

STATE OF MINNESOTA  
COUNTY OF RICE

IN DISTRICT COURT  
CIVIL DIVISION  
THIRD JUDICIAL DISTRICT

In the Matter of  
Certain Gifts to St. Olaf College

File No. CV-06-2518

**FINDINGS OF FACT**

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On October 15, 2007, the undersigned was appointed Special Master to (1) investigate and determine the amount of assets and donations attributable to WCAL, including those described in the Amended Petition, (2) determine how the donations and gifts attributable to WCAL have been held, how they should have been held, and whether they were used for their intended purpose, (3) review the gift documentation and determine the intent of the gifts and if and how St. Olaf accounted for such use, (4) ascertain and determine whether St. Olaf has used "generally accepted accounting principles" in all matters concerning the trust assets and expenses and if the accounting principles are appropriate, (5) determine if St. Olaf appropriately depreciated the WCAL assets against the WCAL charitable trust funds, and (6) determine the value of the WCAL charitable trust funds, including all restrictions.

The Special Master's determinations in the Findings of Fact, Memorandum, and Recommendations resulted after a review of the original Petition; the Amended Petition; the submissions and affidavits of the parties and their attorneys; the transcripts of the proceedings in Rice County District Court on March 8, 2007, April 13, 2007 and May 25, 2007; and the arguments of legal memorandums of counsel, as submitted at the hearings and to the Special Master.

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The Special Master reviewed countless documents, including all of the files, written bequests and gifts underlying each donation listed in Exhibits A, B and C of the Amended Petition; St. Olaf letters to donors of WCAL endowments seeking input regarding their wish for the use of funds following WCAL-MPR sale; the financial summaries of Exhibit D, 1992-2004; the "Milford Jensen Endowment for Radio Station WCAL" documents; the "Herbert and Helen Schroeder Christmas Festival Endowment for WCAL" documents; the Will and related documents of the Estate of Eunice M. Munck; the Will of Edwin W. Norberg; the Syvilla M. Turbis Trust Agreement and its amendments and related documents; and the statements provided by Richard Jensen, son of Milford Jensen; Grace Schroeder Scott, daughter of Herbert and Helen Schroeder, and John L. Thompson, personal representative of the estate of Eunice M. Munck.

Among the documents and records reviewed by the Special Master are the following: Financial Statements by Virchow Krause & Company, LLP for radio station WCAL-FM, for the years 1992 through 2004, and the Statements of Activities and Cash Flows for the time period June 1, 2004 to November 19, 2004; Summary of Endowments, Gifts and Bequests; WCAL Board Minutes, 1992-2004; Board of Regents meeting minutes; SaveWCAL petitions and related documents; Patrick Communications file and documents; FCC petitions and orders; Corporation for Public Broadcasting related grants and contracts, WCAL and St. Olaf historical material and records in archives; Rosemount Radio Tower land lease with University of Minnesota; fundraising documents for the Rosemount radio tower project; the Rosemount radio tower construction budget; construction documents regarding the Rosemount radio tower; Rosemount radio tower

subleases; WCAL 10/22/88 Alumni Reunion Souvineer Booklet; and Endowment Market Value calculations.

The Special Master also interviewed the following witnesses: David Anderson, St. Olaf College President; Jeff Donnell, present manager of WCAL activities; Jeff Engelking, Accounting Manager, Minnesota Public Radio; John Gaddo, La Crosse, Wisc., former WCAL station manager; Lowell Gordon, Gregory Uphoff and Sara Lassila, Minnetonka, Certified Public Accountants; Aaron Heidgerken, student manager of KSTO; Alexis Herman, present *Sing For Joy* communications coordinator; Leonard Hoefft, Palm Desert, Calif., Senior Board Regent and contributor; Thomas J. Kigin, Executive Vice President, Chief Administrative Officer and General Counsel, Minnesota Public Radio; Michael Kyle, St. Olaf College Vice President and Dean of Enrollment; Jan McDaniel, Prior Lake, former St. Olaf College Vice President, College Relations; Alan Norton, St. Olaf College Vice President/Treasurer; Rev. Paul E. Peterson, Northfield, former WCAL manager; Jennifer Rowe, former *Sing For Joy* communications director; Jeff Sauve, St. Olaf archivist; Ruth Sylte, Northfield, Save WCAL President; Jerry Williams, Northfield, Save WCAL member; and Josh Wyatz, recording engineer.

## **I. BACKGROUND**

### **A. History**

1. St. Olaf is a private liberal arts college located in Northfield, Minnesota. It is organized as a Minnesota non-profit corporation.

2. St. Olaf owned and operated "WCAL," a radio station which broadcast from 1922 until 2004.

3. WCAL's programming consisted of classical and religious music, news, public affairs and education programs, and religious services.

4. In November 2004, St. Olaf discontinued its WCAL broadcast operations after selling its primary assets to Minnesota Public Radio ("MPR"). The primary assets were the broadcast license for 89.3 FM and a broadcasting tower located in Rosemount, Minnesota.

#### **B. The Petition by St. Olaf**

5. St. Olaf has petitioned for the Release of Restrictions placed on certain gifts given to WCAL. Pursuant to Minnesota Statutes §§ 309.68, subd. 2 (2006) ; 501B.16 (2006); and 501B.31, subd. 2 (2006), St. Olaf requests an order (1) partially releasing the restriction on the "Restricted Endowment Gifts" (Petition Exhibit A) that the gifts be used to support WCAL under Minn. Stat. § 309.68, subd. 2; in the alternative, modifying the gift under Minn. Stat. § 501B.31, subd. 2; and directing St. Olaf to use the "Restricted Endowment Gifts" to support the Core WCAL Activities; (2) confirming that the "Restricted Nonendowment Gifts" (Petition Exhibit B) are no longer subject to any restrictions; (3) confirming that the "Undocumented Gifts" (Petition Exhibit C) are not subject to any restrictions because there is no documentary evidence that the donors imposed restrictions on these gifts; (4) completely releasing the restriction on the Milford C. Jensen "Special Endowment Gift" that the gift be used to support WCAL under Minn. Stat. § 309.68, subd. 2; in the alternative, modifying the gift under Minn. Stat. § 501B.31, subd. 2; and directing St. Olaf to use the gift for the creation of an endowment to support

scholarships for students studying the organ; (5) completely releasing the restriction on the Herbert A. and Helen D. Schroeder "Special Endowment Gift" that the gift be used to support WCAL under Minn. Stat. § 309.68, subd. 2; in the alternative, modifying the gift under Minn. Stat. § 501B.31, subd. 2; and directing St. Olaf to use the gift as an addition to the existing Herbert A. and Helen D. Schroeder Scholarship Fund at St. Olaf; (6) completely releasing the restriction on the Eunice Munck "Special Endowment Gift" that the gift be used to support WCAL under Minn. Stat. § 309.68, subd. 2, modifying the gift under Minn. Stat. § 501B.31, subd. 2; and directing St. Olaf to use the gift to support Core WCAL Activities, including the acquisition of new recording equipment; (7) partially releasing the restriction on the Norberg Distributions that the distributions be used to support WCAL under Minn. Stat. § 309.68, subd. 2, in the alternative, modifying the gift under Minn. Stat. § 501B.31, subd. 2, and directing St. Olaf to use the funds to support Core WCAL Activities; and (8) partially releasing the restriction on the Turbis Request under Minn. Stat. § 309.68, subd. 2; in the alternative, modifying the gift under Minn. Stat. § 501B.31, subd. 2; and directing St. Olaf to use the Turbis Request to support the Core WCAL Activities.

### **C. Exclusions from Petition**

6. St. Olaf omitted certain endowments from its petition. They are: Clara S. Johnson Religious Endowment for WCAL in the amount of \$39,149.50; Pearl Husby WCAL Endowment in the amount of \$4,600; and the Solveig T. Jorgenson & Wallace Jorgensen Memorial WCAL endowment fund in the amount of \$50,000. In all three cases, the living donors received letters from St. Olaf advising them of WCAL's sale and seeking input with respect to their intentions for the future endowments. Each living

donor signed a Release of Gift Restriction, releasing St. Olaf from the restriction that the Endowment be used for WCAL. The Special Master examined the files in the three cases and finds that each donor signed a release and submitted documents requesting specific other uses of the funds. Clara S. Johnson requests that her endowment be used for *Sing for Joy* and the Christmas Festival; Pearl Husby requests that her endowment be used for a pre-established memorial fund for general programs of the college; and Solveig Jorgenson requests that her endowment be used for a scholarship for students majoring in Chinese or Asian Studies. Each endowment is to be continued to be held as a permanent endowment but with a changed purpose. The Special Master has reviewed each file and the direction(s) of the living donor, and finds that the exclusion of these endowments from the Petition is appropriate.

7. In addition, St. Olaf omitted an endowment entitled "WCAL Radio Endowment" with no specific donor, in the amount of \$21,266.90. The record does not indicate any donor information regarding this endowment. This endowment should have been included in the petition as nothing shows that it has been released by a living donor. It should have been included in the Petition as a part of Exhibit C. An amended Exhibit C is attached hereto as Special Master Exhibit C-3.

7a. In its first Petition, St. Olaf included a donation by E. Daniel Eckberg, along with Jensen, Schroeder and Munck for "Special Endowment Gifts." Apparently the son of E. Daniel Eckberg withdrew his request that the gifts (with market value of \$9,458 on 4-30-06) be used for "support for a program in broadcast journalism. The Eckberg donation has been excluded from this Second Petition. The amount should be added to Exhibit "A" and treated as a "Restricted Endowment Gift".

#### **D. Special Master**

8. The Special Master was appointed in October 2007 to oversee the matter according to Minnesota Rules of Civil Procedure Rule 53.01-53.09. The order appointing the Special Master also directs the Special Master to determine the amount of assets and donations that are attributable to WCAL, including those outlined in the amended Petitions.

### **II. POSITIONS OF THE PARTIES**

#### **A. St. Olaf**

9. In addition to arguing for the release of the restrictions on the various gifts described above, St. Olaf maintains that the focus of the Special Master's inquiry should be limited to the six types of gifts and trust distributions listed in its amended petition and that the proceeds of the sale of the WCAL assets to MPR are not at issue. But in the event that the sale proceeds are considered, St. Olaf asserts that they are unrestricted. Specifically, St. Olaf maintains that when an asset is purchased with a restricted gift and that asset is then used by the donee institution, the gift restriction lasts only for a reasonable period of time unless provided otherwise by the donor. Thus, although the radio tower was funded by donor contributions, St. Olaf argues that a reasonable period of time had passed by the time it was sold, and that the proceeds of the tower sale are unrestricted.

## B. SaveWCAL

10. SaveWCAL is a Minnesota non-profit corporation, which raises multiple arguments in opposition to St. Olaf's petition. SaveWCAL argues that by selling WCAL's assets to MPR, St. Olaf created circumstances that made it "impossible" to honor the intent of the WCAL donors and, thus, St. Olaf breached its fiduciary duty as a trustee of WCAL. To remedy this breach, SaveWCAL asserts that the court should declare the WCAL-MPR transaction void.

11. SaveWCAL further maintains that the WCAL charitable trust includes more assets than those mentioned in the St. Olaf petition. Specifically, SaveWCAL asserts that the additional assets include the FCC licenses, the Rosemount broadcasting tower, and all WCAL assets acquired since 1922 with funds given by WCAL donors.

12. SaveWCAL also argues that any restrictions on the gifts cannot be released, asserting that Minn. Stat. § 309.62, subd. 2 does not apply. SaveWCAL notes that this statute governs institutional funds, which are funds "held by an institution for its exclusive use, benefit, or purposes." Minn. Stat. § 309.62, subd. 3 (2006). SaveWCAL argues that because WCAL donors contributed their gifts to St. Olaf for the WCAL radio station and not for St. Olaf's own "use, benefit, or purposes," the WCAL gifts do not qualify as "institutional funds."

## C. Attorney General

13. When St. Olaf submitted its petition to lift the restrictions on charitable gifts, it gave notice of its petition to the Attorney General, as required under Minn. Stat. § 501B.31, subd. 5.

14. The Attorney General first asserts that St. Olaf's argument that the restriction on the "Restricted Nonendowment Gifts" may be released under Generally Accepted Accounting Principles for Nonprofit Corporations is incorrect. The Attorney General maintains that the cited rule is simply an accounting rule meant to provide a consistent standard for recognizing expirations of donor-imposed restrictions, and that the rule itself does not provide a basis for lifting restrictions on charitable gifts.

15. Further, the Attorney General argues that St. Olaf's request that the court find that the "Undocumented Gifts" are not subject to any restrictions should be denied because it is likely that the gifts were restricted, either because of St. Olaf's solicitation of the gift for a specific purpose or because of a now-lost gift document.

16. Lastly, the Attorney General asserts that, contrary to St. Olaf's argument, Minnesota courts are "quite *liberal* in finding the existence of charitable trusts as well as assets impressed with charitable trusts." It also argues that St. Olaf's argument regarding these proceeds "inaccurate." Specifically, the Attorney General argues that if a gift is made for a specific purpose and the donee purchases an asset consistent with that purpose, uses the asset for a certain period of time, and then later sells the asset, the proceeds of the sale are still subject to the restriction. *See* Minn. Stat. § 501B.31, subd. 4(b) (requiring that restricted charitable gifts must be used according to the restriction).

### III. WCAL HISTORY

17. WCAL began in 1918 as a telegraphy experiment by St. Olaf professors. By 1922, a broadcast license was issued to St. Olaf for WCAL AM. WCAL broadcast in

AM exclusively with emphasis on music, public affairs, church and chapel broadcasts until 1968, when it obtained its FM license and began FM broadcasts. From 1968 to 1991, WCAL broadcast on both FM and AM. In 1991, WCAL transferred its AM license to the University of Minnesota in exchange for a long-term lease on one acre of land in Rosemount. WCAL and KUOM, the University of Minnesota station, then operated the AM station as a partnership for a short direction, sharing broadcast time. In 1991 and 1992, WCAL built a new tower on the acre of land in Rosemount. In 1992 WCAL began broadcasting exclusively on FM. In 2000, WCAL expanded its audio distribution by streaming its programming over the Internet. In November, 2004, WCAL was sold to MPR and concluded its broadcasts.

#### IV. ST. OLAF CONTRIBUTIONS TO WCAL

18. St. Olaf obtained the original AM license for WCAL in 1922. Further, since its inception, WCAL received financial support, in the form of both cash subsidies and indirect overhead expenses from St. Olaf. Shortly after WCAL began broadcasting, it began receiving contributions from listeners to pay for some of its broadcasting expenses.

19. Skifter Hall housed WCAL during much of its existence. The building and its subsequent additions and renovations were financed completely by contributions from WCAL listeners. Skifter Hall was not a part of the MPR sale, and it is presently used to house St. Olaf communications departments, including the Broadcast Media Department (the successor to WCAL). *Sing for Joy* is recorded and distributed there.

20. By 1985, the St. Olaf contributions amounted to less than half the WCAL broadcasting budget. Ten years later the St. Olaf contributions were less than 25%.

21. In addition to the St. Olaf contributions, WCAL received revenue from several other sources throughout the years, the largest source being private gifts and donations. The State of Minnesota was a contributor to WCAL through its grants. WCAL also historically received grants from the Corporation for Public Broadcasting and in 2004 received a grant in the amount of \$228,000. As a requirement of the grant, the Corporation for Public Broadcasting required that St. Olaf assign value to the "donated facilities and administrative support" it furnishes to WCAL. The amounts are determined by formulas from the Corporation of Public Broadcasting. WCAL's percentage of the St. Olaf President's salary, for example, was determined by the number of WCAL employees as compared with the number of employees retained by the college as a whole. Likewise, WCAL's percentage of the utilities was determined by the ratio of the WCAL building's square footage compared with the square footage of the other college buildings as a whole. Although the Skifter Building, which housed WCAL was built with listener contributions, St. Olaf provided janitorial services, utilities and other overhead expenses to WCAL. In fiscal 2004, the amount allocated as "donated facilities and administrative support from St. Olaf College" was \$341,326. This figure may or may not relate to the actual valued amount of "donated facilities and administrative support" because it was derived as a requirement of obtaining the grant. The Special Master could not find that the same formula for donated facilities and administrative services figures was used for the other divisions of the St. Olaf family. WCAL appears to have been unique in this regard.

22. In fiscal 2004<sup>1</sup>, total WCAL revenue, exclusive of Donated Facilities, administrative support from St. Olaf college, and Gains (losses) on investments, was \$1,965,000.

23. Of that revenue, 56% (\$1,107,000) was derived from listener contributions and income from listener endowments; 13% came from grants; 24% came from rents (tower leases, etc.); and 6% came from St. Olaf cash contributions.

24. Since 1985, St. Olaf contributed over \$5,365,000 in cash to WCAL for its daily operations. This is separate from St. Olaf's "in kind" contributions for overhead and administrative support.

25. WCAL and St. Olaf had agreed on a goal of decreasing the St. Olaf cash contributions to WCAL and of eliminating them by 2005. From 1993 to 2004, St. Olaf's contributions to WCAL decreased from \$350,000 (which was 21% of the 1993 WCAL operating budget) to \$130,000 (which was 5% of the 2004 WCAL operating budget).

26. Under the Generally Accepted Accounting Principles ("GAAP"), listener contributions, other than the endowments, have been expended throughout the years for the purposes for which the listeners intended – the daily operations of the radio station. The argument has been made that all of the proceeds of the WCAL sale should be placed into a charitable trust. This argument would be sound if all of the money used by WCAL from its inception had been donated funds without any financial assistance from St. Olaf. However, although St. Olaf's contribution to WCAL had decreased in recent years, it formerly had been the source of 50% or more of WCAL's annual operating income.

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<sup>1</sup> The WCAL "fiscal year" is June 1 to May 31. The 2004 "fiscal year" ended May 31, 2004, five months before the sale to MPR.

## **VI. SALE OF WCAL**

### **A. Broker Engagement**

27. On June 14, 2004, St. Olaf signed an Engagement Agreement for the sale of WCAL-FM in Northfield and KMSE-FM, its sister station in Rochester with broker Patrick Communications of Ellicott City, Maryland. Patrick Communications' commission was to be 1.25% of the first \$8,500,000 of the purchase price and 6.5% of any additional consideration. At that time, St. Olaf had already received an offer of \$8,500,000 from Minnesota Public Radio ("MPR"). MPR subsequently increased its offer to \$10,500,000. Educational Media Foundation also made an offer, which consisted of a cash price of \$11,000,000. MPR then offered to add to its \$10,500,000 offer an agreement to provide on-air promotion to St. Olaf for the period of one year; MPR placed a \$1,300,000 value on these promotions. St. Olaf accepted the MPR offer. When St. Olaf later paid Patrick Communications on the basis of a sale of \$10,500,000, Patrick Communications claimed that it should actually be paid commission based on a sale value of \$11,800,000, and St. Olaf eventually agreed to pay commission on the additional amount.

### **B. Purchase Agreement**

28. St. Olaf and MPR signed the asset purchase agreement on August 27, 2004. The agreement included: (a) licenses and permits (including the FCC licenses); (b) equipment, transmitters, antennas, cables, and the Rosemount and Rochester towers, vehicles, furniture, fixtures, and other tangible personal property; (c) Rosemount and Rochester tower site ground leases (with the University of Minnesota and United Audio Corp.); (d)

income producing leases on the Rosemount tower; and (e) call letters, trademarks, and goodwill.

### **C. Exclusions from the Purchase Agreement**

29. Excluded from the sale were the “*Sing for Joy*” program; cash and receivables; duplicate CDs; recordings of any St. Olaf choral group, instrumental group or campus speakers; the Central Lutheran Church and Northfield studio leases; and certain other contracts.

### **D. Sale Asset Itemization**

30. Neither the purchase agreement nor any of the closing documents delineate the amounts that MPR paid for particular parts of the assets of WCAL. More specifically, nothing in the record shows what MPR specifically paid for the tower, the licenses, or the other personal property. The only item in the purchase agreement which had a specific price was MPR’s agreement to perform promotional announcements for St. Olaf; MPR placed a \$1,300,000 value on this.

### **E. MPR Asset Allocation**

31. At the request of St. Olaf’s attorneys, MPR sent Alan Norton, St. Olaf Vice President and Treasurer, an email in late February 2008 outlining the “information that MPR used for the allocation of the cash portion of the WCAL between hard assets and the broadcast license.” The email indicates the “fixed assets” were valued at \$709,795 and the balance of the purchase price or, \$9,790,205, was attributed to the license itself. The breakdown of the fixed assets that would be attributable to the Rosemount tower, its building and equipment appears to be \$575,370.

32. While the division detailed in the email may have been sufficient for MPR for accounting purposes, the Special Master does not find it helpful or credible in determining the value of the donor contributions for the construction of the tower at the time of the sale. The amounts assigned to the hard assets were “estimates by MPR’s engineers of the market value of the used equipment.” There were no formal appraisals done. The estimates of the value of the tower and building were made by engineers, whose credentials for estimating construction and values of buildings and towers are unknown. The estimates of the value of the building and tower and antenna did not take into account any value of the ground lease with the University of Minnesota; nor did they take into account the value of the tower subleases or attribute any value to the trademarks and goodwill. The estimates likewise did not take into account the replacement costs of the tower and the building.

**F. Approval of WCAL Sale by Board of Regents**

33. The St. Olaf College Board of Regents Executive Committee approved the sale of WCAL to MPR for the cash payment of \$10,500,000, plus the airing of ten daily advertising spots about St. Olaf College on MPR for the period of one year; MPR’s assumption of existing St. Olaf contracts; payment of St. Olaf employee severance; agreement to continue airing the St. Olaf Christmas Festival; and the refund of federal clawbacks. The Board of Regents approved the sale on August 5, 2004 at an executive session of the Board at the Minneapolis Club. The meeting was attended by 14 Regents. Four Regents were absent (Brunelle, Hoeft, Miller and Carlson); ten voted by conference call; and three voted by proxy. The only regent who did not vote was Tad Piper, who abstained because of a conflict of interest.

34. The WCAL Board, which had been appointed by the Board of Regents, was disbanded immediately after the Board of Regents meeting approving the sale of WCAL. The WCAL Board did not have notice of the proposed sale before the Board of Regents' approval of the sale, and the WCAL Board did not approve of the sale.

35. Following the signing of the asset purchase agreement on August 27, 2004, MPR and St. Olaf then petitioned the FCC for approval of the transfer of the license.

**G. The Reasons for the Sale**

36. St. Olaf did not sell WCAL because it was a financial drain on the college. Its cash contributions had been steadily decreasing. It was purely a business proposition on St. Olaf's part. WCAL was simply an "existing asset which could be directed to more educational pursuits."

37. WCAL had not been incorporated into the St. Olaf academic program. It offered internships and employment opportunities for students, but St. Olaf had no broadcasting majors or degrees.

38. WCAL's listener contributions remained high and had increased steadily over the last decade. Although WCAL had a very loyal following, its listenership was relatively small in comparison to similar stations. For example, compare WCAL's overall cumulative audience of almost 80,000 with the KSJN (MPR Classic) audience of 180,000 and the Current, MPR's new station, audience of 210,000.

39. By selling WCAL, St. Olaf would be able to add a significant amount to its "unrestricted funds" account. The addition of \$10,500,000 to that account would be a welcome addition. President Christopher Thomforde recommended that the funds could be used for endowing the St. Olaf Choir Director position, endowing a church music

program, and the remaining funds could be used “for the new Science Center Complex.” At the October and August Board of Regents President Thomforde made different suggestions for the use of the proceeds. In the October meeting the request did not include the Science Center. In addition, the Board Chair, Jerry Tostrud said that the savings to St. Olaf would amount to approximately \$700,000 annually.

#### **H. SaveWCAL Opposition to Sale**

40. Many WCAL listeners opposed the sale of WCAL. SaveWCAL, a non-profit corporation, was formed and obtained the signatures of over 5,200 opposed listeners. SaveWCAL also petitioned the FCC to block the transfer of the assignment of the license.

41. SaveWCAL made a formal proposal to the St. Olaf Board of Regents that the Board of Regents reverse the decision to sell the license and that SaveWCAL either be allowed to fund the support of the station or be allowed to purchase it. The Board of Regents referred the proposal to a committee, and the proposal was reviewed by the Board of Regents at a October 7, 2004 meeting. At the meeting, although the Board did not take any formal action by way of resolution, the Board’s consensus appeared to be that the decision to sell could not be reversed because an asset purchase agreement had already been signed. Notwithstanding the SaveWCAL proposal, the Board approved President Thomforde’s proposal to use the funds from the sale to restore the Boe chapel organ at a cost of \$1,500,000; to endow \$22,000,000 for the Church Music Program; and to endow three or four Regent Professor Programs, including salaries. The Board further approved the proposal that “revenue from other sources” can “provide web casting of the St. Olaf College Chapel services and support; audio recording of the music

organizations.” In addition, the Board appointed a committee to review the WCAL proposal. The committee later concluded that the “MPR offer provides at least \$10,000,000 net in hand within 10 days of the FCC approval – it is simply a better deal.”

#### I. Closing of the Sale

42. On November 15, 2004, the FCC granted the application for transfer of the WCAL license to MPR and at the same time, denied SaveWCAL’s petition to deny the transfer. The transaction closed shortly thereafter, and WCAL’s last broadcast was on Sunday, November 21, 2004.

43. After deduction for commissions and costs of sale, St. Olaf netted approximately \$10,100,000 from the sale. This amount has been kept in its “unrestricted” account, and at the end of 2007 had a “market value” of \$13,793,000.

#### VII. CORE WCAL ACTIVITIES

44. St. Olaf’s Amended Petition requests that the restrictions on several endowments be released and that St. Olaf be directed to use the funds to conduct “Core WCAL Activities.” The Petition defines these activities as “the essence of WCAL – religious music and religious service programming,” and further defines the activities as “*Sing for Joy*, a program of religious music, and daily and Sunday services from the St. Olaf Chapel.” St. Olaf states that it plans to continue these activities “indefinitely.” This definition may appear to be too limiting, and not inclusive of areas of core WCAL activity.

45. The definition of what constitutes the “essence of WCAL” and “WCAL Core Activities” has been explored by the Special Master, through interviews and review of documents.

#### A. Christmas Festival

46. WCAL distributed and broadcast the St. Olaf Christmas Festival. The sale agreement with MPR assures continued production and distribution of that Festival. The Festival is a "Core WCAL Activity." Presently it is broadcast annually, but recorded only every three years. It appears that the decision not to record the Festival on a more frequent basis has been driven at least in part by economics.

#### B. Sing for Joy

47. *Sing for Joy* is a weekly half hour program that has the stated mission "to provide music and commentary that will support the church in evangelism and worship." The program is produced at the former WCAL studio in Skifter Hall and *Sing for Joy* is distributed to over 250 stations and broadcast to 241 cities in the United States and 4 cities internationally, through radio, cable and satellite services. St. Olaf, which distributes the program for free, does not pay for the broadcast time in those stations.

48. WCAL began broadcasting *Sing for Joy* in 1970. At that point, it was produced by a different station, KFUE. In the mid-1980s, KFUE ended production and WCAL began producing and distributing the program. Subsequently, the founder, Rev. Alvin Reuter assigned the program to WCAL, and St Olaf's Pastor Benson began as its moderator.

49. *Sing for Joy* currently has a staff of one person, who handles production, distribution, and fund raising. Formerly, WCAL attributed 8 of its 25-person staff to *Sing for Joy*. *Sing for Joy* solicits funds from listeners, and distributes a newsletter to those who contribute. It, however, has not been completely self-sustaining. *Sing for Joy* formerly relied on WCAL for its budget and is currently in need of financial assistance.

50. Although *Sing for Joy* is broadcast to 241 cities in the United States, including Denver, Chicago, New Orleans, St. Louis, Philadelphia, and Pittsburg, it is not broadcast in the Twin Cities area. Before the WCAL-MPR sale, *Sing for Joy* had been broadcast throughout the Twin Cities. The successor MPR station does not broadcast the program. St. Olaf has a long-standing policy of not paying for airtime and has not been able to find a station that would carry the program gratis. But St. Olaf veered from this policy of not paying for airtime when MPR broadcast its St. Olaf “spot” announcements following the WCAL-MPR sale. The “spots” were valued at \$1,300,000.

51. *Sing for Joy* is a “Core WCAL Activity.” Because *Sing for Joy* is a “Core WCAL Activity,” it is appropriate to use some of the endowment income to broadcast the program to the Twin Cities area.

#### **C. Public Service**

52. Over the years, WCAL provided much in the area of public service. It began with its broadcasting of weather reports and news and continued with its broadcasting of lectures, debates, St. Olaf college classes, and other programs using a variety of college faculty and students. In addition, it has long broadcast “events” such as the Nobel Peace Forum. An audio/production/journalism unit in the Skifter Building could provide new projects to record and broadcast for Internet/Podcast or CD distribution that report on issues and conversations on topics of public interest that extend the interests of St. Olaf. The broadcasting of public service programs such as these is a “Core WCAL Activity.”

#### **D. Classical Music**

53. The broadcasting of classical music has long been a “Core WCAL Activity.” From WCAL’s inception, classical music, as well as religious music, were important parts of WCAL broadcasts. In the 1920s, the St. Olaf orchestra and faculty were broadcast live. WCAL’s broadcasting of classical music increased greatly throughout the years, so much so that in recent years WCAL was known as the “Classical Music” station.

#### **E. Chapel Broadcasts**

54. Chapel broadcasts also constitute a “Core WCAL Activity.” The St. Olaf Chapel broadcast was WCAL’s longest tenured radio program on the air. It broadcast from 1924 to 2004. Chapel was broadcast every day during the school year and on Sundays, the St. Olaf worship service was broadcast, together with Church services from Bethlehem Lutheran and Central Lutheran.. In addition, church broadcasts in Norwegian and Swedish languages were broadcast for many years.

#### **F. Student Involvement**

55. Student employment and mentoring have also been “Core WCAL Activities” since early on in WCAL’s existence. Students were employed as announcers, technicians and engineers. (Current President David Anderson worked for four years as an announcer at WCAL). Although student announcers in recent years were replaced by professional announcers, the student involvement has continued in the engineering and recording side of the station and can continue with the broadcasting unit in the Skifter building. In addition, more assistance could be given to the students with KSTO, the student run radio station.

#### **G. Band, Orchestra, and Choral Music**

56. Band, orchestra and choral music are also “Core WCAL Activities” that played a large part in WCAL history. WCAL has long broadcast live and recorded concerts of the St. Olaf choirs (in addition to the Christmas Festival), the bands, the orchestras, and organ recitals.

### VIII. CONTINUATION OF CORE WCAL ACTIVITIES

57. Many WCAL "Core Activities" are now continued and conducted in the former WCAL location, the Skifter Hall Building on the St. Olaf campus. They are now handled by the Broadcast Media Department at St. Olaf, under the direction of Jeff Donnell. The Department continues production and distribution of *Sing for Joy*.

58. Both Donnell and his predecessor, John Gaddo (the WCAL station manager when WCAL finished formal broadcasting in 2004), have given much thought to the continuation of Core WCAL Activities, and have prepared memos directed to St. Olaf with suggestions for the continuation of the Core Activities. The Gaddo memo of October 27, 2004 was prepared in anticipation of the sale of WCAL, with a view to continued operation of “Core Activities.” It was prophetic and insightful, and should be reviewed in contemplation of future “Core WCAL Activities.” The memo is attached hereto as “Special Master Exhibit 4.”

59. The Donnell memo of December 12, 2007 is also attached to these findings as “Special Master Exhibit 5.” It was prepared at the request of this Special Master, and is a detailed proposal for continuation of “WCAL Core Activities.”

60. Future “broadcasting” should include web-streaming, not only of daily chapel and concerts, but also of likely special events and student recitals. Expansion of the

streaming capacity is possible so that if additional servers are added, almost unlimited on-demand viewers could be serviced.

61. The present recording services of the various St. Olaf venues can be expanded, increased and perfected. The Donnell memo recommends substantial additional equipment for Boe Memorial Chapel, the Skoglund Auditorium recording studio, as well as renovation of aged and failing equipment and consoles in Skifter Hall.

62. St. Olaf events, theatrical productions, concerts and faculty interviews can be recorded by the Broadcast Media Department for broadcast in other broadcast facilities. For example, St. Olaf music ensembles for the classical music channels on satellite radio services, reintroduction of the "Dr. America" broadcast featuring a St. Olaf Professor, visiting ensembles such as the Oslo Chamber Choir, campus events such as the dedication of the Boe Memorial Chapel new organ, and broadcast of next Summer's Nobel Peace Prize Forum at St. Olaf.

63. The St. Olaf Broadcast Media department currently employs six student workers, who receive training and experience. With expanded operations, opportunity can be given to even more students.

64. St. Olaf has a campus radio station, KSTO, which broadcasts primarily only on campus, 24 hours per day. It is run by students, on a volunteer basis, with a small stipend for payment (\$75 per semester for "music directors" and \$125 per semester for the station director). Its annual budget is \$3,000. The Director, Aaron Heidgerken, indicates that although the station currently broadcasts primarily music (mostly rock), it would like to consider doing some news and events. The station could use financial and professional

help. They claim they need updated equipment and more space. The Broadcast Media department could provide support and training for the student volunteers at KSTO.

### IX. MARKET VALUE OF ENDOWMENTS

65. St. Olaf holds its endowments in a pool of investments, with both “restricted” and “unrestricted funds”. The investments pool earn income. A portion of the income is used by the college, and the other portion is left in the investment pool.

66. St. Olaf has a formula for determining the market value of its endowments and investment pool. The St. Olaf formula is attached as “Special Master Exhibit 6.” The intention behind the formula is to keep updating the principal to accord with current economics or inflation. For example, Lena Zaiger died in 1974. Her will left funds from her savings account to “WCAL of St. Olaf ... as a memorial to my mother, Esenwein Zaiger.” St. Olaf and WCAL received \$12,999.08 on December 27, 1974. Exhibit A to the Petition lists the current “market value” of the Lena Zaiger endowment as \$42,114 as of April, 2006. As of the fourth quarter of 2007, the endowment “market value” increased to \$47,720. While the income earned on that endowment likely has been more than the increase in market value, the income has not been added to the principal amount of the endowments. Instead, the income has been used to fulfill the wish of Lena Zaiger that the money be used for WCAL “to be used in programming and broadcasting programs of a religious nature, as a memorial to my mother.”

67. “Market Value” for the purpose of these findings, is delineated as of the fourth quarter of 2007, which is the latest “market value” assessment available to the Special Master. The “market value” of the endowments, however, can and should be updated using the most current quarter.

## XI. ASSETS AT ISSUE

### A. Restricted Endowment Gifts (Exhibit A):

68. In its Petition, St. Olaf refers to the gifts in Exhibit A as “Restricted Endowment Gifts.” With these gifts, donors directed St. Olaf to hold the funds as an endowment and to use the annual endowment distribution to support WCAL. The total of Exhibit A, in April 2006 was \$399,627. The “market value” as of the fourth quarter of 2007 was \$452,821. With the addition of the Eckberg donation, referred to here under “Excluded Gift”, the total of Special Master Exhibit A as of April 30, 2006 is \$409,085, and the fourth quarter of 2007 is \$463,538.

69. St. Olaf requests that the restriction on these gifts that they be used for WCAL be partially released under Minn. Stat. § 309.62, subd. 2 or, in the alternative, that the gift be modified under Minn. Stat. § 501B.31, subd. 2. St. Olaf further asks that these gifts be used to carry out “Core WCAL Activities.”

70. The gifts in this category are “endowment funds” within the definition of Minn. Stat. § 309.62, subd. 4, which defines an “endowment fund” as “an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.”

71. The Special Master has reviewed all of the files for the gifts in Exhibit A.

72. The gifts clearly appear to be for permanent endowments to support WCAL with no contingency for the ceasing of WCAL operations.

73. The Special Master agrees with St. Olaf that the intent of the donors can best be carried out by using the Restricted Endowment Gifts listed in Exhibit A to support Core

WCAL Activities and recommends that St. Olaf's Petition should be granted regarding these gifts.

74. Because Minn. Stat. §309.68, subd. 2, provides that a release "may not change an endowment fund to a fund that is not an endowment fund," St. Olaf must continue to hold these funds in an endowment.

**B. Restricted Nonendowment Gifts (Exhibit B):**

75. In its Petition, St. Olaf refers to the gifts in Exhibit B as "Restricted Nonendowment Gifts." These gifts were given by donors who designated their gifts for the support of WCAL but did not require that St. Olaf hold them as an endowment. The total of Exhibit B on the date of the Petition is \$414,228.

76. Although the donors did not request that St. Olaf hold these funds as endowments, St. Olaf chose to do so.

77. The Special Master has reviewed all of the files for the gifts in Exhibit B and has reviewed specifically the documents, such as wills or annuity agreements, that created the gifts. In addition, the Special Master has examined all of the letters and receipts signed by St. Olaf representatives acknowledging the gifts.

78. The Special Master finds that although the wording of the gifts do not appear to specifically qualify the gifts as "permanent endowment," when acknowledging receipt of the gift, St. Olaf has, in many cases, *promised* the donor or the donor's representative that St. Olaf would establish a permanent endowment. In those cases, not only has St. Olaf kept the gifts in fund labeled "Endowment," not "Quasi Endowment," but also St. Olaf *promised* that it would do so.

79. In other cases, St. Olaf did not promise to hold the funds in a permanent endowment.

80. Petitioner's Exhibit B is divided into "Special Master Exhibit B-1" and "Special Master Exhibit B-2."

81. Exhibit B-1 is composed of those gifts that the donor did not specifically request a permanent endowment and where St. Olaf did not promise to keep the funds in a permanent endowment. The market value of Exhibit B-1 on the date of the Petition was \$242,565.

82. Exhibit B-2 is composed of those gifts in which although the donor may not have specifically requested in the written instrument that the gifts be held as a permanent endowment, St. Olaf promised the donor to do so. The market value of Exhibit B-2 when the Petition was filed was \$414,228.

83. St. Olaf now claims that the restriction on these funds may be released under the Generally Accepted Accounting Principles for Nonprofit Corporations and requests that it be confirmed that these gifts are no longer subject to any restrictions. According to Generally Accepted Accounting Principles for Nonprofit Corporations, "if an expense is incurred for a purpose for which both unrestricted and temporarily restricted net assets are available, a donor-imposed restriction is fulfilled to the extent of the expense incurred unless the expense is for a purpose that is directly attributable to another specific external source of revenue." *Accounting for Contributions Received and Contributions Made*, Statement of Financial Accounting Standards No. 116, ¶ 17 (Financial Accounting Standards Bd. 1993).

84. The Special Master consulted with HG&K, Ltd. Certified Public Accountants regarding the application of GAAP as it relates to these funds. The HG&K, Ltd. report is attached as "Special Master Exhibit 7". The HG&K, Ltd. report states that under the GAAP, these funds are temporarily restricted because of donor-imposed restrictions, and the funds will be used as the temporary restrictions are met. Further, these funds cannot be released from restriction by board action.

85. The Special Master separated the Quasi-Endowments of Exhibit B in the Petition into Exhibits B-1 and B-2 because, at first blush, it seemed that St. Olaf's promise to the Exhibit B-2 donors would cause those gifts to become permanently restricted in an endowment and that release of the restriction on those funds may be inappropriate. However, in light of the HG&K, Ltd. report, St. Olaf's promise to the Exhibit B-2 donors is not an issue under the GAAP. Exhibit B-2 should be treated in the same manner as Exhibit B-1.

86. The Special Master's review of the record shows that the amount of money that St. Olaf contributed for the support of WCAL exceeded the "Restricted Nonendowment Gifts" available to WCAL. Thus, the Special Master determines that St. Olaf expended the entire amount of the "Restricted Nonendowment Gifts" and recommends that it be confirmed that the funds that St. Olaf holds attributable to those gifts are not subject to any restrictions. The Petition by St. Olaf with respect to both B-1 and B-2 should be granted.

#### **C. Undocumented Gifts (Exhibit C):**

87. St. Olaf also received what it describes as "Undocumented Gifts." St. Olaf asserts it has kept these funds in a quasi endowment for WCAL's benefit, although it has no

record what restrictions were placed on these gifts by their donors. St. Olaf does not have any record regarding why the decision was made to hold these gifts as quasi endowments for WCAL's benefit. St. Olaf now asks that the court determine that there are no restrictions on these gifts.

88. St. Olaf asks that because there is no showing that these gifts were intended by the donor to be restricted, the presumption should be that they are not permanent endowments for the benefit of WCAL, although St. Olaf has treated them as such through the years. St. Olaf has the burden of showing that there are no restrictions on these gifts. St. Olaf, however, has not met this burden as it has not produced any documents regarding these gifts. These endowments are listed in Exhibit C of the Petition, and had a total market value at the time of the Petition of \$305,771.

89. Special Master finds that it is likely that at least some of the gifts were restricted by the donors with the intent that they be held as permanent endowments for WCAL. This may have been because the funds were given in response to St. Olaf's solicitation of the funds for WCAL or because of a now-missing directive from the donor. Thus, the Special Master recommends that St. Olaf's request be denied. The Special Master recommends that the funds listed as "Undocumented Gifts" be added to the "Restricted Endowment Gifts" list in Exhibit A. Further, the Special Master recommends that, similar to the "Restricted Endowment Gifts," the restriction on these gifts be partially released under Minn. Stat. § 309.68, subd. 2 or, in the alternative, that the court be allowed to modify the use of the gift to carry out the general purpose of the gift instrument and the donor's general intentions under Minn. Stat. § 501B.31, subd. 2. The Special Master recommends that the intent of the donors can best be carried out by the

court issuing an order directing St. Olaf to use these gifts to support Core WCAL Activities.

90. The Petition inadvertently excluded an additional undocumented gift in the amount of \$21,266.90. This gift should be treated in the same manner as the “Undocumented Gifts” listed in the Amended Petition’s Exhibit C. Thus, with the addition of the new undocumented gift, the total amount of undocumented gifts in Exhibit “C” is \$327,037.90, as of the date of the petition, and the market value as of the fourth quarter of 2007 is \$370,570.

#### **D. Special Endowment Gifts**

91. For three of the Restricted Endowment Gifts, St. Olaf received input from living relatives or personal representatives of the donors who indicated that in their opinion, following the sale of WCAL, the donors would have wished St. Olaf to use distributions from the endowment to support a different program at St. Olaf.

92. St. Olaf asks for an order directing the use of the funds for those specific programs. St. Olaf refers to these three gifts as the “Special Endowment Gifts.”

##### **1) Milford C. Jensen**

93. One “Special Endowment Gift” donor was Milford C. Jensen. St. Olaf requests that the restriction on this gift be completely released under Minn. Stat. § 309.68, subd. 2. St. Olaf also petitioned under Minn. Stat. § 501B.31, subd. 2 to have the court modify the use of the gift to carry out the general purpose of the gift instrument and the donor’s general intentions. St. Olaf proposes that the intent of Jensen can best be carried out by using his gift for the “[c]reation of an endowment to support scholarships for students studying organ.”

94. The Special Master finds that although a family member of the donor has indicated his belief regarding how the donor would want the funds distributed, given the fact that WCAL no longer operates, the intention of the donor, who had wished that the funds be used for WCAL, is best served by using the funds to support Core WCAL Activities.

95. Petitioner's request for a complete release of the restriction on this endowment is, in effect, a partial release because the endowment for scholarships for students studying the organ is a Core WCAL Activity.

96. St. Olaf's request that the restriction on the Jensen gift be released should be granted or, in the alternative, St. Olaf's request for modification should be granted. The funds should be used to support the Core WCAL Activity of creating an endowment for scholarships for students studying the organ.

97. Because Minn. Stat. §309.68, subd. 2, provides that a release "may not change an endowment fund to a fund that is not an endowment fund," St. Olaf must continue to hold these funds in an endowment.

## **2) Herbert and Helen Schroeder**

98. Another "Special Endowment Gift" was the Herbert and Helen Schroeder Endowment. Helen Schroeder signed two "One Life Gift Annuity Agreements" with St. Olaf. The first, signed on August 31, 1998, was for \$10,000. The second, signed on June 30, 1996, was for \$12,000. Both endowments were to be for the "Herbert and Helen Schroeder Christmas Festival Endowment for WCAL-St. Olaf College." Helen Schroeder died on December 6, 1998. On November 30, 2004, the market value of the endowments was \$28,237.

99. After the sale of WCAL, the input of the heirs of Helen Schroeder was requested. Her daughter, Grace Schroeder Scott, who was the then-Senior Principal Gifts Officer at St. Olaf, asked if it would be possible for the fund to be added to an existing Herbert and Helen Schroeder Endowed Scholarship Fund at St. Olaf.

100. St. Olaf requests that the restriction on this gift be completely released under Minn. Stat. § 309.68, subd. 2. St. Olaf also petitioned under Minn. Stat. § 501B.31, subd. 2 to have the court modify the use of the gift to carry out the general purpose of the gift instrument and the donor's general intentions. St. Olaf proposes that the intent of the Schroeders can best be carried about by adding those funds to St. Olaf's existing Hebert A. and Helen D. Schroeder Scholarship Fund.

101. The Special Master finds that complete release of the restriction would be inappropriate and that, instead, modification of the gift instrument is appropriate. The Special Master further finds that to add this endowment to the existing scholarship fund set up the same donor would not further Helen Schroeder's specific intent in setting up the WCAL endowment. The intent behind the endowment was clearly to support the Christmas Festival, which was a separate endowment from the scholarship fund. This intention can best be carried out by using the fund to support "Core WCAL Activities," and specifically the Christmas Festival.

102. Because Minn. Stat. §309.68, subd. 2, provides that a release "may not change an endowment fund to a fund that is not an endowment fund," St. Olaf must continue to hold these funds in an endowment.

### 3) Eunice Munck

103. The donor of the third "Special Endowment Gift" was Eunice Munck. Eunice Munck died on November 30, 2002, leaving a bequest for WCAL with her wish that it be used to support programming for senior citizens. On June 18, 2003, St. Olaf (WCAL) reached an agreement with the Munck estate as follows: (1) \$150,000 in a restricted endowment for the purpose of providing overnight programming for the comfort and companionship of senior citizens. The agreement stated that "the interest from this endowment will pay for costs associated with this service in perpetuity"; (2) \$175,000 in a quasi endowment for launching digital broadcasting "within 2 to 3 years"; (3) \$75,000 for enhancing efforts that benefit seniors (overnight music service, music recordings for a music library, arts reports and commentary, publication of *Music & Ideas* listener guide, and technology to help future broadcasting goals. It appears that the \$75,000 was expended within a year. The bequest was paid in installments commencing June 23, 2003, with the last installment paid in 2005. Several installments were made after WCAL was sold. St. Olaf asserts that the only funds remaining from the Munck bequest is the \$150,000 permanent endowment. The attorneys for the estate agreed with the St. Olaf attorneys that the restriction on this gift should be released and that the funds be used to "[s]upport Core WCAL Activities and acquisition of new recording equipment to be used to produce programs which feature religious music and religious services."

104. The Special Master finds that given the fact that WCAL no longer operates, the intention of the donor, who had wished that the funds be used for WCAL, is best served by having the funds used to support Core WCAL Activities.

105. Petitioner's request for a complete release of the restriction on this endowment is, in effect, a partial release<sup>4</sup> because Petitioner requests that the funds be used to "[s]upport Core WCAL Activities and acquisition of new recording equipment to be used to produce programs which feature religious music and religious services."

106. St. Olaf's request that the restriction on the Munck gift be released should be granted or, in the alternative, St. Olaf's request for modification should be granted. The funds should be used to support Core WCAL Activities, including acquisition of new recording equipment to produce programs which feature religious music and religious services.

107. Because Minn. Stat. §309.68, subd. 2, provides that a release "may not change an endowment fund to a fund that is not an endowment fund," St. Olaf must continue to hold these funds in an endowment.

#### **D. The Norberg Trust**

108. While St. Olaf owned and operated WCAL, a perpetual charitable trust ("the Norberg Trust") was established. The Norberg Trust provided that it would make annual distributions ("the Norberg Distributions") to support WCAL. St. Olaf asks that the restriction on the Norberg Distributions be partially released under Minn. Stat. § 309.68, subd. 2 or, in the alternative, the gift instrument be modified under Minn. Stat. § 501B.31, subd. 2. St. Olaf further proposes that the best way to carry out Norberg's intent would be to use the funds to support Core WCAL Activities.

109. The Special Master agrees with St. Olaf that under Minn. Stat. § 309.68, subd. 2, the requirement that St. Olaf use these funds for WCAL has become obsolete, inappropriate, and impractical and that under Minn. Stat. § 501B.31, subd. 2, the

circumstances have changed in such a way that the original designated use of the funds is no longer possible. The Special Master further agrees with St. Olaf that the intent of Norberg can best be carried out by using the funds to support Core WCAL Activities. Thus, the Special Master recommends that St. Olaf's petition regarding a partial release or, in the alternative for modification, be granted regarding these funds.

#### **E. Turbis Bequest**

110. In 2005, after WCAL's operations ended, St. Olaf received a bequest from the Revocable Trust of Syvilla Turbis which was designated to support WCAL. On July 1, 1996, Sylvia M. Turbis executed a trust agreement in which she left \$100,000 to St. Olaf "to be used to establish a quasi-endowment fund to support the operations of the St. Olaf College radio station, WCAL-FM, from which the administrators of the funds may use the income and, if appropriate in the discretion of such fund administrators, principal of such fund."

111. Sylvia Turbis amended the trust twice. The first amendment left the provisions regarding WCAL the same, and the second amendment was declared invalid by the court. Litigation ensued and an agreement was reached on November 8, 2004 that provided that the "St. Olaf College quasi endowment fund (WCAL-FM) was to receive \$90,909 of the estate assets." Although Turbis died on April 22, 2003, payment was not made until November 28, 2005, substantially after the sale of WCAL.

112. St. Olaf maintains that although this gift was not an endowment, it is an existing gift restricted to support WCAL. St. Olaf petitions to have the restriction on this gift partially released under Minn. Stat. § 309.68, subd. 2 or, in the alternative, to have the gift instrument modified under Minn. Stat. § 501B.31, subd. 2. St. Olaf further maintains

that the donor's intent can best be carried out by using this gift to support the Core WCAL Activities.

113. The Special Master agrees with St. Olaf that the restriction on the gift should be partially released or that, in the alternative, the court should modify the use of the gift. The Special Master further agrees with St. Olaf that the donor's intent would be best carried out by using this gift to support Core WCAL Activities and, thus, recommends that St. Olaf be directed to use these funds in that manner.

#### **F. The Rosemount Radio Tower**

114. Until 1992, WCAL operated by transmitting from a radio tower in Northfield, Minnesota on the St. Olaf campus. The old tower was built in 1967 and was only 440 feet high. Its primary signal radius was 34.5 miles and reached only half of the Twin Cities metro area. After WCAL was sold to MPR, this tower was torn down and replaced with a new one.

115. Until 1991, WCAL operated with both an AM and FM license. In 1991, WCAL transferred its AM license (which it had obtained in 1922) to the University of Minnesota, which operated it as KUOM. In exchange for the AM license, the University of Minnesota signed a lease with St. Olaf College for one acre of land in Rosemount, Minnesota. The lease ran for 40 years with one 40-year renewal option.

116. In 1990, WCAL and St. Olaf determined that it was appropriate to build a new 800-foot broadcast tower on the land leased from the University. The budget for the tower was \$1,250,000. WCAL began an extensive fundraising program, headed by Leonard Hoeft, specifically for the construction of the tower. Before the fundraising campaign was completed, St. Olaf obtained a permit from the FCC on September 17,

1990. Although only a fraction of the anticipated donations had been received, St. Olaf and WCAL commenced construction immediately because the FCC permit expired on March 17, 1992 (18 months after it had been granted).

117. The project was funded in part by \$583,192 in gifts generated through the fundraising campaign. Another \$426,871 was drawn during the fiscal years of 1993 and 1995 from preexisting WCAL "quasi endowments" that had been transferred to the tower project. These "quasi endowments" had been providing operating income to support WCAL. The remaining amount needed for the construction was financed by a loan to WCAL from St. Olaf's "unrestricted funds." Interest on the loan was 7%.

118. In May 1996, the balance on the St. Olaf loan was \$475,611. Leonard Hoeft asked St. Olaf to apply \$475,611 of a \$4,050,000 donation of Ziegler stock he had contributed to St. Olaf in December 1995 to WCAL to pay off that loan. When St. Olaf complied and transferred that amount, the loan was repaid.

119. When the Hoeft contribution is taken into consideration, virtually all of the costs of the tower construction, \$1,485,674, were financed by gifts and endowments from donors to WCAL.

120. The donors of those funds would have expected that their contributions would have been used for construction of a tower that likely would continue providing service to WCAL listeners for another 40 years. (The tower built in 1967 was recently torn down and replaced). Since the tower was sold to MPR, the amounts contributed for the purchase of that tower should be held in an endowment for the performance of "Core WCAL Activities."

121. When the WCAL assets were sold in 2004, the \$1,485,674 in tower contributions would have increased, using the St. Olaf Endowment “market value” contribution calculator to \$2,008,507. The present market value of that endowment (at the end of 2007), using the same calculations is \$2,546,263. Although the intent of the donors would have been to have their contributions benefit WCAL with use of the tower, their interest can now be best served by putting the funds in a restricted endowment, which will be used for “Core WCAL Activities.”

122. It should be anticipated that the income from the endowment will be used for those activities. In addition, commencing in 2010, St. Olaf may, at the discretion of the President, his committee and the Board of Regents, use the principal, as long as it is used for “Core WCAL Activities”.

123. SaveWCAL argues that all of the assets associated with WCAL-MPR sale should be part of the WCAL charitable trust. But the record shows that, in addition to listener donations, WCAL received grants from the Corporation for Public Broadcasting and cash contributions from St. Olaf throughout the years. It is likely that all three groups of funds were used to purchased assets were used to purchase assets for WCAL, and it is virtually impossible to discern from the record which, if any, assets were solely purchased with listener donations. The only exception is the Rosemount radio tower, which was clearly constructed with funds form listener donations. Therefore, the Special Master determines that the radio tower is the only asset associated with the WCAL-MPR sale that should be part of the WCAL charitable trust.

### G. Leonard Hoeft Donations

124. Leonard Hoeft has served on the St. Olaf Board of Regents from 1970 to the present. From 1980 to 1986, he served as the Chair of the Board and in recent years, he has served as a Senior Regent.

125. In 1991, Hoeft chaired the committee that led the fundraising campaign for the Rosemount tower.

126. In December 1995, Hoeft gave a gift of 16,200,000 shares of Ziegler, Inc. stock to St. Olaf. The value of the stock was not determined at that time. The stock was not public and the value was determined through an independent appraisal. In May 1996, the value of the stock was determined to be \$4,050,000. Ziegler, Inc. signed a subordinated debenture agreement to purchase the stock back from St. Olaf for that figure. The agreement provided for payment of interest only or \$324,000 annually for ten years and then principal payments of \$101,250 plus interest annually. The debentures were added to the total of the investments that make up the endowment pool.

127. Hoeft made no direction as to how the gift of stock was to be used in December 1995, when it was transferred to St. Olaf. St. Olaf treated the 1995 gift as "unrestricted" (in an undetermined amount). In May 1996, Hoeft met with St. Olaf representatives and the parties agreed that \$1,000,000 would be used for a permanent endowment for minority students and that \$475,611.33 would be used for the repayment of the loan that St. Olaf had given WCAL for the construction of the Rosemount tower.

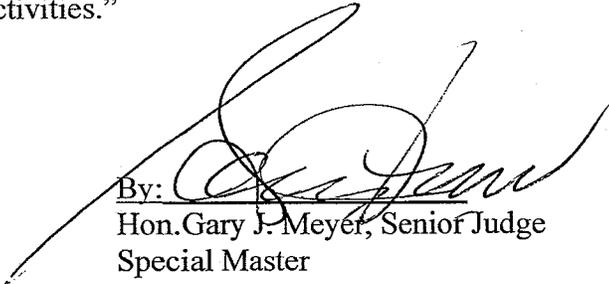
128. Hoeft requested and St. Olaf agreed that \$1,000,000 of the remaining \$2,575,399.67 would be used to generate approximately \$50,000 in income per year for WCAL. St. Olaf listed the remaining \$2,575,399.67 on its books as "unrestricted" funds.

However, the only actual “unrestricted” part of the \$4,050,000 Hoeft gift was \$1,575,000. Although St. Olaf has listed the other \$1,000,000 as “unrestricted” funds, St. Olaf has acknowledged that “until such time as the board would spend the principal (and we do not anticipate that day will ever come) the income is restricted to support WCAL.”

129. Hoeft has not released the restriction from this endowment. The Board has not spent the principal \$1,000,000 principle.

130. The Special Master interviewed Hoeft personally. Hoeft strongly opposed the sale of WCAL primary assets to MPR and still has an allegiance to what was the essence of WCAL and WCAL Core Activities. He says he was not consulted prior to the sale, and has never been consulted regarding the disposition of his \$4,050,000 gift, except in June 1996, when he made his directions concerning the disposition of all except the \$1,575,000 “unrestricted.” The Special Master finds that Hoeft’s intentions are best served by keeping the \$1,000,000 in a quasi endowment in which the \$50,000 of annual income is used for “Core WCAL Activities.”

Date: March 7, 2008

By:   
Hon. Gary J. Meyer, Senior Judge  
Special Master