

publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption and/or to request a hearing. Comments and hearing requests are due within 34 days of the date of publication of the proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Silvia M. Quezada of the Department, telephone number (202) 693-8553. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each

application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

[FR Doc. 03-28546 Filed 11-13-03; 8:45 am]

**BILLING CODE 4510-29-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Prohibited Transaction Exemption 2003-32; [Exemption Application No. D-11067] et al.; Grant of Individual Exemptions; Sorenson Broadcasting Employee Stock Ownership Plan and Trust, et al

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978,

section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

#### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

#### Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan); Located in Sioux Falls, SD

[Prohibited Transaction Exemption 2003-32; Exemption Application No. D-11067]

#### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,<sup>1</sup> shall not apply to (1) the sale (the Sale) by the Plan to Sorenson Broadcasting Corporation (the Employer), a party in interest with respect to the Plan, of 930 shares of common stock (the Common Stock) of the Employer; and (2) the extension of credit by the Plan to the Employer under the terms of a subsequent adjustment to the Sale price (the True-up) in connection with the Sale.

This exemption is subject to the following conditions:

(a) The Sale occurs in the following manner:

(1) The Employer pays the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain positive adjustments indicated in an addendum to a purchase agreement dated May 26, 2000;

(2) The fair market value of the Common Stock as of the transaction date (the Closing Value) is determined no later than two months after the transaction date;

(3) As additional consideration, the Plan receives the difference between the

<sup>1</sup> For purposes of this exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True Up; and

(4) As collateral for the True-up, Mr. Dean Sorenson, the principal shareholder of the Employer, deposits \$100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan does not pay any commissions or other expenses with respect to the Sale.

(c) The transactions are approved by an independent fiduciary, who will monitor such transactions on behalf of the Plan.

(d) The Plan's trustees determine that the Sale and True-up are appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 5, 2003 at 68 FR 52791.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anna M.N. Mpras of the Department, telephone (202) 693-8565. (This is not a toll-free number.)

**Liberty Media 401(k) Savings Plan (the Plan); Located in Englewood, Colorado**

[Prohibited Transaction Exemption No. 2003-33; Application No. D-11170]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 25, 2002, to (1) the acquisition of certain stock rights (the Rights) by the Plan in connection with a Rights offering by Liberty Media Corporation (LMC), a party in interest with respect to the Plan; (2) the holding of the Rights by the Plan during the subscription period of the offering; and (3) the exercise of the Rights by the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The Rights were acquired pursuant to Plan provisions for individually-directed investment of such accounts;

(b) The Plan's receipt of the Rights occurred in connection with the Rights offering made available to all shareholders of common stock of LMC;

(c) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with the Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received the Rights in connection with the offering;

(d) The Plan's acquisition of the Rights resulted from an independent act of LMC as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition; and

(e) The Plan received the same proportionate number of the Rights as other owners of Liberty Media Series A and Series B common stock (the Stock).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on August 15, 2003 at 68 FR 49302.

**FOR FURTHER INFORMATION CONTACT:**

Khalif Ford of the Department, telephone (202) 693-8540 (this is not a toll-free number).

**Hayden O. Grona IRA (the IRA); Located in San Antonio, Texas**

[Prohibited Transaction Exemption 2003-34; Application No. D-11192]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved land (the Property) by the IRA to Mr. Grona's children (the Children), disqualified persons with respect to the IRA;<sup>2</sup> provided that the following conditions are met:

(a) the sale is a one-time cash transaction;

(b) the IRA receives the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser; and

(c) the IRA pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 5, 2003 at 68 FR 52795.

**FOR FURTHER INFORMATION CONTACT:**

Ekaterina A. Uzlyan of the Department at (202) 693-8540. (This is not a toll-free number.)

<sup>2</sup> Pursuant to CFR 2510.3-2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

**Newspaper Agency Corporation; Pension Trust (the Plan); Located in Salt Lake City, Utah**

[Prohibited Transaction Exemption 2003-35; Application No. D-11194]

*Exemption*

I. Transactions

The restrictions of sections 406(a)(1)(A)-(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code<sup>3</sup> shall not apply to: (1) The leasing of certain improved real property (the Property) by the Plan to the Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, pursuant to the terms of a lease (the New Lease), effective August 1, 2003; and (2) the guarantee by MediaNews Group, Inc. and Deseret News Publishing Company (collectively, the Owners of the Employer) of the obligations of the Employer under the terms of the New Lease.

II. Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) an independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines that each of the subject transactions is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of such Plan;

(b) the I/F manages the Property on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Property;

(c) the fair market value of the Property does not now and will at no time exceed twenty-five percent (25%) of the fair market value of the total assets of the Plan;

(d) the I/F negotiates, reviews, and approves the terms of the subject transactions;

(e) the terms and conditions of the subject transactions are, and will at all times be, no less favorable to the Plan than terms obtainable by the Plan under similar circumstances when negotiated at arm's length with an unrelated third party;

<sup>3</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(f) an independent, qualified appraiser determines the fair market value of the rental of the Property, as of August 1, 2003, and annually thereafter;

(g) the I/F monitors compliance with the terms of the New Lease throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance by the Employer and/or the Owners of the Employer of all other obligations of the Employer under the terms of such lease;

(h) the Plan incurs no fees, costs, commissions, or other charges or expenses as a result of its participation in the transactions which are the subject of this exemption, other than the fee payable to the I/F for services rendered to the Plan and the fee payable to the independent, qualified appraiser for the annual appraisal of the fair market value of the Property;

(i) the I/F ensures that the terms and conditions described herein are at all times satisfied;

(j) the I/F will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this exemption in the **Federal Register**, and subject to the termination of the New Lease, as provided in section II(k), below, of this exemption, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which the I/F determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and

(k) notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice, which date shall be at least six (6) months after the date such written notice is given to the Employer (but in no event extending the New Lease beyond the then current lease term).

Effective Date: The exemption will be effective August 1, 2003.

#### Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on September 5, 2003. All comments and requests for a hearing were due by October 20, 2003.

The Department received, on October 20, 2003, a letter from the applicant, informing the Department of a correction to the language of the exemption, as proposed. In this regard, in the Notice on page 52796, Part I, lines 16–17, the reference to “Deseret News Publishing Corporation” should be revised to read “Deseret News Publishing Company.” The Department acknowledges the correction and in the final exemption has amended the language of Part I, as requested in the October 20, 2003, letter from the applicant.

In addition, on October 20, 2003, the Department received a comment letter, from the Executive Board and Chief Steward of the Graphic Communications International Union, Local 28N (the Local). Accompanying this comment letter was a petition signed by 153 individuals who are employees of the Employer and members of the Local. In this regard, the commentators requested denial of the exemption. In support of this request, the commentators state that: (a) The Employer has not maintained the premises of the Property, because upon completion of construction on a new building, the Employer wants to “walk away” leaving “an almost worthless piece of property” in the Plan; (b) all employees will be adversely affected by the grant of the exemption; (c) the exemption should not be allowed without proper and meaningful negotiations between the union(s) and the Employer; and (d) a hearing should be scheduled, in the event negotiations between the union(s) and the Employer break down.

At the close of the comment period, the Department forwarded a copy of the comment letter to the applicant and requested that the applicant respond in writing to the issues raised by the commentators.

With regard to the commentators' assertion that the Employer has not maintained the Property, the applicant points out that the Property is a warehouse constructed of cement block. As such, the greatest expense involved in maintaining the Property has been that of maintaining the roof. In this regard, it is represented that the Employer has expended substantial sums in maintaining the Property. For example, since June of 2001, the Employer has paid a total of \$112,809.67 to replace over two-thirds (2/3) of the roof (\$49,891 paid on June 30, 2001, and an additional \$62,918.67 paid during 2002). It is represented that the Employer also pays for janitorial services for the Property two (2) times per week.

In response to the comment that the Property is “an almost worthless piece of property,” the applicant points out that the fair market value of the Property is \$1,700,000, as evidenced by the written appraisal of the independent appraiser selected by the I/F. In addition, the applicant points out that the Property has increased in value over the period from 1971 to 2003 from \$259,000 to \$1,700,000, being an increase in value of over 650% (or an average of slightly over 20% per year over the term of 32 years). In addition to appreciation in the value of the Property, the Employer, as the tenant, has made fair market value rental payments to the Plan and also paid for the taxes, liability and casualty insurance premiums, maintenance, and repairs.

In response to the comment that all employees will be adversely affected by the grant of the exemption, the applicant represents that the Plan is a defined benefit pension plan under which the participant benefits are calculated without regard to the value of the underlying plan assets as they exist from time to time. Accordingly, it is represented by the applicant that benefits of Plan participants are not adversely affected by approval of the exemption request. In this regard, the applicant points out that the exemption deals with the leasing of the Property under the terms of the New Lease between the Employer and the Plan which includes various provisions which are favorable to the Plan, including but not limited to the following:

(a) the Employer, as the tenant, is required to pay fair market value lease payments to the Plan, redetermined annually by independent appraisal (in addition to taxes, insurance and other expenses); and

(b) upon six months written notice to the Employer, the Plan may unilaterally terminate the New Lease for any reason. The applicant notes that the Employer does not have the right to terminate the New Lease prior to the end of the primary three (3) year term. Further, the applicant points out that the exemption includes a condition requiring the I/F, within fifteen (15) days following publication of the grant of the exemption in the **Federal Register**, to place the Property on the open market so that the Plan has adequate time (in essence, almost a three (3) year period) to find a buyer for the Property.

In the opinion of the applicant, the comment that the exemption should not be allowed without proper and meaningful negotiations between the union(s) and the Employer appears to

reflect the desire of the Local to use the exemption application process as a means to open pension negotiations with the Employer. As the exemption application by the Employer does not request or result in any amendment to the Plan or any change in the benefits provided to participants under the Plan, it is the position of the applicant that the requested exemption should not constitute a trigger for union benefit negotiations.

Further, the applicant suggests that the genesis of the request for denial of the exemption application included in the comment letter appears to arise from some disappointment or ill will from prior negotiations involving issues unrelated to the exemption application. In the opinion of the applicant, such feelings as to unrelated matters are irrelevant to and should not be the catalyst for denial of the requested exemption.

In response to the comment requesting a hearing be scheduled if union negotiations break down, the applicant maintains that the exemption application does not affect the benefits of the participants under the Plan and should not involve union negotiations. Further, the applicant points out that the comment letter does not include any facts supporting a conclusion that any participant would be adversely affected by the grant of the exemption requested. In the opinion of the applicant, a hearing should not be required, as all factual data and documents have already been provided to the Department of Labor, and any issues discussed in the comment letter can be fully explored, if deemed necessary by the Department of Labor, through the submission of evidence in written form.

The Department, after reviewing the concerns of the commentators, does not believe that there are material issues relating to the subject exemption that were raised by the commentators during the comment period which would require the convening of a hearing. Accordingly, the Department has determined not to delay consideration of the final exemption by holding a hearing on application D-11194.

After giving full consideration to the entire record, including the written comment from the commentators, the applicant's response to such comments, and the applicant's own comment, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letter from the commentators, the applicant's response thereto, and the comment letter from the applicant which were submitted to the Department have been included as part of the public record of

the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on September 5, 2003, at 68 FR 52796.

**FOR FURTHER INFORMATION CONTACT:**

Angelena C. Le Blanc, of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

*General Information*

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of November, 2003.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
Department of Labor.*

[FR Doc. 03-28545 Filed 11-13-03; 8:45 am]

**BILLING CODE 4510-29-P**

**DEPARTMENT OF LABOR**

**Employment Standards  
Administration, Wage and Hour  
Division**

**Minimum Wages for Federal and  
Federally Assisted Construction;  
General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be