

Under this standard, the Bureau has readily granted technically feasible waivers of the

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[11] 47 C.F.R. §1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[12] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

[13] *Network IP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

[14] *Second Periodic Review, supra*, 19 FCC Rcd at 18346.

[15] *Weigel Broadcasting Company*, Letter of Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, dated August 16, 2012.

PSIP Standard in a variety of "unique circumstances."[16] For example, in *Weigel Broadcasting Company* the Bureau granted a waiver of the *PSIP Standard* for the use of alternative virtual channels solely to avoid viewer confusion when two stations voluntarily swapped network programming.[17] In that case, the Bureau granted a waiver for the exchange of major channel numbers between two stations concurrent with an exchange of network programming sources. The Bureau quoted approvingly the petitioner's statement that "'[g]rant of the instant waiver request would allow the proposed programming swap to be completely transparent to viewers on both stations, because they will be able to continue to tune to the virtual channel number already associated with the underlying content'" — meaning, in that instance, the network programming source.[18] The Bureau also found that the proposed waiver was "technically feasible," because the stations' protected service contours would not overlap with the protected service contours of other stations using the same major channel numbers.[19]

Gray's present waiver request satisfies both the FCC's general waiver standards and the specific standards the Bureau has developed for PSIP waivers. Gray's requested PSIP assignments would better serve the public interest in this case than rote application of the *PSIP Standard*. The *PSIP Standard* was adopted to limit consumer confusion and preserve broadcasters' established good will in their traditional channel positions.[20] Both of these policies

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[16] *See, e.g., Weigel, supra*; *see also Entravision Holdings, LLC* (KETF-CD, Laredo, Texas), *available at* http://licensing.fcc.gov/cgibin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=31837; February 17, 2012 (waiver granted to avoid confusion resulting from foreign station's use of the virtual channel that the *PSIP Standard* assigned to licensee seeking waiver); *Francois Leconte* (WDFL-LD, Miami, Florida) (November 27, 2013) (waiver granted for use of alternative virtual channel to avoid confusion from transmitter site relocation that resulted in service contour overlap of two stations with the same virtual channel).

[17] *Id.*

[18] *Id.* at 2.

[19] *Id.*

[20] *Second Periodic Review, supra,* 19 FCC Rcd at 18346.

favor assigning KX4 rather than KDRK-TV to PSIP Channel 4.1. Viewers are accustomed to finding CBS-affiliated programming now airing on KX4 on Channel 4, and they aren't familiar with KRDK-TV's programming on any particular channel. KDRK-TV's preference for Channel 4 does not provide any support for denying Gray's requested waiver, which would more effectively protect consumers and vindicate the FCC's PSIP policies.

Moreover, the requested waiver satisfies the more specific PSIP waiver standards established by the Bureau. First, the instant request presents a "unique situation" not provided for in the *PSIP Standard*. The *PSIP Standard* lacks any mechanism for adjusting PSIP assignments where, as here, the standard assignment rules would lead to absurd results. The logic of the policies underlying the PSIP standard – protection of consumers and preservation of historical broadcaster investments – requires that the programming and service offered by each station remains relatively stable. In cases where dramatic programming shifts take place, application of the PSIP channel assignment rules leads to consumer confusion and the squandering of broadcaster investments. So, here, assigning KRDK-TV to PSIP channel 4 will ensure that Fargo MVPD viewers are confused and inconvenienced and will destroy value in KX4, without providing KRDK-TV any earned value in channel 4. These results are precisely the opposite of what the *PSIP Standard* was designed to achieve. The requested waiver therefore satisfies the first prong of the Bureau's PSIP waiver test.

Second, the proposed waiver is technically feasible. The operation of KVLY-TV's HD-2 channel with virtual channel 4 creates no technical challenges, and there are a number of open virtual channels available to KRDK-TV, including virtual channel 38, which corresponds to KRDK-TV's over-the-air channel. The instant request does not require either station's protected service contours to overlap the protected service contours of other stations using corresponding

major channel numbers.[21] Thus, the Bureau's technical feasibility standard also is met here.

The FCC's recent denial of a PSIP waiver request by PMCM TV, LLC ("PMCM") also supports grant of Gray's request.[22] In that case, the Bureau reaffirmed that "an important aspect of the two-part channel number navigational concept adopted in [the *PSIP Standard*] was to permit digital broadcasters to retain their existing brand identity as a result of years of marketing and advertising on their analog channels."[23] As the Bureau observed, upholding a PSIP assignment that gives a new station the same virtual channel number as that used by an incumbent in the market would "dilute the incumbent stations' local brand identification" and might "lead viewers to believe the programming was coming from [the incumbent]."[24]

Assignment of PSIP channel 4 to would be directly contrary to the standards the Bureau applied in the *Declaratory Ruling* because KRDK-TV has "no existing brand identification in its service area."[25] KRDK-TV is essentially a new station in the market, with a new call-sign, no relationship to the former CBS-affiliated programming service, and no investment in promoting the identification of its new programming service with channel 4. Indeed, the Bureau's denial of

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[21] *See* Exhibit A, Figures 1, 2. Figure 1 demonstrates that no contour overlap will occur if KRDK-TV is assigned major channel number 38, and Figure 2 demonstrates that no contour overlap will occur if KX4 is assigned major channel number 4

[22] *See Declaratory Ruling*, MB Docket No. 14-150, DA 15-662, released June 5, 2015 ("*Declaratory Ruling*"). In that case, PMCM sought to use a virtual channel that for more than half a century had been identified in the market with CBS-affiliated programming. PMCM also sought to use the same virtual major channel number used by other stations with overlapping contours, a result that was likely to engender viewer confusion over the responsibility for particular program streams. Gray's proposed waiver does not suffer from that defect. Following the implementation of Gray's waiver request, in contrast, no station in the market would have the same major channel as either KRDK-TV or KVLY-TV, so viewers would have clarity as to the responsibility of their respective programming streams. No licensee would share a virtual channel with another station in its service area, either a major channel number or a combined major and minor channel number.

[23] *See Declaratory Ruling, supra,* at paras. 5-6.

[24] *Id.* at para. 59.

[25] *Id.*

PMCM's request was intended to prevent exactly the kind of customer confusion and waste of investment that Gray's request is designed to guard against.

In sum, a grant of Gray's requested waiver would advance rather than contravene the principal policy goals underlying the Commission's adoption of the *PSIP Standard*, creating no harm whatsoever to Parker's revived KDRK-TV and avoiding the viewer confusion that otherwise would result if KDRK-TV were permitted to transmit its novel program service on the virtual channel that in-market viewers have associated for decades with CBS network programming.

Conclusion

For the reasons set forth above, Gray requests that the Commission grant its requested wavier, assign channel 4 as the virtual channel for KVLY-TV's CBS-affiliated programming service on its HD-2 channel, and assign major channel 38 (or another available channel) to KRDK-TV.

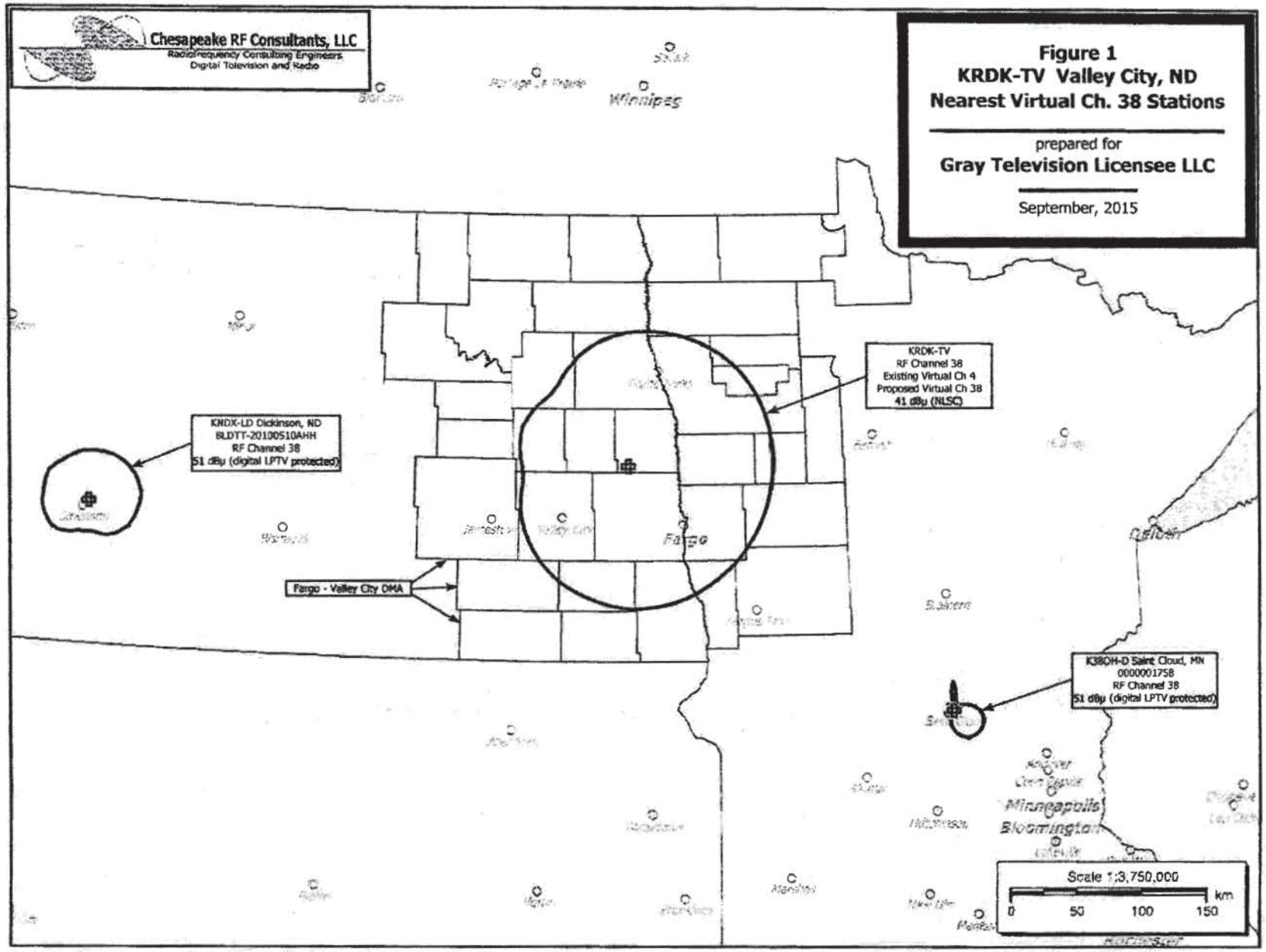
Respectfully submitted,

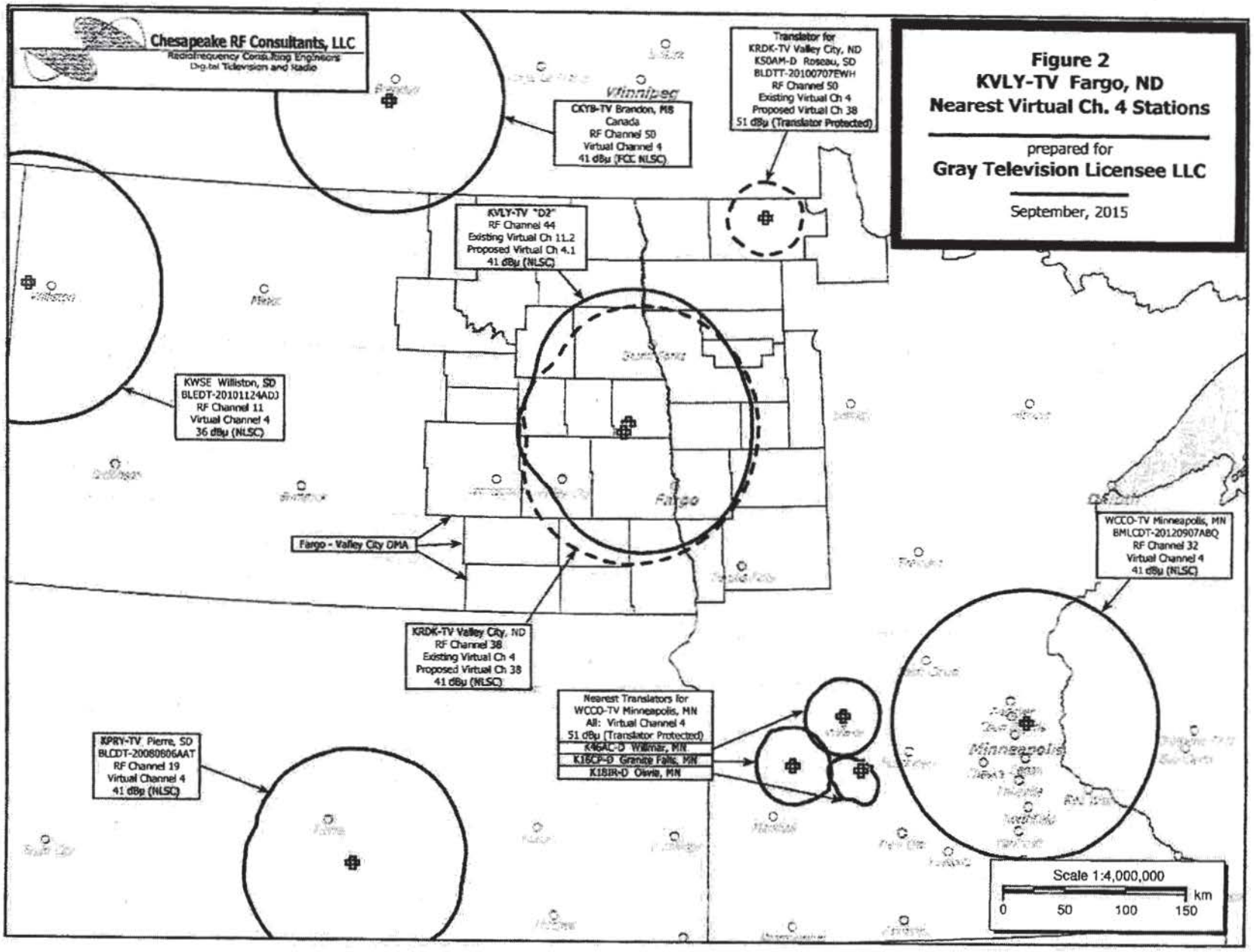
GRAY TELEVISION LICENSEE, LLC

By: _____
Name: Robert J. Folliard, III
Title: Assistant Secretary

October 7, 2015

EXHIBIT A


Chesapeake RF Consultants, LLC
Radiofrequency Consulting Engineers
Digital Television and Radio
Figure 1
KRDK-TV Valley City, ND
Nearest Virtual Ch. 38 Stations
prepared for
Gray Television Licensee LLC
September, 2015
KRDK-TV
RF Channel 38
Existing Virtual Ch 4
Proposed Virtual Ch 38
41 dBμ (NLSC)
KNDX-LD Dickinson, ND
BLDTT-20100510AHH
RF Channel 38
51 dBμ (digital LPTV protected)
Fargo - Valley City DMA
K38OH-D Saint Cloud, MN
0000001758
RF Channel 38
51 dBμ (digital LPTV protected)
Winnipeg
Fargo
Minneapolis
Bloomington
Scale 1:3,750,000
0
50
100
150
km


Chesapeake RF Consultants, LLC
Radiofrequency Consulting Engineers
Digital Television and Radio
Figure 2
KVLY-TV Fargo, ND
Nearest Virtual Ch. 4 Stations
prepared for
Gray Television Licensee LLC
September, 2015
CKYB-TV Brandon, MB
Canada
RF Channel 50
Virtual Channel 4
41 dBμ (FCC NLSC)
Translator for
KRDK-TV Valley City, ND
K50AM-D Roseau, SD
BLDTT-20100707EWH
RF Channel 50
Existing Virtual Ch 4
Proposed Virtual Ch 38
51 dBμ (Translator Protected)
KVLY-TV "D2"
RF Channel 44
Existing Virtual Ch 11.2
Proposed Virtual Ch 4.1
41 dBμ (NLSC)
KWSE Williston, SD
BLEDT-20101124ADJ
RF Channel 11
Virtual Channel 4
36 dBμ (NLSC)
Fargo - Valley City DMA
KRDK-TV Valley City, ND
RF Channel 38
Existing Virtual Ch 4
Proposed Virtual Ch 38
41 dBμ (NLSC)
WCCO-TV Minneapolis, MN
BMLCDT-20120907ABQ
RF Channel 32
Virtual Channel 4
41 dBμ (NLSC)
Nearest Translators for
WCCO-TV Minneapolis, MN
All: Virtual Channel 4
51 dBμ (Translator Protected)
K46AC-D Willmar, MN
K16CP-D Granite Falls, MN
K18IR-D Olivia, MN
KPRY-TV Pierre, SD
BLCDT-20080606AAT
RF Channel 19
Virtual Channel 4
41 dBμ (NLSC)
Winnipeg
Fargo
Minneapolis
Scale 1:4,000,000
0
50
100
150
km

CERTIFICATE OF SERVICE

I, Dottie Boudreau, Executive Assistant of Gray Television, Inc. do hereby certify that a true and correct copy of the foregoing "Petition for Waiver" was served by first-class U.S. mail, postage-prepaid, unless otherwise indicated, on the 7th day of October, 2015 on the following:

Barbara Kreisman*
Chief, Video Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Ravi Kapur
Major Market Broadcasting of North Dakota, Inc.
2118 Walsh Avenue, Suite 208
Santa Clara, CA 95050

Adrienne Denysyk*
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

William Lake*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Hossein Hashemzadeh*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Midcontinent Communications
3600 Minnesota Drive
Suite 700
Minneapolis, MN 55435
Attn: Director of Programming

Midcontinent Communications
3901 North Louise Ave
Sioux Falls, SD 57107
Attn: General Counsel

DIRECTV, LLC
Local Into Local
2260 East Imperial Highway
El Segundo, CA 90245
Attn: Vice President, Content & Programming

DISH Network, LLC
9601 S. Meridian Blvd
Englewood, CO 80112
Attn: SVP Media Sales & Programming

Barnesville Cable TV
102 Front Street N.
Barnesville, MN 56514

BEK Communications Coop
PO Box 230
Steele, ND 58482

Bagley Public Utilities
PO Box M
Bagley, MN 56621

BEK Communications Coop
PO Box 230
Steele, ND 58482

Barnesville Cable TV
102 Front Street N
Barnesville, MN 56514

Cable Services, Inc.
PO Box 608
Jamestown, ND 58402

City of Fosston
220 East First Street
Fosston, MN 56542

Daktel Communications, LLC
630 5th Street
Carrington, ND 58421

Dickey Rural Services, Inc.
PO Box 69
Ellendale, ND 58436

Federated Telephone
PO Box 156
Chokio, MN 56221

Halstad Telephone Company
345 2nd Ave. W
Halstad, MN 56548

MLGC, LLC.
301 Dewey Street
Enderlin, ND 58027-1153

Otter Com, Inc.
PO Box 277
Underwood, MN 56586

Otter Com, Inc.
dba Valley Telephone
PO Box 277
Underwood, MN 56586

Paul Bunyan Rural Telephone Cooperative
1831 Anne Street, NW
Bemidji, MN 56601

Red River Rural Telephone Association
(Red River Communications)
510 Broadway
Abercrombie, ND 58001

Runestone Telecom Association
PO Box 336
Hoffman, MN 56339

Sjoberg's Inc.
315 North Main Avenue
Thief River Falls, MN 56701

United Telephone Mutual Aid Corp.
411 7th Avenue
Langdon, ND 58249

West Central Telephone Association
308 Frontage Road
Sebeka, MN 56477

Wikstrom Systems LLC
212 Main Street South
Karlstad, MN 56732

/s/ Dottie Boudreau
Dottie Boudreau

* Via hand delivery

CERTIFICATE OF SERVICE

I, Dottie Boudreau, Executive Assistant of Gray Television, Inc., do hereby certify that on this 22d day of March, 2016, I caused a copy of the foregoing "Comments" to be served via U.S. mail, postage prepaid, upon the following:

William Lake*
Chief, Media Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, Suite 1100
Arlington, VA 22209

Barbara Kreisman*
Chief, Video Division
Media Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Martha Heller*
Chief, Policy Division
Media Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

KBRR, KJRR, KNRR, KVRR
Red River Broadcast Co., LLC
P.O. Box 9115
Fargo, ND 58106

KCPM
G.I.G. of North Dakota, LLC
P.O. Box 88336
Sioux Falls, SD 57109

Tekstar Communications, Inc.
150 Second Avenue Southwest
Perham, MN 56573

WDAY-TV, WDAZ-TV
Forum Communications Company
301 8th St. S
PO Box 2466
Fargo, ND 58103

Cable One, Inc.
210 E. Earll Drive
Phoenix, AZ 85012

Lortel Systems, Inc.
13 E. 4th Ave, Box 72
Ada, MN 56510

Viking Electronics Inc.
110 4th Street East
Park River, ND 58270

City of Barnesville MN
102 Front St N, PO 550
Barnesville, MN 56514

Garden Valley Telephone Company
201 Ross Avenue
PO Box 259
Erskine, MN 56535

Midcontinent Communications
3901 North Louise Ave
Sioux Falls, SD 57107

Sjobergs Cablevision Inc
315 North Main Avenue
Thief River Falls, MN 56701

City of Bagley Minnesota-Public Utilities Department
18 Main Ave S
PO Box M
Bagley, MN 56621

City of Fosston Minnesota
220 East First St
Fosston, MN 56542

Wikstrom Systems LLC
212 South Main
PO Box 217
Karlstad, MN 56732

Red River Rural Telephone Association
510 Broadway
PO Box 136
Abercrombie, ND 58001

Otter Com Inc.
100 Main Street
Underwood, MN 56586

Daktel Communications, LLC
630 5th St N
PO Box 299
Carrington, ND 58421

Cable Services In
PO Box 608
Jamestown, ND 58402

Maddock Area Development Corp
306 2nd St
Maddock, ND 58348

Dickey Rural Services, Inc
9628 Hwy 281
PO Box 69
Ellendale, ND 58436

MLGC LLC
301 Dewey Street
Enderlin, ND 58027

NDTC
211 22nd Street NW
PO Box 180
Devils Lake, ND 58301

Central Dakota TV Inc.
630 5th St N
PO Box 299
Carrington, ND 58421

United Telephone Mutual Aid Corp
411 7th Avenue
PO Box 729
Langdon, ND 58249

DIRECTV, Inc.
2260 E. Imperial Hwy
El Segundo, CA 90245

DISH Network, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

Fargo City Commission
200 North Third Street
Fargo, ND 58102

Bek Communications Cooperative
200 E Broadway
PO Box 230
Steele, ND 58482

City Manager
City of Moorhead
500 Center Avenue
3rd Floor
Moorhead, MN 56560

Cass County Commission
Cass County Courthouse
211 9th Street South
Fargo, ND 58103

City of Frontier
5202 32nd Street S
Frontier, ND 58104

Melissa Quern
Clerk, Reed Township
413 19th Ave NW
West Fargo, ND 58102

West Fargo City Commission
800 4 Avenue East
Suite 1
West Fargo, ND 58078

City Administrator
City of Dilworth
PO Box 187
2 1st Avenue SE
Dilworth, MN 56529

City of Prairie Rose
3287 41st Avenue South
Prairie Rose, ND 58104

City of Briarwood
8 Briarwood Place
Briarwood, ND 58104

Dottie Boudreau

* Via hand delivery