

PUBLIC VERSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

HC2 STATION GROUP, INC.,

Complainant,

v.

DIRECTV, LLC,

Defendant.

MB Docket No. 19-295
CSR-8981-M

DIRECTV, LLC'S ANSWER TO COMPLAINT FOR DENIAL OF CARRIAGE

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DIRECTV, LLC (“DIRECTV”), pursuant to 47 C.F.R. § 76.7(b), hereby answers the October 7, 2019 Complaint of HC2 Station Group, Inc. (“HC2”) for failure to carry, filed on behalf of WJFB (“WJFB” or “Complainant”), a television broadcast station it now owns in the Nashville, Tennessee designated market area (“DMA”).

SUMMARY

WJFB’s Complaint has multiple, independent flaws, and it should be dismissed.

First, the Complaint is time-barred. The Commission “will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station’s carriage request.” 47 C.F.R. § 76.66(m)(6). According to WJFB, it made its must-carry election and request on September 28, 2017 (the “WJFB Letter,” *see* Compl. Ex. B).

After a broadcast station makes a request for carriage, the satellite carrier’s denial can take three forms: (1) if the satellite carrier does not respond to the station’s written request within 30 days, the satellite carrier is deemed to have denied the request; (2) if the station and the satellite carrier initially decide to negotiate for carriage and cannot reach agreement, the filing period commences when negotiations end; and (3) if the satellite carrier denies the request explicitly, the filing period commences when the satellite carrier “submits a final rejection.”¹

DIRECTV denied WJFB’s alleged election and carriage request under each of these three alternatives on or before January 10, 2018. After receiving the WJFB Letter, DIRECTV never indicated it intended to carry WJFB. Its implicit denial triggered the 60-day filing period by October 30, 2017 (*i.e.*, 30 days after the date of the WJFB Letter). *See* 47 C.F.R. § 76.66(m)(6) (barring complaints filed more than 60 days after “implicit” denial); *Reconsideration Order*, 16

¹ Order on Reconsideration, *Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 16544, 16574, ¶ 60 (2001) (“*Reconsideration Order*”).

FCC Rcd at 16574, ¶ 60.

DIRECTV also made an explicit, “final rejection,” and ended any “negotiating” that might have tolled the filing period, *Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] By this time, DIRECTV was *not* carrying WJFB, and [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]

If WJFB wanted to file a complaint to enforce rights under the alleged must-carry request in the WJFB Letter, the 60-day period for doing so began to run no later than January 10, 2018, and expired by March 12, 2018. *See* 47 C.F.R. § 76.66(m)(6); *Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60. WJFB’s October 7, 2019, Complaint is clearly too late.

Established policy also supports the conclusion that the Complaint is untimely. DIRECTV allocated spotbeam capacity for the 2018-20 election cycle knowing it would not have to carry WJFB. Requiring DIRECTV to carry WJFB now, mid-cycle, would be time consuming, expensive, and contrary to the Commission’s recognition that “carriers need some measure of control in configuring their satellite systems” and that this control requires timely assertion of rights.²

Second, in the alternative, WJFB’s alleged must-carry election was invalid. Consequently, DIRECTV “is not required to carry” it. 47 C.F.R. § 76.66(d)(1)(v).

To validly choose mandatory carriage, a station must make an “affirmative carriage

² Report and Order, *Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918, 1929, ¶ 22 (2000) (“2000 Order”).

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election,” providing information a satellite carrier “needs to commence the carriage.” *2000 Order*, 16 FCC Rcd at 1932, ¶ 30. On September 28, 2017, Radiant Life Ministries, Inc. and owner of the TCT Network (“TCT”) – the then-license holder of WJFB – told DIRECTV in a cover letter to the purported election (the “Renewal Letter”) that it did *not* want DIRECTV to “commence the carriage” of WJFB, as well as several other stations. The Complaint ignores the Renewal Letter, which expressed TCT’s “desire” “to renew the retransmission consent / *local into local channel waiver agreement* that our organizations have been party to . . . for a number of election cycles.” Compl. Ex. E (Ltr. from TCT to DIRECTV (Sept. 28, 2017)) at 1 (emphasis added). TCT enclosed the WJFB Letter only so that TCT could “again *waive* . . . carriage rights” for its stations, including WJFB. *Id.* (emphasis added). Thus, from the moment it made the purported must-carry election, WJFB told DIRECTV it did *not* actually demand carriage.

WJFB’s subsequent conduct reinforced the words of the Renewal Letter. After September 28, 2017, the parties never deviated from the path WJFB chose, and, over the ensuing months, **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

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As the Commission has explained, its rules require an affirmative election including the information carriers “need[] to commence the carriage.” *2000 Order*, 16 FCC Rcd at 1929, 1932, ¶¶ 22, 30. The Renewal Letter and enclosed WJFB Letter (together, the “WJFB Requests”), which collectively conveyed that the parties would continue their ongoing relationship and that DIRECTV should *not* plan on allocating capacity for WJFB, fail to meet this standard. Treating the WJFB Requests as a valid election would leave carriers in the untenable position of having to reserve capacity for a station, even if the station indicates it does not actually want to be carried. That would undermine the purpose of requiring an affirmative election in the first place.

FACTUAL BACKGROUND

A. DIRECTV Did Not Carry WJFB Because WJFB Elected To Negotiate an Alternative Disavowing Mandatory Carriage

The deadline for broadcasters to elect must carry for the 2018-20 cycle was October 1, 2017. *See* 47 C.F.R. § 76.66(c). On September 28, 2017, just before that deadline, TCT, which was then the licensee for WJFB, sent DIRECTV a letter communicating its “desire” “to renew the retransmission consent / local into local channel waiver agreement that our organizations have been party to concerning Public Interest Channel 377 for a number of election cycles.”

Compl. Ex. E. [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

In its Renewal Letter, TCT noted that it recently acquired WJFB and was “able to include th[at] station[] into a renewal agreement going forward.” Compl. Ex. E.³ **[BEGIN**

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

TCT also stated in its Renewal Letter that it was “enclosing carriage election letters for each of those stations” to be covered by the renewed local into local channel waiver agreement, but that TCT did that only “so that [it] may again waive those stations’ individualized carriage rights.” Compl. Ex. E. TCT enclosed such letters, including the letter for WJFB attached as Exhibit B to the Complaint.⁴

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]** On December 13, 2017, in the midst of negotiations, DIRECTV discontinued carriage of WJFB.⁵ The station did not object to that

³ **[BEGIN CONFIDENTIAL]** [REDACTED]

[END CONFIDENTIAL] See Griet Decl. ¶ 2. References to “Griet Decl.” are to the Declaration of Karen Griet, dated October 28, 2019, attached hereto.

⁴ The Complaint erroneously asserts (at ¶ 2) that the alleged election was sent on September 15, 2017, but Exhibit B to the Complaint is dated September 28, 2017, the same date as Exhibit E, which rejected must-carry rights and elected to negotiate for transmission of another signal.

⁵ As noted, TCT had recently acquired WJFB, so, unlike other TCT stations, WJFB was carried by DIRECTV; however, DIRECTV discontinued carriage of WJFB on December 13, 2017, because the parties intended to treat WJFB like other TCT stations subject to must-carry waivers. See Compl. Ex. E; Griet Decl. ¶ 2.

action, and it certainly did not file a must-carry complaint against DIRECTV at the Commission.

TCT and DIRECTV [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6

[REDACTED]

⁶ [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] By this time, the parties had definitively resolved that DIRECTV would not carry WJFB. *See* Griet Decl. ¶ 2; Exhibit 2.

On August 23, 2018, TCT agreed to sell and assign the license of WJFB to HC2. *See* Compl. ¶ 4. The Commission granted WJFB's license assignment to HC2 on February 5, 2019. *See id.* According to the Complaint, TCT and HC2 consummated the assignment on May 3, 2019. *See id.*

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

[REDACTED] [END
CONFIDENTIAL]⁷

B. After Acquiring WJFB, HC2 Attempted To Rely on One Portion of TCT's Prior Correspondence While Ignoring Other Clarifying Statements

On August 15, 2019, HC2 demanded DIRECTV carry WJFB on the basis of the WJFB Letter sent to DIRECTV nearly two years earlier. *See* Compl. Exs. B (purported election on September 28, 2017), D (HC2's August 15, 2019 letter). DIRECTV responded that any complaint WJFB might file with the Commission for failure to carry would be untimely. *See* Compl. Ex. E (citing 47 C.F.R. § 76.66(m)(6)). DIRECTV also explained that HC2 must comply with WJFB's must-carry waiver found in the Agreement. *See id.*

DIRECTV and HC2 discussed their disagreement on a September 19, 2019, phone call. *See* Compl. ¶ 9. HC2 insisted that any agreement between DIRECTV and TCT was not binding on HC2. *See id.* HC2 also informed DIRECTV that TCT's counsel had denied that any agreement or fact barred HC2's exercise of its must-carry rights for WJFB after TCT sold the station to HC2. *See id.*

[BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁷ HC2 appears to allege that it did not know about the Agreement. *See* Compl. ¶¶ 5, 6, 9. If HC2 truly denies that it knew about the Agreement, it should say so clearly in its Reply. Even if disputed, however, HC2's knowledge of the Agreement is irrelevant [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] travels with and are binding on WJFB. *See* Part II.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] WJFB filed its Complaint on October 7, 2019.

ARGUMENT

I. WJFB’S COMPLAINT, BY ITS OWN TERMS, IS UNTIMELY

A. Stations Must File Complaints Within 60 Days of a Refusal To Carry

The Commission’s rules set out a process for expeditiously resolving carriage disputes between satellite providers and stations claiming mandatory carriage. *See generally* 47 C.F.R. § 76.66. That process begins with an election. A commercial station must choose between retransmission consent and mandatory carriage for an applicable three-year cycle by October 1 of the year preceding that cycle (*e.g.*, by October 1, 2017, for the 2018-20 cycle). *See id.* § 76.66(c)(2), (4).

“An election for mandatory carriage made by a television broadcast station shall be treated as a request for carriage.” 47 C.F.R. § 76.66(d)(1)(i). If a station requests carriage, a satellite carrier must respond “[w]ithin 30 days,” providing reasoning if it refuses carriage. *Id.* § 76.66(d)(1)(iv)(A). After receiving the carrier’s response, “[i]f the television station’s request for carriage is rejected, it may file a complaint pursuant to the rules established in the Remedies section [of § 76.66].” *2000 Order*, 16 FCC Rcd at 1932, ¶ 29; *see* 47 C.F.R. § 76.66(m)

(codifying “remedies”).

The Commission “adopt[ed] a date certain for when a complaint *must be filed*.” *2000 Order*, 16 FCC Rcd at 1975, ¶ 131 (emphasis added). Specifically, “[t]he Commission will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station’s carriage request.” 47 C.F.R. § 76.66(m)(6). “In this context, the denial can be in the affirmative, as in a rejection letter, or by silence, where a carrier does not respond to a carriage request within 30 days of its receipt.” *2000 Order*, 16 FCC Rcd at 1975, ¶ 131.

As the Commission clarified in its *Reconsideration Order* in the same docket, “[i]f a satellite carrier provides no response to a must carry election, the 60 days commences after the time for responding as required by the rule has elapsed.” *Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60.⁸ Alternatively, “if the parties are negotiating to resolve carriage disputes . . . , the 60 days does not begin to run until resolution efforts have failed.” *Id.* In sum, the 60-day filing period begins to run whenever “the satellite carrier submits a final rejection” or, in the case of non-responsiveness, its time for responding under the rules has expired. *Id.*

B. DIRECTV “Implicitly” and “Explicitly” Rejected the Alleged Carriage Request by January 10, 2018, Triggering the 60-Day Filing Period

WJFB claims that the WJFB Letter, attached as Complaint Exhibit B, constitutes a valid must-carry election and a request for carriage. *See* Compl. ¶¶ 2, 11, 19 (complaining about DIRECTV’s “refus[al] to honor [the alleged September 28, 2017] election and carry the

⁸ If the carrier has responded by rejecting a station’s carriage request, the rules contemplate that the station will “notify the carrier, in writing, of the alleged failure,” at which point the carrier will have “30 days” to respond. 47 C.F.R. § 76.66(m)(1)-(2). Again, the Commission has clarified that the 60 days begins to run either from the carrier’s “second response” or from lapse of the 30-day response period. *Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60.

station”); 47 C.F.R. § 76.66(d)(1)(i) (“An election for mandatory carriage . . . shall be treated as a request for carriage.”).⁹ Assuming Complaint Exhibit B does constitute a must-carry election, as WJFB alleges, the undisputed facts confirm that DIRECTV both “implicitly” and “explicitly” denied it by no later than January 10, 2018. The parties clearly and finally decided by that date that DIRECTV would *not* carry WJFB, and the station would be subject to the Agreement.

More specifically, DIRECTV first denied WJFB’s request for purposes of the 60-day filing period by October 30, 2017, when the 30-day period for DIRECTV to notify “those local television stations it intends to carry” expired following the must-carry election on which WJFB relies. 47 C.F.R. § 76.66(d)(1)(iv)(B).

To the extent WJFB claims that, because “the parties [we]re negotiating to resolve carriage disputes” through late 2017, the 60 days did not begin to run immediately following the expiration of DIRECTV’s 30-day response period,¹⁰ *Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60, that does not change the result. Even if those negotiations tolled the 60-day limit for some brief period, DIRECTV denied WJFB’s carriage request by December 13, 2017, when DIRECTV discontinued carriage of WJFB’s signal on its system during the course of negotiations. *See* Griet Decl. ¶ 2. If, as the Commission has said, silence is a sufficiently clear refusal to trigger the 60-day filing period, *see Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60, the even clearer act of discontinuing carriage must have the same effect.

In all events, DIRECTV explicitly refused to carry WJFB when DIRECTV and TCT

[BEGIN CONFIDENTIAL] [REDACTED]

⁹ WJFB does not allege that its August 15, 2019, letter constitutes an election, and an election at that time would plainly be untimely. *See* 47 C.F.R. § 76.66(d)(1)(v).

¹⁰ After the 30-day period expired, in early November 2017, DIRECTV explained to TCT that it did not respond because the parties were negotiating. *See* Griet Decl. ¶ 2.

[REDACTED]

[REDACTED] [END CONFIDENTIAL] To the extent WJFB ever validly intended to elect carriage as alleged, it [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] was fully aware by January 10, 2018, that DIRECTV had “final[ly] reject[ed]” any such election and request and that DIRECTV would not carry WJFB through 2023. *See Reconsideration Order*, 16 FCC Rcd at 16574, ¶ 60 (60-day filing period commences after “final rejection”). [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

Accordingly, under the Commission’s rules, WJFB had 60 days from no later than January 10, 2018, to file its Complaint. *See* 47 C.F.R. § 76.66(m)(6); Memorandum Opinion and Order, *Norwell Television, LLC v. EchoStar Commc’ns Corp.*, 17 FCC Rcd 13517, 13520, ¶ 8 (Dep. Chief, MB 2002) (“*Norwell Television*”) (dismissing complaint as untimely under § 76.66(m)(6)). Because WJFB filed this Complaint more than a year after that deadline, it is untimely and should be dismissed.

Precedent confirms that WJFB’s Complaint is untimely. In *Norwell Television*, the Commission held that even a potentially ambiguous denial letter can trigger the 60-day period under § 76.66(m)(6) when the facts, “taken together,” “could not reasonably be interpreted as an agreement to carry [the station].” *Id.* WJFB does not and cannot allege “any conduct by [DIRECTV] acknowledging any carriage intentions,” *id.*, and the undisputed facts confirm a contrary intention *not* to carry.

Similarly, in *Red Lion Broadcasting Co. v. Echostar Satellite LLC*, the Commission dismissed a complaint as untimely under § 76.66(m)(6), even though the complainant asserted

that “the parties continued to negotiate following Red Lion’s receipt of the Denial Letter.”

Memorandum Opinion and Order, 20 FCC Rcd 11865, 11867, ¶ 6 (Dep. Chief, Pol’y Div., MB 2005). Importantly, the Commission reached that conclusion because there was not “any evidence in the record to indicate that the parties continued to communicate regarding carriage after the Denial Letter.” *Id.* Here, there is likewise no evidence that WJFB and DIRECTV negotiated carriage in any way [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

The Commission’s decision to reject such belated enforcement efforts reflects its understanding that satellite carriers need predictability to effectively plan and allocate capacity, and that satellite carriers cannot plan effectively if they are forced to reserve space for stations that do not act on their rights in a timely fashion. Thus, if a station submits a mandatory carriage election even one day late, it forfeits carriage rights for the entire three-year cycle. *See* 47 C.F.R. § 76.66(d)(1)(v). Similarly, stations cannot change elections at any point during a cycle, even if a station is sold, and stations are bound by election decisions made far in advance of the election deadline. *See* Memorandum Opinion and Order, *Radio Perry, Inc. v. Cox Commc’ns, Inc.*, 26 FCC Rcd 16392, 16394-95, ¶ 6 (Sr. Dep. Chief, Pol’y Div., MB 2011) (“*Radio Perry II*”). Indeed, even if a station makes an indisputably valid election and a satellite carrier denies it without any justification at all, the satellite carrier has to wait only 60 days before it can reallocate that station’s capacity for the three-year election cycle. *See* 47 C.F.R. § 76.66(m)(6).

WJFB’s belated attempt to assert carriage rights would severely undermine these policies. DIRECTV did not reserve capacity for WJFB for the 2018-20 election cycle because it knew from before the cycle began that WJFB was not going to – and could not – enforce carriage. Even if DIRECTV did not have such a compelling reason for refusing to carry WJFB,

§ 76.66(m)(6) precludes WJFB from forcing DIRECTV to come up with capacity now, nearly two years after DIRECTV made clear that it was not reserving any such capacity.

C. WJFB Misconstrues DIRECTV’s Timeliness Arguments, Misconstrues and Misapplies Precedent, and Relies on Arguments That Have Been Rejected and Would Undermine § 76.66(m)(6)

Each of WJFB’s responses to DIRECTV’s timeliness arguments is unpersuasive.

As an initial matter, and contrary to WJFB’s assertion (at ¶ 13), DIRECTV did not assert, and is not asserting, that WJFB “waived its right to carriage by failing to demand carriage within 30 days of the station’s 2017 notice to DirecTV that it was electing must carry for the 2018-20 election cycle.” Rather, DIRECTV asserted in its correspondence with WJFB, and is asserting here, that WJFB cannot file a timely complaint with the Commission because it failed to do so within 60 days of DIRECTV’s implicit and explicit denials of WJFB’s alleged carriage request in the WJFB Letter. *See* 47 C.F.R. § 76.66(m)(6). DIRECTV bases its argument on a straightforward application of the Commission’s time limits for filing a complaint following rejection of a carriage request. WJFB does not cite § 76.66(m)(6), nor does it discuss a single decision analyzing that provision.

WJFB appears to argue that its claims are nevertheless timely because it can allegedly assert “carriage and channel positioning rights *at any time* so long as [it] ha[s] not elected retransmission consent.” Compl. ¶ 13 (purporting to quote Report and Order, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, 2976-77 (1993)). That quotation does not appear in the source WJFB cited. Instead, it appears in a subsequent *Clarification Order* regarding the cable must-carry rules. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 4142, 4144,

¶ 15 (1993). When read in context, the *Clarification Order* and cited passage support DIRECTV and undermine WJFB's position.

In the *Clarification Order*, the Commission responded to concerns that local stations that had timely elected mandatory carriage but had ongoing signal quality issues preventing carriage as of the implementation date might not be carried for the entire initial three-year cycle. *See id.* at 4142, ¶ 3. The Commission clarified, in the language the Complaint cites (but only in part), that, “*where the station does not initially meet the criteria for must-carry status, it subsequently may assert its rights once it satisfies the conditions [e.g., signal quality] for must-carry status.*”⁶ *Id.* (emphasis added). Critically, moreover, footnote 6 immediately following that passage states: “However, if a television station asserts its must-carry rights and is denied carriage or its requested channel position, *it is subject to time limits established for filing complaints.* See 47 C.F.R. § 76.61.” *Id.* ¶ 3 n.6 (emphasis added).¹¹

Thus, when the Commission later in the *Clarification Order* “reiterate[d] [its] clarification that broadcast stations may assert their carriage and channel positioning rights at any time so long as they have not elected retransmission consent,” *id.* at 4144, ¶ 15, the Commission was *not* suggesting that time limits for filing complaints following denial of a must-carry request are inapplicable, as WJFB erroneously implies. On the contrary, as footnote 6 and the context of the Commission's statement make clear, *if* a station asserted must-carry rights and its carriage request was denied, “it is subject to time limits established for filing complaints.” *Id.* at 4142, ¶ 3 n.6.

¹¹ Section 76.61 includes the cable-carriage counterpart to § 76.66(m)(6)'s 60-day filing requirement in the satellite context. *See* 47 C.F.R. § 76.61(a)(5) (“No must-carry complaint filed pursuant to paragraph (a) of this section will be accepted by the Commission if filed more than sixty (60) days—after (i) The denial by a cable television system operator of request for carriage or channel position”).

In any event, the satellite must-carry implementation orders do not include similar language to that found in the cable *Clarification Order* and thus do not suggest that stations can assert their must-carry rights “at any time.” Such a statement would be difficult to reconcile with the satellite rules, which differ in key respects from the cable rules. Specifically, in the cable context, a station that makes no election defaults to mandatory carriage because, under the cable rules, carriage “is an immediate right that vests without request.” *2000 Order*, 16 FCC Rcd at 1929, ¶ 22. By contrast, in the satellite context, “there can be no default mandatory carriage requirement . . . because a commercial television station must expressly request carriage. Rather, [in the satellite context] if a commercial television station does not make an election, it defaults to retransmission consent.” *Id.* Further, in the satellite context, a carriage election “shall be treated as a request,” 47 C.F.R. § 76.66(d)(1), automatically initiating the carrier’s response/denial obligations that ultimately trigger § 76.66(m)(6)’s 60-day filing deadline.

For these reasons, *Radio Perry II*, a cable-carriage decision that WJFB cites at ¶ 13 in support of its proposition that it can assert its must-carry rights “at any time,” is inapposite. *See* 26 FCC Rcd at 16393, ¶ 13. *Radio Perry II* involved a broadcaster that had initially “defaulted to must carry status” with a *cable* provider for the 2009-2011 cycle when it failed to make an election by October 1, 2008. *See id.* ¶ 3. The Media Bureau, citing the *Clarification Order*’s statement – which, as discussed above, is inapplicable in the satellite context – observed that the station could assert its must-carry rights at any time. However, the Media Bureau never considered and never cited the complaint-timing requirements in the cable context, found in § 76.61(a)(5), let alone the complaint-timing requirements applicable here. Thus, the decision offers no guidance concerning interpretation of such timing provisions for satellite carriers. The only directly relevant guidance concerning such provisions from the cable context is the

Commission's admonition that those timing requirements still apply where the broadcaster asserted must-carry rights and the provider rejected them. *See Clarification Order*, 8 FCC Rcd at 4142, ¶ 3 n.6.

Telefutura Fresno LLC v. Echostar Communications Corp. likewise does not support WJFB's argument. *See Memorandum Opinion and Order*, 18 FCC Rcd 22940 (Dep. Chief, MB 2003). In that case, there is no indication that the satellite carrier, Echostar, ever argued that the *complaint* was untimely under § 76.66(m)(6), and the 60-day limit for filing a complaint is not cited or discussed in the decision. *See id.* Rather, the carrier argued that the station's *election* was untimely (a different claim from DIRECTV's here). *See id.* at 22941, ¶ 5. The passage from *Telefutura Fresno* on which WJFB relies – that “the controlling factor is that the subject station made a timely election,” *id.* at 22943, ¶ 11 – does not speak to the timeliness of a *complaint*. Instead, it holds that a predecessor's *election* binds its successor, so a successor cannot be denied carriage for failing to make a timely election of its own where its predecessor's election was timely. *See id.* at 22943-44, ¶¶ 11-12. DIRECTV agrees that HC2 is bound by any timely election made by its predecessor, TCT, but *Telefutura Fresno* does not silently eliminate § 76.66(m)(6) or its requirement to file a *complaint* within 60 days of a carrier's denial of a carriage request.

Finally, to the extent WJFB argues that simply making a new request (*see* Compl. ¶ 8) revives the time to file a complaint, the Commission has rejected that argument, even in the cable context. In *Educational Public TV Corp. v. RCN-BecoCom, LLC*, the complainant acknowledged that it requested carriage in May 2000 and that the cable operator denied its request on November 17, 2000. *See* 17 FCC Rcd 9329, 9330-31, ¶¶ 3-5 (Chief, Pol'y Div., MB 2002). The complainant did not file a complaint within 60 days of that denial, but again

requested carriage on July 27, 2001, and argued that its 60-day time to file should be measured from denial of its second request. *See id.* The Bureau directly rejected the argument WJFB appears to make here:

We disagree with the arguments raised by [the station] and deny its request. Although [the station] relies on language in the *Clarification Order* that states that “broadcast stations may assert their carriage and channel positioning rights at any time, so long as they have not elected retransmission consent,” such reliance is misplaced. Broadcast stations are entitled to demand carriage any time during an election period if they are not already being carried by a cable operator, such as RCN, that is located in the same DMA. [The station] did so in May 2000 and its request was formally and explicitly denied by RCN on November 17, 2000. Once its demand for carriage was rejected, it had 60 days to file a complaint. Because it did not do so, [the station] is not entitled to carriage under the mandatory carriage provisions on RCN’s Boston cable system.

Id. at 9331, ¶ 6.

II. IN THE ALTERNATIVE, IF WJFB HAS A TIMELY CLAIM, THE CLAIM SHOULD BE DISMISSED BECAUSE WJFB DID NOT VALIDLY ELECT MANDATORY CARRIAGE

If the Commission accepts WJFB’s allegation that the WJFB Letter was a valid must-carry election, the Complaint is time-barred for the reasons discussed above. The Commission need go no further to resolve this case. If the Commission concludes that the Complaint is not time-barred, however, it should be dismissed on the alternative ground that the WJFB Letter was not a valid mandatory carriage election.

A local station “ha[s] the burden of initiating satellite carriage” by making an affirmative request. *2000 Order*, 16 FCC Rcd at 1929, 1931, ¶¶ 22, 28. To satisfy its burden of electing mandatory carriage, a station must provide in writing an “affirmative carriage election” and other information a carrier “needs to commence the carriage of local television stations.” *Id.* at 1932, ¶ 30.

A. WJFB Did Not Intend To Elect Mandatory Carriage

The facts in the Complaint and additional facts omitted from the Complaint that WJFB cannot dispute demonstrate that WJFB never met its burden for initiating satellite carriage. WJFB never made – and never intended to make – a valid, affirmative carriage election that would have enabled DIRECTV “to commence the carriage” or provided DIRECTV a sufficient “measure of control in configuring [its] satellite system.” *2000 Order*, 16 FCC Rcd at 1929, 1932, ¶¶ 22, 30.

To be sure, TCT sent the WJFB Letter, which WJFB relies upon to allege it elected carriage, attached as Exhibit B to the Complaint. But TCT simultaneously negated the force of that purported election and expressed a contrary intent, the effect of which was to convey to DIRECTV that it did *not* need to prepare to carry WJFB. *See* Griet Decl. ¶ 2. In the Renewal Letter enclosing the WJFB Letter, TCT said it understood that “DIRECTV desires to renew the retransmission consent / local into local channel waiver agreement that our organizations have been party to concerning Public Interest Channel 377 for a number of election cycles.” Compl. Ex. E. TCT stated that “[r]enewal of this agreement is our desire as well.” *Id.* (emphasis added). As for WJFB’s purported must-carry election, TCT enclosed it “so that we may again waive those stations’ individualized carriage rights.” *Id.* (emphasis added). Furthermore, WJFB was automatically subject to the existing Affiliation Agreement, and TCT explicitly stated its intent to include WJFB in the renewed agreement. *See id.* The best reading of the WJFB Requests, considered together and in view of the parties’ existing relationship and treatment of WJFB, is that TCT elected to negotiate and not to invoke mandatory carriage rights, as stated in the Renewal Letter referencing the enclosed elections and explaining that TCT intended from the outset to waive any rights it had nominally asserted in those enclosures.

The fact that WJFB did not file a mandatory carriage election notice with the Commission at or around that time reinforces this conclusion. In fact, WJFB did not file the WJFB Letter or its purported election until August 23, 2018 – the date of the Acquisition Agreement under which HC2 purchased WJFB. *See* Compl. Ex. C. WJFB cites no precedent supporting a station’s right to pretend to elect mandatory carriage while simultaneously negotiating an alternative agreement that waives mandatory carriage rights, and then, nearly two years after reaching such an alternative and halfway through a cycle, asserting rights under the sham election.¹²

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] should be considered “to determine whether an election was validly made under the Commission’s rules.” *Radio Perry II*, 26 FCC Rcd at 16394, ¶ 5 (rejecting argument that the Commission cannot be drawn “into any aspect of [an] agreement”). [BEGIN CONFIDENTIAL] [REDACTED] [END

¹² *Paxson Communications Corp. v. DIRECTV* is not to the contrary. *See* Memorandum Opinion and Order, 17 FCC Rcd 834 (Dep. Chief, CSB 2002). In that case, the station submitted a timely carriage election on June 22, 2001. The satellite carrier denied the request because, on April 27, 2000, before the station elected carriage, the parties entered an interim letter agreement expressing the parties’ intent to negotiate a retransmission consent agreement and granting retransmission rights in the meantime. That interim letter agreement was terminable at will by either party if they failed to reach a permanent agreement by May 30, 2000. The Bureau concluded: “we do not believe that Paxson had waived its right to mandatory carriage by virtue of granting retransmission consent on an *interim, temporary* basis.” *Id.* at 839, ¶ 11 (emphasis added). WJFB, by contrast, went seamlessly from *permanently and irrevocably* [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], just as it said it would do in the Renewal Letter. Moreover, the station in *Paxson* filed a complaint asserting its carriage rights within 60 days of DIRECTV denying carriage, whereas WJFB here waited for more than a year. Thus, even if, contrary to fact, the Agreement here were like the one in *Paxson* in all respects, WJFB’s Complaint would be untimely.

CONFIDENTIAL] is strong evidence of the meaning of TCT’s prior correspondence. If, as WJFB alleges, TCT affirmatively committed to must carry on September 28, 2017, in a manner that would have enabled DIRECTV “to commence the carriage,” *2000 Order*, 16 FCC Rcd at 1932, ¶ 30, it would not have simultaneously committed to negotiating **[BEGIN**

CONFIDENTIAL] [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

The parties had experience entering such agreements “for a number of election cycles,” Compl. Ex. E, so TCT knew at the time it sent DIRECTV the WJFB Requests what the renewal agreement would entail. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

In view of the parties’ intent **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END CONFIDENTIAL]**, the WJFB Requests are at most an ambiguous, simultaneous election of mutually exclusive mandatory carriage *and* negotiation for rights to retransmit another signal coupled with disavowal of mandatory carriage. The Commission has clarified that, where there is an “inconsistent election,” the party is deemed to have “defaulted.” Petition for Reconsideration, *Cablevision Systems Corp.*, 12 FCC Rcd 13121, 13126-27, ¶¶ 10, 12 (Dep. Chief, CSB 1996). In the satellite context, stations that do not make an election default to retransmission consent. *See 2000 Order*, 16 FCC Rcd at 1929, ¶ 22. Thus, even if the September 28, 2017 WJFB Requests – **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] [END CONFIDENTIAL] – are not deemed a rejection of mandatory carriage and an election for an alternative involving retransmission of another signal, it should be deemed an ambiguous, inconsistent election and default, leading to the same outcome.¹³

B. WJFB Expeditiously Revoked Any Purported Mandatory Carriage Election

Cablevision provides another reason to reach the same conclusion, even if the Commission deems TCT’s WJFB Letter a valid must-carry election.

While a party *ordinarily* cannot change an election decision after it is made, there are exceptions to that rule where the change is made early in an election cycle and comports with the parties’ intent. To the extent TCT ever elected mandatory carriage, its immediately subsequent conduct and the Agreement, which effectuated TCT’s stated intent, expeditiously corrected any such erroneous mandatory carriage election. *Cablevision* recognizes that, ordinarily, “permitting ‘mid-period’ changes to correct ‘errors’ would lead to administrative chaos and is inconsistent with the rules governing the election process,” but, “given the totality of the circumstances,” the Commission may depart from that general rule. 12 FCC Rcd at 13127, ¶ 12. In that case, the “error was identified not in the middle of the three year . . . cycle but before the period had even commenced.” *Id.* at 13127-28, ¶ 12. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]¹⁴ Based on “the prior agreement,

¹³ For this reason, it does not matter whether the Bureau views the September 28, 2017 correspondence as a valid and affirmative retransmission consent election for WJFB under § 76.66(d) or instead as an insufficiently clear affirmative mandatory carriage election. Either way – through affirmative election involving retransmission or through default – TCT elected retransmission consent as a matter of law under the Commission’s rules for this cycle.

¹⁴ [BEGIN CONFIDENTIAL] [REDACTED]

the early discovery of the error, and the lack of dispute as to the intentions of the parties,” *Cablevision* refused to enforce an election that appeared to be erroneous and was promptly corrected. *Id.*

To the extent the Bureau views WJFB’s purported election as valid, it should reach the same conclusion as the Commission in *Cablevision*. Honoring the parties’ clear intent would prevent “administrative chaos.” By contrast, rewarding WJFB’s belated attempt to alter existing arrangements mid-cycle would make such chaos inevitable.

C. [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] WJFB Has No Carriage Rights

If the Bureau concludes that there is a valid must-carry election, it is clear that WJFB waived any must-carry rights [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] To support its contrary position, WJFB appears to argue (at ¶¶ 14, 17) that the Agreement is not binding because TCT did not assign the Agreement to HC2. This argument is incorrect.

As an initial matter, the Agreement can and should be considered for two reasons regardless of whether it remains binding in all respects. *First*, WJFB implicitly agrees that election-related decisions carry over from a prior licensee, as WJFB’s new owner, HC2, itself relies on TCT’s purported election in the WJFB Letter. *See* Compl. ¶¶ 11, 19. *See also Telefutura Fresno*, 18 FCC Rcd at 22943-44, ¶ 11. Thus, WJFB effectively concedes that the Renewal Letter’s stated intent to renew the Affiliation Agreement (explicitly including its must-carry waiver), [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] are binding to the extent their TCT Programming

[REDACTED] [END CONFIDENTIAL]

transmission terms and must-carry waiver constitute an election. *See Radio Perry II*, 26 FCC Rcd at 16394, ¶ 5 (elections can be made in an agreement). Because a broadcaster cannot undo an election decision, even one made by a predecessor, after that decision has been made, *see id.* at 16394-95, ¶ 6 (holding that the election bell cannot be unrung and that early elections are binding); *see also Telefutura Fresno*, 18 FCC Rcd at 22943-44, ¶ 11 (predecessors' elections bind successors), it is irrelevant whether TCT assigned the Agreement to HC2.

Second, Radio Perry II makes clear that the Bureau can “review agreements to determine whether an election was validly made under the Commission’s rules.” 26 FCC Rcd at 16394, ¶ 5. Accordingly, the Commission can review the Agreement to help ascertain TCT’s intent and whether TCT ever validly elected must-carry rights for WJFB. As discussed above, TCT’s Renewal Letter manifested its clear intent to reject must-carry rights for WJFB, as well as several other stations, in favor of a negotiated alternative [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] *See* Compl. Ex. E. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15

¹⁵ None of the cases cited by WJFB, including *Telefutura Fresno*, *Radio Perry II*, and Memorandum Opinion and Order, *NBC Subsidiary (NH), Inc. v. Echostar Communications Corp.*, 18 FCC Rcd 15238, 15241 (Dep. Chief, MB 2003), contradicts either of the foregoing grounds for considering the Agreement. DIRECTV’s argument above does not require the Commission to resolve a contract dispute but rather to determine if WJFB made a valid must-carry election. The Commission can resolve this case without resolving contractual disputes by concluding that WJFB’s words, particularly in context, disavowed mandatory carriage rather than affirmatively electing it.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

WJFB’s argument that TCT and HC2 did not list the Agreement as an assumed contract under the Asset Purchase Agreement when HC2 purchased WJFB from TCT misses the point. TCT had no WJFB must-carry rights to convey to HC2, so HC2 could not have acquired such rights. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] *See Witter v. Taggart*, 577 N.E.2d 338, 341 (N.Y. 1991)

(holding that grantor can effectively extinguish or terminate a restrictive covenant only if the purchaser “takes title without actual or constructive notice of the covenant”).¹⁶

¹⁶ The Asset Purchase Agreement pursuant to which HC2 acquired WJFB is governed by New York law. *See* Exhibit 8, § 12.1.

AFFIRMATIVE DEFENSES

Affirmative Defense No. 1: The Complaint is time-barred. As explained above, under 47 C.F.R. § 76.66(m)(6), the Complaint is untimely and should be dismissed in its entirety.

Affirmative Defense No. 2: Laches. Laches is available to a party that “has been prejudiced by another party’s inexcusable delay in asserting a known right.” Order on Reconsideration, *Indiana Mobile Telephone Corp.*, 2 FCC Rcd 6272, 6272-73, ¶ 8 (Dep. Chief, CCB 1987) (“*Indiana Mobile*”) (citation and alteration omitted). WJFB’s delay in asserting its purported carriage rights is clearly inexcusable, as the relevant facts concerning carriage have been fixed since, at the latest, January 10, 2018. *See supra* Part I.B-C. Based on WJFB’s conduct and statements, [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL], DIRECTV removed WJFB on December 13, 2017, and WJFB knew that DIRECTV was doing so because it agreed to the conduct. Had WJFB asserted its rights promptly, DIRECTV would have known and could have planned its capacity for the 2018-20 cycle to include WJFB. It would be expensive and costly for DIRECTV to allocate such capacity now, after DIRECTV already implemented plans that do not include WJFB. Laches therefore bars WJFB’s Complaint. *See Indiana Mobile*, 2 FCC Rcd at 6272-73, ¶ 8.

Affirmative Defense No. 3: Equitable estoppel. Equitable estoppel is a doctrine “that we may apply in our discretion.” Memorandum Opinion and Order, *Comcast of Potomac, LLC*, 24 FCC Rcd 8919, 8924-25, ¶ 18 (Sr. Dep. Chief, Pol’y Div., MB 2009).

Here, it is clear that WJFB acted in a manner that prompted DIRECTV to discontinue carriage of WJFB’s signal on December 13, 2017, and not to allocate any capacity for WJFB. Indeed, WJFB’s election-related conduct, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[END CONFIDENTIAL], and its conduct at all times between September 28, 2017, and August 14, 2019, assured DIRECTV that it had no need to allocate any capacity for WJFB [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], and DIRECTV, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], justifiably relied on that conduct [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in planning its long-term capacity needs. Accordingly, WJFB is equitably estopped from taking a contrary position now, and requiring carriage, which would impose a significant detriment on DIRECTV – namely, the burden and expense of creating spotbeam capacity for WJFB that WJFB told DIRECTV long ago it did not have to create for many years to come. *See* Memorandum Opinion and Order, *AT&T Corp. v. Business Telecom, Inc.*, 16 FCC Rcd 12312, 12336-37, ¶ 52 (2001).

RESPONSES TO COMPLAINANT’S NUMBERED PARAGRAPHS

DIRECTV incorporates the foregoing in its entirety in response to each of HC2’s allegations. Any allegations not specifically admitted above or in the numbered paragraphs below are denied. To the extent allegations discuss documents, rules, or authority, DIRECTV notes that such materials speak for themselves and disputes any interpretation of those documents that is inconsistent with DIRECTV’s foregoing position.

1. DIRECTV admits the allegations in this Paragraph and notes that the transition from channel 44 to channel 25 referenced in the allegation has already occurred.

2. DIRECTV denies the allegations in this Paragraph. The notice attached to the Complaint as Exhibit B is September 28, 2017, not September 15, 2017, as alleged. DIRECTV denies that TCT transmitted a must-carry election, and DIRECTV disputes the validity of that

election, as discussed above and as stated in Complaint Exhibit E. DIRECTV also notes that Complaint Exhibit E contains a cover letter, also dated September 28, 2017, enclosing Complaint Exhibit B. The cover letter explains that TCT actually intended to *waive*, rather than assert, the rights referenced in Exhibit B. The Commission should thus read Exhibit B in conjunction with Exhibit E.

3. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

4. Admitted, except that DIRECTV lacks knowledge concerning the date on which TCT agreed to sell WJFB to HC2. DIRECTV notes that, based on the date of the purchase agreement, HC2 had approximately six months before consummation to request a copy of the Agreement from DIRECTV but did not do so.

5. DIRECTV denies the allegations in this Paragraph. The terms of the TCT-HC2 Asset Purchase Agreement, attached hereto as Exhibit 8, speak for themselves. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

6. DIRECTV denies the allegations in this Paragraph, except that it lacks sufficient information to know whether TCT provided HC2 with a copy of the Agreement during due diligence. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] Further, prior to filing this Answer, DIRECTV offered to provide a copy of the Agreement to HC2, if HC2 agreed to keep the Agreement confidential. HC2 rejected that offer and suggested that DIRECTV include the Agreement in this filing.

7. DIRECTV lacks sufficient information to know whether HC2 broadcast Radiant Life programming on WJFB, when it might have ceased doing so, whether or when it began broadcasting MeTV Network programming on WJFB's primary channel, and when or whether it moved Radiant Life programming to a subchannel. DIRECTV also lacks sufficient information to know whether HC2 reached an agreement with MeTV. DIRECTV admits that HC2 sent DIRECTV the correspondence concerning carriage attached as Exhibit D to the Complaint (without admitting the accuracy of any of the assertions in that letter). DIRECTV admits that it informed HC2 that it would continue its longstanding decision not to carry WJFB, that it currently lacks capacity to do so, and [BEGIN CONFIDENTIAL] [REDACTED] [REDACTED] [END CONFIDENTIAL] such that HC2 is not entitled to demand carriage of WJFB.

8. DIRECTV admits that, on August 15, 2019, WJFB sent the letter it attaches as Exhibit D to the Complaint (except that Exhibit D refers to an attachment that is not included in the exhibit). DIRECTV notes that, to the extent this was a formal demand for carriage, it was untimely, as discussed above. DIRECTV admits that, on September 12, 2019, it responded to WJFB's untimely carriage demand in the letter attached as Exhibit E to the Complaint, a document that speaks for itself. DIRECTV denies WJFB's characterization of the arguments made in Exhibit E.

9. DIRECTV admits that it proposed a telephone call to discuss the issue stated in Complaint Exhibit E, which speaks for itself. DIRECTV admits that the parties participated in a conference call on September 19, 2019. DIRECTV did not provide HC2 with a copy of the Agreement at that time only after HC2 said that it would not comply with the terms of any such agreement regardless, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] DIRECTV also notes that, while WJFB claims TCT's counsel did not inform HC2 of the Agreement, [BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED] [END CONFIDENTIAL]

10. DIRECTV admits this Paragraph, except that the quoted Commission rules speak for themselves and require no response.

11. DIRECTV denies the allegations in this Paragraph. DIRECTV notes that TCT dated its correspondence September 28, 2017, not September 15. DIRECTV articulated its explanation of the defects of the alleged election in the WJFB Letter herein and in Complaint Exhibit E.

12. DIRECTV denies the allegations in this Paragraph, except that it admits it has provided several explanations for its ongoing refusal to carry WJFB, as discussed in Complaint Exhibit E and above. DIRECTV also admits that it informed WJFB that it currently lacks capacity to carry the station. The Commission's rules make election decisions binding on a successor like HC2, as discussed above. DIRECTV denies that it has any obligation to reserve capacity for stations that elect to negotiate an alternative to mandatory carriage and that, in fact, [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END]

CONFIDENTIAL]

13. DIRECTV denies the allegations in this Paragraph. DIRECTV responds to the legal authorities cited in this Paragraph in Part I above.

14. **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

15. DIRECTV denies that dismissal of WJFB's carriage Complaint requires the Commission to construe the terms of the Agreement, for reasons stated in Parts I and II above.

DIRECTV admits that WJFB lacks mandatory carriage rights **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**, as explained in Part II above. As explained above, however, there are multiple reasons the Commission should deny the Complaint without reaching that issue.

16. DIRECTV denies the allegations in this Paragraph. DIRECTV explained its responses to WJFB's legal assertions and characterizations above. DIRECTV admits that, once a broadcaster makes an election, the broadcaster cannot undo that election and it is binding for the duration of the cycle, with limited exceptions that are inapplicable to WJFB.

17. DIRECTV denies the allegations in this Paragraph, except that DIRECTV agrees it **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED] [END CONFIDENTIAL] DIRECTV notes that this does not preclude the Commission from reviewing [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] for a variety of reasons under the Commission's rules and precedent, as discussed above. As explained above, however, the Commission should deny the Complaint without reaching that issue for multiple reasons.

18. DIRECTV denies the allegations in this Paragraph. To the contrary, granting WJFB relief would undermine the public interest and the intent of Congress. The Commission's rules do not permit mid-cycle changes in satellite carriage elections, and the undisputed facts confirm that WJFB made quite clear that it did not want DIRECTV to carry the station on a must-carry basis. Permitting WJFB to undo those decisions now would create precisely the kind of uncertainty and disruptions to satellite carriers that caused the Commission to make elections unalterable in the first place.

19. DIRECTV denies that WJFB made a valid election for mandatory carriage. DIRECTV admits that it has implicitly, explicitly, and continuously refused to carry WJFB. DIRECTV denies that the Commission needs to consider the terms of the Affiliation Agreement and Agreement to dismiss WJFB's Complaint, but DIRECTV submits that [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL]

DIRECTV denies that the Commission should order DIRECTV to begin carriage of WJFB or that WJFB is entitled to any relief.

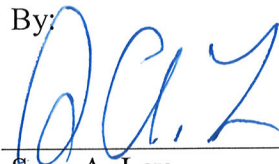
CONCLUSION

The Commission should dismiss WJFB's Complaint with prejudice.

Respectfully submitted,

DIRECTV, LLC

By:



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October 28, 2019

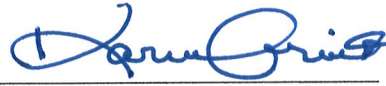
DECLARATION OF KAREN GRIET

I, Karen Griet, am over the age of 18. I am a resident of the state of California. I have personal knowledge of the facts herein, and, if called as a witness, could competently testify thereto.

1. I am Director, Content & Programming, for AT&T Mobility & Entertainment Group. In that role, I routinely oversee retransmission and related carriage negotiations between various AT&T entities, including DIRECTV, LLC ("DIRECTV"), and broadcast stations. In particular, I was personally involved on behalf of DIRECTV in the interactions between DIRECTV and the licensees of WJFB that are the subject of the Complaint and DIRECTV's Answer thereto.
2. I have reviewed DIRECTV's Answer. Based on my personal knowledge, each statement in the Answer followed by a reference to this declaration is true and correct. Moreover, based on information made known to me pursuant to my duties, the remainder of the Factual Background is true and correct, as well.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 28, 2019, in California.

A handwritten signature in blue ink, appearing to read "Karen Griet", written over a horizontal line.

Karen Griet

Exhibit 1

**CONFIDENTIAL INFORMATION –
NOT FOR PUBLIC INSPECTION**

Exhibit 2

**CONFIDENTIAL INFORMATION –
NOT FOR PUBLIC INSPECTION**

Exhibit 3

**CONFIDENTIAL INFORMATION –
NOT FOR PUBLIC INSPECTION**

Exhibit 4

**CONFIDENTIAL INFORMATION –
NOT FOR PUBLIC INSPECTION**

Exhibit 5



Leadership



Garth W. Coonce

Garth W. Coonce has forged a reputation as a uniquely qualified Christian leader and businessman. He is the President and, along with his wife, Christina, founded TCT Network, Inc., a Christian broadcast ministry since 1977. Garth has earned several degrees, including Bachelor of Science in Business Administration, Master of Business Administration, Doctor of Humanities, and received an Honorary Doctorate of Divinity and Literary Law Degree. He has published numerous articles and authored four books, "HOW TO KEEP YOUR LIFE IN FOCUS," "THE MIRACLE OF TOTAL COMMITMENT," "A VOICE, A VISION, A VICTORY" and "THE GREATEST DECISIONS OF YOUR LIFE." At the same time he has served in ministry through the Full Gospel Businessmen's Fellowship International, Life in the Spirit Seminars, as well as serving as President of ACTS (Association of Christian Television Stations). He has produced and hosted numerous television programs throughout his broadcasting career including his flagship program, TCT Today and many others.



Tina Coonce

Co-founder and Vice President of the TCT Network, Tina Coonce has been the wife and vital partner with Garth Coonce in every endeavor for fifty years. While also ministering as a noted Christian leader herself, Christina has earned a Doctor of Humanities as well as an Honorary Doctorate of Divinity. She co-hosts with Garth on multiple network programs as well as having hosted her own program, Radiant Life, for many years. She has also authored two books, LIFE IN THE RIGHT SEAT and FOR WOMEN ONLY. Together, they have two daughters and seven grandchildren and seven great-grandchildren.

Features

VIEW TCT LIVE FEEDS

VIEW NOW

DONATE

Now Playing

- TCT
TCT Today - Tune-in
- TCT - HD
TCT Today - Tune-in
- TCT - Kids
Wild Horse Phantom - Tune-in



Hopegivers

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Exhibit 6



(REFERENCE COPY - Not for submission)

Commercial Broadcast Stations Biennial
Ownership Report (FCC Form 323)

File Number: 0000046463 | Submit Date: 2018-03-01 | FRN: 0004325262

Purpose: Commercial Broadcast Stations Biennial Ownership Report | Status: Received | Status Date: 03/02/2018

Filing Status: Active

Section I - General Information

1. Respondent

FRN		Entity Name			
0005077524		Radiant Life Ministries, Inc.			

Street Address	City (and Country if non U.S. address)	State ("NA" if non-U.S. address)	Zip Code	Phone	Email
PO Box 1010	Marion	IL	62959	+1 (618) 997-9333	mjd@tct.tv

2. Contact Representative

Name		Organization			
Colby M. May, Esq.		Colby M. May, Esq., P.C.			

Street Address	City (and Country if non U.S. address)	State	Zip Code	Phone	Email
P. O. Box 15473	Washington	DC	20002	+1 (202) 544-5171	cmmay@maylawoffices.com

3. Application Filing Fee

Question	Response
Is this application being submitted without a filing fee?	No

Fees

Application Type	Form Number	Fee Code	Quantity	Fee Amount	Subtotal
Biennial	Form 323	MAT	5	70	\$350.00
				Total	\$350.00

4. Nature of Respondent

(a) Provide the following information about the Respondent:

Relationship to stations/permits	Licensee
Nature of Respondent	Not-for-profit corporation

(b) Provide the following information about this report:

Purpose	Biennial
"As of" date	10/01/2017 When filing a biennial ownership report or validating and resubmitting a prior biennial ownership report, this date must be Oct. 1 of the year in which this report is filed.

5. Licensee(s) and Station(s)

Respondent is filing this report to cover the following Licensee(s) and station(s):

Licensee/Permittee Name	FRN
Radiant Life Ministries, Inc.	0005077524

Fac. ID No.	Call Sign	City	State	Service
7651	WJFB	LEBANON	TN	DTV
10133	WRAY-TV	WILSON	NC	DTV
31394	WJFB-LP	LEBANON	TN	LPA
43870	WRLM	CANTON	OH	DTV
54452	WLXI	GREENSBORO	NC	DTV
78915	KDMI	DES MOINES	IA	DTV

Section II – Biennial Ownership Information

1. 47 C.F.R. Section 73.3613 Documents

Licensee Respondents that hold authorizations for one or more full power television, AM, and/or FM stations should list all contracts and other instruments required to be filed pursuant to 47 C.F.R. Section 73.3613 for the facility or facilities listed on this report. If the agreement is an attributable Local Marketing Agreement (LMA), an attributable Joint Sales Agreement (JSA), or a network affiliation agreement, check the appropriate box. Otherwise, select “Other.” Non-Licensee Respondents, as well as Licensee Respondents that only hold authorizations for Class A television and/or low power television stations, should select “Not Applicable” in response to this question.

Not Applicable.

2. Ownership

Interests

(a) Ownership Interests. This Question requires Respondents to enter detailed information about ownership interests by generating a series of subforms. Answer each question on each subform. The first subform listing should be for the Respondent itself. If the Respondent is not a natural person, also list each of the officers, directors, stockholders, non-insulated partners, non-insulated members, and any other persons or entities with a direct attributable interest in the Respondent pursuant to the standards set forth in 47 C.F.R. Section 73.3555. (A “direct” interest is one that is not held through any intervening companies or entities.) List each interest holder with a direct attributable interest in the Respondent separately.

Leave the percentage of total assets (Equity Debt Plus) field blank for an interest holder unless that interest holder has an attributable interest in the Respondent solely on the basis of the Commission’s Equity Debt Plus attribution standard, 47 C.F.R. Section 73.3555, Note 2(i).

In the case of vertical or indirect ownership structures, list only those interests in the Respondent that also represent an attributable interest in the Licensee(s) for which the report is being submitted.

Entities that are part of an organizational structure that includes holding companies or other forms of indirect ownership must file separate ownership reports. In such a structure do not report, or file a separate report for, any interest holder that does not have an attributable interest in the Licensee(s) for which the report is being submitted.

Please see the Instructions for further detail concerning interests that must be reported in response to this question.

The Respondent must provide an FCC Registration Number for each interest holder reported in response to this question. Please see the Instructions for detailed information and guidance concerning this requirement.

Ownership Information			
FRN	0005077524		
Entity Name	Radiant Life Ministries, Inc.		
Address	PO Box	1010	
	Street 1		
	Street 2		
	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Respondent		
Positional Interests (check all that apply)	Respondent		
Tribal Nation or Tribal Entity	Interest holder is not a Tribal nation or Tribal entity		
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	0.0%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			No

Ownership Information		
FRN	0027300441	
Name	Thomas C. Nolan	
Address	PO Box	1010

	Street 1		
	Street 2		
	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer, Director		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Male	
	Ethnicity	Not Hispanic or Latino	
	Race	White	
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	16.7%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

Ownership Information			
FRN	0019313378		
Name	Julie A. Nolan		
Address	PO Box	1010	
	Street 1	P. O. Box 1010	
	Street 2		
	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer, Director		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Female	
	Ethnicity	Not Hispanic or Latino	

	Race	American Indian or Alaska Native	
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	16.7%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

Ownership Information			
FRN	0019313006		
Name	Michael J. Daly		
Address	PO Box	1010	
	Street 1		
	Street 2		
	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Male	
	Ethnicity	Not Hispanic or Latino	
	Race	White	
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	0.0%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

Ownership Information		
FRN	0019313410	
Name	Charles Payne	
Address	PO Box	
	Street 1	P. O. Box 1010
	Street 2	

	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer, Director		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Male	
	Ethnicity	Not Hispanic or Latino	
	Race	White	
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	16.7%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

Ownership Information			
FRN	0019316058		
Name	Christina M. Coonce		
Address	PO Box		
	Street 1	P. O. Box 1010	
	Street 2		
	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer, Director		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Female	
	Ethnicity	Not Hispanic or Latino	
	Race	American Indian or Alaska Native	
Interest Percentages	Voting	16.7%	Jointly Held?

(enter percentage values from 0.0 to 100.0)			No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

Ownership Information			
FRN	0019313469		
Name	Garth W. Coonce		
Address	PO Box		
	Street 1	P. O. Box 1010	
	Street 2		
	City	Marion	
	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer, Director		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Male	
	Ethnicity	Not Hispanic or Latino	
	Race	White	
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	16.7%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

Ownership Information		
FRN	0019313451	
Name	Victoria M. Clark	
Address	PO Box	1010
	Street 1	P. O. Box 1010
	Street 2	
	City	Marion

	State ("NA" if non-U.S. address)	IL	
	Zip/Postal Code	62959	
	Country (if non-U.S. address)	United States	
Listing Type	Other Interest Holder		
Positional Interests (check all that apply)	Officer, Director		
Citizenship, Gender, Ethnicity, and Race Information (Natural Persons Only)	Citizenship	US	
	Gender	Female	
	Ethnicity	Not Hispanic or Latino	
	Race	American Indian or Alaska Native	
Interest Percentages (enter percentage values from 0.0 to 100.0)	Voting	16.7%	Jointly Held? No
	Equity	0.0%	
	Total assets (Equity Debt Plus)	0.0%	
Does interest holder have an attributable interest in one or more broadcast stations that do not appear on this report?			Yes

(b) Respondent certifies that any interests, including equity, financial, or voting interests, not reported in this filing are non-attributable. If "No," submit as an exhibit an explanation.	Yes
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<p>(c) Does the Respondent or any reported interest holder hold an attributable interest in any newspaper entities in the same market as any station for which this report is filed, as defined in 47 C.F.R. Section 73.3555?</p> <p>If "<u>Yes</u>," provide information describing the interest(s), using EITHER the subform OR the spreadsheet option below. Respondents with a large number (50 or more) of entries to submit should use the spreadsheet option.</p> <p>NOTE: Spreadsheets must be submitted in a special XML Spreadsheet format with the appropriate structure that is specified in the documentation. For instructions on how to use the spreadsheet option to complete this question (including templates to start with), please Click Here.</p> <p>If using the subform, leave the percentage of total assets (Equity Debt Plus) field blank for an interest holder unless that interest holder has an attributable interest in the newspaper entity solely on the basis of the Commission's Equity Debt Plus attribution standard, 47 C.F.R. Section 73.3555, Note 2(i). If using an XML Spreadsheet, enter "NA" into the percentage of total assets (Equity Debt Plus) field for an interest holder unless that interest holder has an attributable interest in the newspaper entity solely on the basis of the Commission's Equity Debt Plus attribution standard.</p>	No
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The Respondent must provide an FCC Registration Number for each interest holder reported in response to this question. Please see the Instructions for detailed information and guidance concerning this requirement.	
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(d) Are any of the individuals listed as an attributable interest holder in the Respondent married to each other or related to each other as parentchild or as siblings?	Yes
If "Yes," provide the following information for each such the relationship.	

Family Relationships			
FRN	0019313378	Name	Julie A Nolan
FRN	0027300441	Name	Thomas C Nolan
Relationship	Parent/Child		

Family Relationships			
FRN	0019316058	Name	Christina M Coonce
FRN	0019313451	Name	Victoria M Clark
Relationship	Parent/Child		

Family Relationships			
FRN	0019313469	Name	Garth W Coonce
FRN	0019313451	Name	Victoria M Clark
Relationship	Parent/Child		

Family Relationships			
FRN	0019313469	Name	Garth W Coonce
FRN	0019316058	Name	Christina M Coonce
Relationship	Spouses		

Family Relationships			
FRN	0019316058	Name	Christina M Coonce
FRN	0019313378	Name	Julie A Nolan
Relationship	Parent/Child		

Family Relationships			
FRN	0019313469	Name	Garth W Coonce
FRN	0019313378	Name	Julie A Nolan
Relationship	Parent/Child		

Family Relationships			
FRN	0019313451	Name	Victoria M Clark
FRN	0019313378	Name	Julie A Nolan

Relationship	Siblings
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<p>(e) Is Respondent seeking an attribution exemption for any officer or director with duties wholly unrelated to the Licensee(s)?</p> <p>If "<u>Yes</u>," complete the information in the required fields and submit an Exhibit fully describing that individual's duties and responsibilities, and explaining why that individual should not be attributed an interest.</p>	No
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3. Organizational Chart (Licensees Only)

Attach a flowchart or similar document showing the Licensee’s vertical ownership structure including the Licensee and all entities that have attributable interests in the Licensee. Licensees with a single parent entity may provide a brief explanatory textual Exhibit in lieu of a flowchart or similar document. Licensees without parent entities should so indicate in a textual Exhibit.

Non-Licensee Respondents should select “N/A” in response to this question.

File Name	Uploaded By	Attachment Type	Description
<u>Other Broadcast Interests (Radiant) (2017).pdf</u>	Applicant	Ownership Chart	

Section III - Certification

Certification

Section	Question	Response
Authorized Party to Sign	WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND /OR REVOCATION OF ANY STATION LICENSE --OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).	
Certification	I certify that I have examined this report and that to the best of my knowledge and belief, all statements in this report are true, correct and complete.	Official Title: Secretary Exact Legal Title or Name of Respondent: Radiant Life Ministries, Inc. Name: Michael J. Daly , Esq.. Phone: 6189979333 03/01/2018

Exhibit 7

**CONFIDENTIAL INFORMATION –
NOT FOR PUBLIC INSPECTION**

Exhibit 8

ASSET PURCHASE AGREEMENT

by and among

HC2 STATION GROUP, INC.,

as Buyer,

and

RADIANT LIFE MINISTRIES, INC.,

as Seller

Dated as of August 23, 2018

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of August 23, 2018 (the “Effective Date”), by and between **HC2 STATION GROUP, INC.**, a Delaware corporation (“Buyer”), and **RADIANT LIFE MINISTRIES, INC.**, an Ohio not-for-profit corporation (“Seller”). Buyer and Seller are referred to herein collectively as the “Parties” and each as a “Party”.

RECITALS

WHEREAS, Seller is the owner and operator of the television station listed below (the “Station”), pursuant to certain licenses issued by the Federal Communications Commission (the “FCC”):

Call Sign	Facility ID	Service	Community of License	Channel	Licensee
WJFB-TV	7651	Full Service TV	Lebanon, TN	44 (pre) 25 (post)	Radiant Life Ministries, Inc.

WHEREAS, Seller owns or leases all other assets used in connection with the operation of the Station and the call letters and associated branding of the Station; and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to purchase all of the Purchased Assets (defined below) used in connection with the operation of the Station.

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following terms and conditions:

ARTICLE 1: SALE AND PURCHASE

1.1 **Purchased Assets**. Subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as defined below) all right, title and interest of Seller in, to and under the properties, rights, interests, assets, claims, contracts and goodwill of Seller (of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, accrued, contingent or otherwise) used or useful in connection with the Station (collectively, the “Purchased Assets”), but excluding the Excluded Assets (as defined below). The Purchased Assets shall include the following:

(a) **Licenses and FCC Authorizations.** All licenses, authorizations, permits, and construction permits and all pending applications for licenses, permits, and authorizations, in each case applied for or issued with respect to the Station by (i) the FCC (the “FCC Authorizations”), (ii) the Federal Aviation Administration (the “FAA”), or (iii) any other federal, state or local governmental authorities in connection with the transmission operations of the Station, including those listed on Schedule 1.1(a) attached hereto.

(b) **Tangible Personal Property.** All machinery and equipment, transmitters, antennas, fixtures, computers, software, inventory, cables, spare parts and other fixed assets and tangible personal property (including associated manufacturers and vendor warranties) used or useful in connection with the transmission operations of the Station, including the tangible property listed and described on Schedule 1.1(b) attached hereto, and any additions and improvements thereto between the Effective Date and the Closing Date (collectively, the “Tangible Personal Property”).

(c) **Contracts.** (i) the contracts, agreements and leases listed on Schedule 1.1(c) and (ii) all other contracts, agreements and leases approved by Buyer in writing which are entered into between the date hereof and the Closing Date (collectively, the “Assumed Contracts”).

(d) **Intangible Property.** All rights to the Station’s call letters and in any trademarks, trade names, service marks, patents, patent applications, internet domain names and associated websites, copyrights, programs and programming material (including program rights), jingles, slogans, logos, and other intangible property owned or leased by Seller and used or useful in connection with the call letters of the Station, including those listed on Schedule 1.1(d), and all goodwill associated with the foregoing (collectively, the “Intangible Property”).

(e) **Files and Records.** The Station’s public inspection file, the Station’s actual cost documentation filings made to the FCC in connection with the Broadcaster Relocation Fund, Seller’s filings with the FCC relating to the Station, and such other technical information, engineering data, books and records of Seller that relate to the Station and the Purchased Assets being conveyed hereunder.

(f) **Claims.** Any and all claims and rights against third parties to the extent relating to the Station, including all rights under manufacturers’ and vendors’ warranties.

(g) **Prepaid Items.** All deposits, reserves, prepaid expenses, and prepaid taxes relating to the Station to the extent attributable to post-Closing periods.

(h) **Relocation Funding.** All rights to reimbursement from the FCC’s Broadcaster Relocation Fund as set forth in Section 5.3.

1.2 **Excluded Assets.** The following shall be excluded from the Purchased Assets and retained by Seller (collectively, the “Excluded Assets”):

(a) **Cash.** All cash, cash equivalents or similar investments such as certificates of deposit, treasury bills and other marketable securities on hand and/or in banks and deposits of Seller.

(b) **Accounts Receivable.** All accounts receivable of Seller arising from the operation of the Station prior to the Closing which are outstanding and uncollected as of the Closing.

(c) **Insurance.** Any (i) insurance policies, intercompany accounts, promissory notes, amounts due from employees, bonds, letters of credit, and other similar items, (ii) any cash surrender value in regard thereto, and (iii) any proceeds from insurance claims made by Seller relating to property or equipment, in each case of (i), (ii) and (iii) which are included in the Purchased Assets and which have been repaired, replaced or restored by Seller prior to the Closing Date.

(d) **Benefit Plans.** Any pension, profit-sharing, cash or deferred (401(k) or otherwise) plans and trusts and assets thereof, or any other employee benefit plan or arrangement, and the assets thereof.

(e) **Tax Refunds.** Any interest in and to any refunds of federal, state or local franchise, income or other taxes of Seller for taxes incurred and actually paid by Seller prior to the Closing.

(f) **Excluded Property.** Any tangible or intangible personal property or tangible real property of Seller listed on Schedule 1.2(f).

(g) **Books and Records.** Except as provided in Section 1.1(e), all financial records, account books and general ledgers, and all corporate records (including organizational documents) of Seller, including tax returns and transfer books.

(h) **Employees.** All employees of the Station or of Seller.

(i) **Contracts.** Any contracts or agreements, whether written or oral, which are not Assumed Contracts.

(j) **Other Stations.** Any property or assets associated with or relating to Seller’s other broadcast stations, facilities, rights, or licenses.

(k) **Tower Leases.** The Seller’s tower site (ASR #1044881) (the “Tower Site”) as described on Schedule 1.2(k) and all third-party lease agreements for access to such tower shall be excluded from the transaction.

1.3 **Liabilities.** The Purchased Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities and encumbrances of every kind and nature

("Liens"), other than for (a) taxes not yet due and payable ("Permitted Liens") and (b) Liens that will be discharged prior to Closing. Buyer shall assume and undertake to pay, discharge and perform all obligations and liabilities relating to the Assumed Contracts arising or occurring after the Closing that relate to the period after the Closing. Buyer shall not assume any other direct or indirect obligations or liabilities of Seller (the "Retained Liabilities"), which Retained Liabilities include direct or indirect obligations or liabilities (a) under the Assumed Contracts or other Purchased Assets relating to the period prior to the Closing, (b) which are unrelated to the Purchased Assets, (c) relating to employees of Seller (including any pension obligations or pension withdrawal liabilities), (d) relating to the Excluded Assets, (e) for any federal, state or local franchise, income or other taxes of Seller, or (f) for any amounts due and owing to the FCC prior to the Closing.

1.4 **Purchase Price.**

(a) **Purchase Price.** The base purchase price to be paid for the Purchased Assets will be Five Million Seven Hundred Fifty Thousand Dollars (\$5,750,000.00) (the "Purchase Price"), subject to the adjustments described below. Buyer shall pay the Purchase Price to Seller by wire transfer of immediately available funds, at Closing.

(b) **Escrow Deposit.** Within five (5) business days of the execution and delivery of this Agreement, Buyer (or an affiliate of Buyer) will deposit Two Hundred Eighty-Seven Thousand Five Hundred Dollars (\$287,500.00) (the "Escrow Deposit") to be held in escrow. The Escrow Deposit shall be held and disbursed by Signature Bank, a New York state-chartered commercial bank, as the escrow agent (the "Escrow Agent") pursuant to the terms of an escrow agreement substantially in the form attached hereto as Exhibit A (the "Escrow Agreement"). Any fees charged by the Escrow Agent shall be paid one-half by Seller and one-half by Buyer. The Escrow Deposit shall be the sole and exclusive recourse of Seller for any breach of this Agreement by Buyer. At Closing, the Escrow Deposit shall be disbursed by the Escrow Agent to Seller as a credit against the Purchase Price. If this Agreement is terminated by Seller pursuant to Section 11.1(b), the Escrow Deposit shall be disbursed by the Escrow Agent to Seller. If this Agreement is otherwise terminated pursuant to its terms, the Escrow Deposit shall be promptly disbursed by the Escrow Agent to Buyer and Seller shall not, by any act or omission, delay or prevent any such payment.

1.5 **Prorations.** The Parties agree to prorate all expenses arising out of the operation of the Station which are incurred, accrued, or payable, as of 11:59 p.m. local time of the day preceding the Closing. The items to be prorated shall include power and utilities charges, FCC regulatory fees (based on the most recent information available from the FCC about the cost of such regulatory fees for the Station), real and personal property taxes upon the basis of the most recent tax bills and information available, security deposits, and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date.

1.6 **Allocation of Purchase Price.** Buyer and Seller shall negotiate in good faith an allocation of the Purchase Price to the assets acquired hereunder in a manner which complies with Section 1060 of the Internal Revenue Code of 1986, as amended to the date hereof, after Closing.

ARTICLE 2: FCC CONSENT; CLOSING

2.1 **FCC Consent; Assignment Application.** Buyer and Seller shall prepare, execute, file, and prosecute an application to the FCC (the “Assignment Application”) requesting the FCC’s consent (the “FCC Consent”) to the assignment from Seller to Buyer of all FCC Authorizations pertaining to the Station. The Assignment Application shall be filed not later than ten (10) business days after the date of the execution of this Agreement. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC in order to secure such FCC Consent without delay and to promptly consummate the transactions contemplated in this Agreement. Buyer shall pay the FCC filing fees due in connection with the Assignment Application, one-half of which fees shall be credited against the Purchase Price at the Closing. Each Party shall be responsible for all of its other costs with respect to the preparation, filing and prosecution of the Assignment Application. Buyer and each Seller shall promptly notify each other of, and provide copies of, all documents filed with or received from the FCC or any other governmental agency with respect to this Agreement, the Assignment Application or the transactions contemplated hereby. If either Buyer or Seller becomes aware of any fact which would prevent or delay the FCC Consent, it shall promptly notify the other Party. For purposes of determining the date of the grant of the FCC Consent, the FCC Consent shall be deemed to have been granted on the date that the FCC gives public notice of the grant within the meaning of the FCC’s rules and shall be deemed to have become effective as of such date unless the FCC shall have provided a different effective date by written action. In the event that the FCC grants the FCC consent by multiple orders and actions, the date that the FCC gives public notice (within the meaning of the FCC’s rules) of the last such orders or actions comprising the FCC Consent shall be deemed the date of grant for the FCC Consent.

2.2 **Closing Date; Closing Place.** The closing (the “Closing”) of the transactions contemplated in this Agreement shall occur on a date (the “Closing Date”) that is no more than ten (10) business days following the later to occur of the date on which: (a) the FCC Consent shall have become a Final Order (as defined below) unless such requirement shall have been waived by Buyer in its sole discretion, and (b) all the other conditions to the Closing set forth in Articles 7 and 8 hereof shall have either been waived or satisfied. Seller and Buyer agree to cooperate to the extent necessary to obtain the FCC's extension of the effectiveness of the FCC Consent as may be required. For purposes of this Agreement, the term “Final Order” means an action by the FCC consenting to the Assignment Application, and such consent shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which action no timely request for stay, petition for rehearing, petition for reconsideration, application for review, or notice of appeal is pending, and as to which the times for filing any such request, petition, application, notice, or appeal, or for reconsideration or review by the FCC on its own motion, shall have expired. The Closing shall be held by exchange of documents via email, or as Seller and Buyer may agree.

2.3 **Assignment of Assumed Contracts at Closing.** In the event any Assumed Contract may not be assigned without the consent of any third party, and such consent has not been obtained as of the Closing, then such Assumed Contract will not be deemed assigned to Buyer until such third party consent is obtained. If consent is subsequently obtained or deemed obtained (by virtue of the passage of time) after the Closing, such Assumed Contract shall be deemed assigned by Seller and assumed by Buyer pursuant to this Agreement as of the date of

such consent without further action or writing by the Parties. Prior to obtaining any required consent, to the extent permitted by law, Seller agrees to equitably assign its rights in such Assumed Contract to Buyer until such consent is obtained. In doing so, Buyer shall receive all benefits of such Assumed Contract and be obligated to pay any monies owned thereunder, and perform and comply with the terms of such Assumed Contract on Seller's behalf. Seller shall use commercially reasonable efforts to obtain all consents required to assign the Assumed Contracts to Buyer until each such consent is obtained. If any such consent is not obtained prior to the Closing Date, Seller shall use commercially reasonable efforts to obtain such consent as soon as possible after the Closing Date.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer:

3.1 **Organization and Authorization.** Seller is a nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State of Ohio. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby on Seller's part, have been duly and validly authorized by Seller, and no other actions on the part of Seller are necessary to authorize the execution and delivery of, or the performance of Seller's obligations under, this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller. This Agreement constitutes the legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

3.2 **No Defaults.** The execution, delivery, and performance of this Agreement by Seller will not (a) constitute a violation of, or conflict with, any organizational document of Seller, (b) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, contract, agreement, lease, or other instrument or obligation relating to the Station or to which Seller or any of the Purchased Assets may be subject, (c) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Seller or any of the Purchased Assets, (d) result in the creation or imposition of any Lien, charge, or encumbrance of any nature whatsoever upon any of the Purchased Assets, other than Permitted Liens, or (e) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent, except as otherwise noted in Schedule 3.10 hereto.

3.3 **Tangible Personal Property.** Schedule 1.1(b) hereto lists all Tangible Personal Property owned by Seller that will be conveyed to Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property. Each material item of Tangible Personal Property (a) is in operating condition, (b) has been maintained in a manner substantially consistent with generally accepted standards of good engineering practice, and (c) is

capable of being operated in full compliance, in all material respects, with the FCC Authorizations and rules and regulations of the FCC.

3.4 **Real Property.** Seller's sole interest in real property used or useful in connection with the transmission operations of the Station is its fee simple ownership of the Tower Site. To the knowledge of Seller, there is no pending condemnation or similar proceeding affecting the real property which is subject to the Tower Lease Agreement (as defined in Section 8.8). Seller has the full legal power and authority to enter into the Tower Lease Agreement. To the knowledge of Seller, the use of the premises leased under the Tower Lease Agreement (the "Leased Premises"), as contemplated by the Tower Lease Agreement, is in compliance with all applicable zoning codes and other laws. All permanent certificates of occupancy and other consents and approvals required to be obtained for use of the Leased Premises by Seller from any governmental authority, association, or board with jurisdiction of the Leased Premises have been issued and are in full force and effect.

3.5 **FCC Authorizations and Other Licenses.**

(a) Schedule 1.1(a) hereto contains a true and complete list of the FCC Authorizations and all other licenses, permits, construction permits, or other authorizations or waivers from governmental or regulatory authorities that are required for the lawful operation of the Station in the manner and to the full extent that the Station is presently operated. Schedule 1.1(a) includes a true and complete list of the FCC Authorizations, including both active and pending licenses, construction permits, and other applications for authorizations in connection with the Station. Except as listed on Schedule 1.1(a), the FCC Authorizations and other licenses are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations and the other licenses, permits, and authorizations listed on Schedule 1.1(a), none of which is subject to any restrictions or conditions that would limit in any material respect the conduct of the Station, other than (i) as may be set forth on the faces of such FCC Authorizations and other licenses, or (ii) as may be applicable to full service television stations or to the television broadcasting industry generally.

(b) To the best of Seller's knowledge and belief, Seller is operating the Station in all material respects in compliance with the FCC Authorizations, the Communications Act of 1934, as amended, and all regulations and published policies of the FCC (the "Communications Laws"). Seller has not received any complaints that the Station is causing objectionable interference to any other station and has not waived any interference rights except as set forth in Schedule 3.5. There is not now pending, or threatened, any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew any of FCC Authorizations. Except as set forth in Schedule 3.5, Seller has not received any notice of, and has no knowledge of, any pending, issued, or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against the Station or Seller. There are no pending proceedings before the FCC regarding the full service status of the Station, as applicable, and there has been no notice of inquiry or order to show cause issued by the FCC regarding the full service status of the Station, as applicable.

(c) All material reports and filings required to be filed with the FCC by Seller with respect to the Station have been filed, and all such reports and filings are accurate and

complete in all material respects. Seller maintains station records for the Station as necessary to comply with the Communications Laws in all material respects.

(d) To the knowledge of Seller, the tower from which the Station broadcasts is (a) obstruction marked; (b) lighted; and (c) properly registered with the FCC to the extent required by, and in accordance with, applicable law and the rules and regulations of the FCC and FAA. The operations of the Station do not exceed permissible levels of exposure to non-ionizing electromagnetic radiofrequency (“RF”) radiation specified in the FCC's rules and regulations concerning RF radiation. Except as set forth on Schedule 1.1(a), during those periods when Seller was licensee, the Station was not silent or operating on less than the required minimum schedule for a period of time of more than thirty (30) consecutive days during the current license term. To the knowledge of Seller, all of the tower, driveways, parking lots, ground systems, transmitting equipment, buildings and other improvements on the Leased Premises relating to the Station are located entirely on and wholly within the lot limits and metes and bounds of the property on which the Station's tower is situated and do not encroach on any adjoining premises.

3.6 **Title; Sufficiency.** Except as set forth on Schedule 3.6 hereof, there are no Liens on the Purchased Assets and no Liens have been filed or recorded against the Purchased Assets in the public records of the Secretary of State of Seller's state of organization or in any other jurisdiction in which the Purchased Assets are located. Any Lien listed on Schedule 3.6 will be fully discharged on or prior to the Closing Date. The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Purchased Assets to Buyer, will transfer good and marketable title to the Purchased Assets, free and clear of all Liens other than Permitted Liens. The Purchased Assets are sufficient for the operation of the Station as presently conducted by Seller.

3.7 **Reserved.**

3.8 **Brokers.** Except for the broker identified in Schedule 3.8, whose fees will be paid fully by Seller, there is no other broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding, or action on the part of Seller.

3.9 **Litigation; Compliance with Law.** Seller is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the Station or the Purchased Assets or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transactions contemplated hereby, and to Seller's knowledge no such proceeding is pending. There is no material litigation or administrative investigation or proceeding pending by or against, or, to Seller's knowledge, threatened against, Seller which relates to the Station or which could materially and adversely affect any of the Purchased Assets. Seller, with respect to the Station, has complied in all material respects with all applicable laws, regulations, orders, or decrees. The present uses by Seller of the Purchased Assets do not violate any such laws, regulations, orders, or decrees in any material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing.

3.10 **Approvals and Consents.** Except as described in Schedule 3.10 hereto, the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby will not require any consent, permit, license or approval of any

person, entity or government or regulatory authority other than the FCC Consent. Any consents required for the assignment of the rights and obligations under the Assumed Contracts (the “Required Consents”) are set forth on Schedule 3.10.

3.11 **Insurance**. All of the material Purchased Assets that are insurable are insured against loss, injury, or damage at book value. In the event of any loss or damage to the Purchased Assets prior to Closing, any shortfall between insurance proceeds and replacement value will not excuse Seller’s obligation to replace or repair the Purchased Assets with comparable assets to the extent required to meet its delivery obligations to Buyer.

3.12 **Environmental Matters**. To the knowledge of Seller (a) Seller has not, in connection with the Station or the Purchased Assets, generated, used, transported, treated, stored, released or disposed of, or to Seller’s knowledge, have suffered or knowingly permitted anyone else to generate, use transport, treat, store, release or dispose of, any Hazardous Substance (as defined below) in violation of any applicable environmental law; (b) there has not been any generation, use, transportation, treatment, storage, release or disposal of any Hazardous Substance in connection with the operation of the Station which has created or might reasonably be expected to create any material liability under any applicable environmental law or which would require reporting to or notification of any governmental entity; (c) no asbestos or polychlorinated biphenyl or underground storage tank is contained in or located at any facility used in connection with the Station; and (d) any Hazardous Substance handled or dealt with in any way in connection with the Station has been and is being handled or dealt with in all material respects in compliance with all applicable environmental laws. To Seller’s knowledge, Seller and the Station are in compliance in all material respects with all environmental, health and safety requirements. There is no action, suit or proceeding pending or, to Seller’s knowledge, threatened against, Seller or the Station that asserts that Seller or the Station has violated any environmental, health or safety laws applicable to the Leased Premises. “Hazardous Substance” means any substance that is defined or listed in, or otherwise classified pursuant to, any applicable laws as a “hazardous substance,” “hazardous material,” “hazardous waste” or “toxic substance,” or any other formulation of any applicable environmental law intended to define, list or classify substances by reason of deleterious properties such as ignitibility, corrosivity, reactivity, radioactivity, carcinogenicity, reproductive toxicity and petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

3.13 **Taxes**. Except where exempt therefrom, Seller has duly, timely, and in the required manner, filed all federal, state, and local income, franchise, sales, use, property, excise, payroll, and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid. No event has occurred which could impose upon Buyer any liability for any taxes, penalties, or interest due or to become due from Seller to any taxing authority.

3.14 **Performance of Assumed Contracts**. Schedule 1.1(c) includes all contracts, agreements and leases that are used or useful in connection with ownership of the Purchased Assets (other than contracts for the sale of advertising time), including, if any, all programming and film contracts, syndication contracts, national sales representation contracts, employment contracts, retransmission contracts, distribution contracts and network affiliation contracts, real

property leases, and income-producing leases and agreements. The Assumed Contracts, including all amendments thereto, have been made available to Buyer by Seller at least three (3) business days prior to the Effective Date. Seller has fully and timely performed all of its obligations pursuant to the Assumed Contracts and is not in material default or breach of any such agreements. Except as set forth in Schedule 3.14, Seller has not received notice from any party to any Assumed Contract that such party contends that Seller is in default or breach under any Assumed Contract. Each of the Assumed Contracts is in full force and effect and, to the knowledge of Seller, there has not been (except as set forth in Schedule 3.14), and is not, any default or breach under any Assumed Contract by the other party to any Assumed Contract. Except as set forth in Schedules 1.1(c) attached hereto, there have been no modifications, extensions, or amendments of any of the Assumed Contracts, whether oral or written, except as may be contemplated by this Agreement. Seller has not been notified by any other party to any Assumed Contract that such party has a present intent to terminate or not to renew such Assumed Contract. Except as set forth in Schedule 3.14, no Assumed Contract included in the Purchased Assets has as the other party a person which, directly or indirectly, is controlled by, is under common control with, or controls Seller.

3.15 **Absence of Insolvency.** No insolvency proceedings of any character including bankruptcy, receivership, reorganization, composition or arrangements with creditors, voluntary or involuntary, affecting Seller or any of the Purchased Assets, are pending or, to the knowledge of Seller, threatened, and Seller has not made any assignment for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

3.16 **Cable and Satellite Matters.** Schedule 3.16 hereto contains a list for the Station showing the carriage (or non-carriage) of the Station by (a) cable television systems, (b) satellite carriers, and (c) other multi-channel video programming distributors (collectively “MVPDs”), if any. No retransmission consent agreements have been entered into with respect to the MVPDs listed on Schedule 3.16 for the carriage of the Station and the Station is carried on each of the MVPDs located in the Station’s designated market area pursuant to valid must carry elections by the Seller. No such MVPD has provided written notice to the Station of any signal quality issue or sought any form of relief from carriage of the Station from the FCC. To the knowledge of Seller, the Station has not received written notice of any such MVPD’s intention to delete the Station from carriage or to change the Station’s channel position or to move the head end of the MVPD’s systems.

3.17 **Intellectual Property.** Seller owns or possesses, has valid licenses for, or is an authorized user of all the Intangible Property. Seller has not received any notice of infringement of or conflict, nor does Seller have any knowledge of any basis for any such claim, with asserted rights of others with respect to any of the Intangible Property. To the knowledge of Seller, no third party infringes the Intangible Property of Seller.

3.18 **Accuracy of Representations and Statements.** No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit, or schedule furnished or to be furnished by Seller in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement

not misleading to Buyer in the circumstance under which such representation, warranty, or statement was made.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties to Seller:

4.1 **Organization and Standing.** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and as of the Closing Date will be qualified to do business in the State of Delaware and any other jurisdiction where such qualification is required.

4.2 **Authorization.** Buyer has the power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer, and no other proceedings on the part of Buyer are necessary to authorize the execution and delivery of, or the performance of Buyer's obligations under this Agreement, or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer. This Agreement constitutes the legal, valid, and binding agreement of Buyer enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

4.3 **No Defaults.** The execution, delivery, and performance of this Agreement by Buyer will not (a) conflict with or result in any breach of any provision of the articles of organization, operating agreement, or other similar organizational documents of Buyer, or (b) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to Buyer or its business, except for such defaults (or rights of termination, cancellation, or acceleration) or conflicts as to which requisite waivers or consents have been obtained and delivered to Seller, (c) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Buyer, or (d) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent.

4.4 **Buyer's Qualification.** Apart from the requirement of obtaining the FCC Consent, Buyer is legally, financially, and technically qualified to acquire, and to become the FCC licensee of, the Station and to perform its obligations under this Agreement.

4.5 **Litigation.** Buyer is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of Buyer or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transactions contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or, to the knowledge of Buyer, threatened against Buyer, that would prevent or materially impede the consummation by Buyer of the transactions contemplated by this Agreement.

4.6 **Brokers.** There is no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding, or action on the part of Buyer.

4.7 **Accuracy of Representations and Statements.** No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit, or schedule furnished or to be furnished by Buyer in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller in the circumstance under which such representation, warranty, or statement was made.

ARTICLE 5: COVENANTS OF SELLER

The following terms of this Article 5 shall apply from the Effective Date until the completion of the Closing (except as otherwise specified).

5.1 **Station Documents.** The material records, files and other documents kept in connection with the Station shall be maintained by Seller in the usual and ordinary manner consistent with standard broadcast industry practice. Seller shall maintain the FCC Authorizations in accordance with their terms and in compliance in all material respects with all applicable laws, rules and regulations and all applicable FCC regulations and published policies. Seller shall maintain the FCC Authorizations in full force and effect and shall take all actions necessary to so maintain them, including the timely filing and prosecution of any necessary modification or renewal applications of the FCC Authorizations or other submissions to the FCC.

5.2 **Maintenance of Purchased Assets.** Seller shall maintain the Purchased Assets in working order and repair consistent with standards of good engineering practice and in accordance with rules and other requirements of the FCC. Seller will replace any Purchased Asset that is used or useful in the digital operation of the Station which is or becomes worn out, lost, stolen, or destroyed with like property of substantially equivalent kind and value.

5.3 FCC's Post-Auction Repacking Process.

(a) In connection with the Station's FCC authorization to move to Channel 25 as a result of displacement resulting from the incentive auction repacking process, Seller shall consult in good faith with Buyer regarding the Station's channel reassignment, design, equipment, facilities, and any other element of system configuration relevant to its operation following the conclusion of the post-auction transition. Seller shall exercise reasonable due diligence to file applications for construction permits, resolve mutually exclusive applications, file quarterly transition progress reports, and take all other actions reasonably necessary to ensure the Station remains able to comply with all applicable deadlines of the FCC's post-auction transition schedule and its construction, licensing and operations requirements.

(b) Seller shall take all reasonable actions necessary to secure funding and reimbursement from the FCC for relocation in connection with the post-auction repacking process.

(c) All funds that are or may be made available for reimbursement of channel-relocation costs and expenses of the Station shall be allocated to the Party which incurs and actually pays such repacking and relocation expense for the Station. Any expenses incurred and actually paid by Seller prior to Closing in connection with the repacking and relocation of the Station (whether such amounts are available prior to or following Closing) shall be for the account of Seller and any expenses incurred and actually paid by Buyer in connection with the repacking and relocation of the Station (whether such amounts are available prior to or following Closing) shall be for the account of Buyer.

(d) In connection with any notice that Seller receives from the FCC or any other person with respect to the post-auction repacking process, including any interference the Station may create, Seller shall: (i) promptly forward such notice to Buyer, (ii) consult in good faith with Buyer regarding options for Seller to pursue in connection with resolution of such interference, and (iii) otherwise take all actions necessary to preserve all rights for the continued use of the FCC Authorizations for the Station.

5.4 **FCC Compliance.** Seller shall continue to operate and maintain the Station in accordance with the terms of the FCC Authorizations and in compliance with all applicable laws and FCC regulations and published policies. Seller will deliver to Buyer, promptly after filing, copies of any material reports, applications, or responses to the FCC, or any material communications from the FCC, or if from any other person directed to the FCC, promptly after receipt by Seller, related to the Station that are filed or received by Seller between the date of this Agreement and the Closing Date. Seller will not file any application with the FCC requesting authority to modify the Station's facilities without Buyer's prior written consent and Seller shall take all actions necessary to (a) keep the FCC Authorizations, including all material permits and applications pending before the FCC, valid and in full force and effect and (b) to preserve all rights for the continued use of all the FCC Authorizations for the Station.

5.5 **Operation of Station in Ordinary Course.** Except as disclosed in writing to and pre-approved in writing by Buyer, Seller shall operate the Station solely in the ordinary course of business consistent with past practice (including incurring only ordinary and necessary business expenses consistent with past practices for the Station), and shall pay and perform all of the obligations with respect to the Station (including those required under the Assumed Contracts) in the ordinary course as such obligations become due. Seller shall not amend any Assumed Contract without Buyer's written approval. Seller shall use commercially reasonable efforts to maintain and preserve its goodwill, Station relationships, licenses and franchises.

5.6 **Insurance.** Seller shall maintain in full force and effect through the Closing Date its existing property damage, liability, and other insurance with respect to the Purchased Assets.

5.7 **Disposition of Assets.** Prior to the Closing Date, Seller shall not, without the prior written consent of Buyer, dispose of, sell, lease, or transfer, or agree to dispose of, sell, lease, or transfer, any of the Purchased Assets, nor create any new Lien on the Purchased Assets.

5.8 **Compliance with Law.** Seller shall comply in all material respects with all federal, state, and local laws, rules and regulations in connection with the operation of the Station.

5.9 **Access to Facilities, Files and Records.** At the request of Buyer, Seller shall from time to time give or cause to be given to Buyer full access during normal business hours to the Purchased Assets, and all accounts, books, insurance policies, licenses, agreements, contracts and equipment with respect to the Station; provided, however, that all such access shall require the express consent of Seller and shall be scheduled in a manner reasonably acceptable to Seller.

5.10 **Representations and Warranties.** Seller shall give detailed written notice to Buyer promptly upon learning of the occurrence of any event that would reasonably be expected to cause or constitute a breach, or that would have reasonably been expected to cause a breach had such event occurred or been known to Seller prior to the date hereof, of any of the representations or warranties contained in this Agreement. Seller shall use commercially reasonable efforts to cure any such event. Updates provided in order to comply with the covenant in this Section 5.10 will not have any impact on Buyer's conditions to Closing or serve to limit Buyer's right to indemnification hereunder.

5.11 **Consummation of Agreement.** Seller shall cooperate with Buyer and use all commercially reasonable efforts to fulfill and perform all conditions and obligations on their part to be fulfilled and performed under this Agreement, and to cause the transactions contemplated by this Agreement to be fully carried out, including the prompt satisfaction of any condition to Closing set forth herein.

5.12 **Employees.** Buyer shall have no obligation to offer employment to any employee of Seller or the Station. Buyer shall have no liability with respect to any such employee or for any such employee's benefits of any kind or nature, except to the extent that Buyer shall offer employment to any such employee and then only from and after the time at which such offer shall have been extended by Buyer and accepted by such employee, and subject to the terms and conditions thereof.

5.13 **Full Service Status.** Seller shall, and shall take all actions necessary to, maintain the full service status of the primary FCC Authorization of the Station.

ARTICLE 6: COVENANTS OF BUYER

Buyer covenants and agrees that from the date hereof until the completion of the Closing:

6.1 **Representations and Warranties.** Buyer shall give detailed written notice to Seller promptly upon learning of the occurrence of any event that would reasonably be expected to cause or constitute a breach or would have reasonably been expected to cause a breach had such event occurred or been known to Buyer prior to the date hereof, of any of the representations and warranties of Buyer contained in this Agreement. Buyer shall use commercially reasonable efforts to cure any such event. Updates provided in order to comply with the covenant in this

Section 6.1 will not have any impact on Seller's conditions to Closing or serve to limit Seller's right to indemnification hereunder.

6.2 **Consummation of Agreement.** Buyer shall cooperate with Seller and use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transactions contemplated by this Agreement to be fully carried out, including the prompt satisfaction of any condition to Closing set forth herein.

ARTICLE 7: CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date:

7.1 Representations, Warranties and Covenants.

(a) Each of the representations and warranties of Buyer contained in this Agreement was true and correct as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct.

(b) Buyer shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

7.2 **Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) and no action is pending which would restrain or prohibit the consummation of the transactions contemplated hereby.

7.3 **FCC Authorizations.** The FCC Consent has been issued by the FCC with no conditions materially adverse to Seller.

7.4 **Deliveries.** Buyer has complied with each and every one of its obligations set forth in Section 9.2.

ARTICLE 8: CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date:

8.1 Representations, Warranties and Covenants.

(a) Each of the representations and warranties of Seller contained in this Agreement was true and correct as of the date when made and is deemed to be made again on and as of the Closing Date and is then true and correct.

(b) Seller shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date.

8.2 **Proceedings.** Neither Seller, Buyer, the Station nor any of the Purchased Assets is subject to any restraining order or injunction (or similar action) and no action is pending which would restrain or prohibit the consummation of the transactions contemplated hereby.

8.3 **FCC Authorizations.** The FCC Consent has been issued by the FCC with no conditions materially adverse to Buyer and shall have become a Final Order.

8.4 **Deliveries.** Seller has complied with each and every one of the obligations set forth in Section 9.1.

8.5 **Required Consents.** Seller shall have obtained and delivered to Buyer all of the Required Consents, if any, described in Schedule 3.10.

8.6 **Liens.** No Liens shall exist or have been filed or recorded against the Purchased Assets in the public records of the Secretary of State of Seller's state of organization or in any other jurisdiction in which the Purchased Assets are located except for those which will be fully discharged on or prior to the Closing Date. Duly executed UCC releases, mortgage terminations or other similar documents or instruments required to transfer the Purchased Assets free and clear of Liens (other than Permitted Liens) in a form reasonably acceptable to Buyer shall have been delivered by Seller.

8.7 **On-Air Status.** None of the FCC Authorizations shall have been cancelled or permanently discontinued as a result of the FCC's post-auction repacking process or the FCC's rules related to suspension of operations.

8.8 **New Tower Lease.** Seller and Buyer shall enter into a tower space lease agreement providing for continued operation of the Station's broadcast transmission facilities at the Tower Site in the form attached hereto as Exhibit C (the "Tower Lease Agreement").

ARTICLE 9: ITEMS TO BE DELIVERED AT CLOSING

9.1 **Deliveries by Seller.** At Closing, Seller shall deliver to Buyer, duly executed by each Seller or such other signatory as may be required by the nature of the document:

(a) a certificate, dated as of the Closing Date, executed by an officer of Seller, certifying on behalf of Seller that the closing conditions specified in Sections 8.1(a) and (b) have been satisfied;

(b) a bill of sale sufficient to sell, convey, transfer and assign the personal property and all other assets included in the Purchased Assets (other than the FCC Authorizations and Assumed Contracts) to Buyer free and clear of any Liens, in a form reasonably acceptable to Buyer and Seller (the "Bill of Sale");

(c) an Assignment and Assumption Agreement sufficient to sell, convey, transfer and assign the Assumed Contracts to Buyer free and clear of any Liens, in a form reasonably acceptable to Buyer and Seller (the "Assignment and Assumption Agreement");

(d) an Assignment and Assumption Agreement sufficient to assign the FCC Authorizations (including the Station's call letters) to Buyer, in a form reasonably acceptable to Buyer and Seller (the "FCC Authorizations Assignment and Assumption Agreement");

(e) the Required Consents described in Schedule 3.10;

(f) executed releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, of any security interests granted in the Purchased Assets as security for payment of loans and other obligations and of any other Liens (other than Permitted Liens);

(g) certified copies of appropriate resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby;

(h) copies of all documentation filed with the FCC establishing the payment and banking information for the payment of relocation construction expenses the Station is eligible to receive in connection with the post-auction transition, with account information redacted as necessary;

(i) copies of documentation of all FCC mandated relocation costs and expenses incurred and paid by Seller prior to Closing, in form and detail reasonably acceptable to Buyer;

(j) the Programming Agreement in the form attached hereto as Exhibit B (the "Programming Agreement").

(k) the Tower Lease Agreement.

9.2 **Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller, duly executed by Buyer or such other signatory as may be required by the nature of the document:

(a) a certificate for Buyer, dated as of the Closing Date, executed by an officer or other authorized representative of Buyer, certifying on behalf of Buyer that the closing conditions specified in Sections 7.1(a) and (b) have been satisfied;

(b) the payment of the Purchase Price in accordance with Section 1.4;

(c) the Bill of Sale;

(d) the Assignment and Assumption Agreement;

(e) the FCC Authorizations Assignment and Assumption Agreement;

(f) an authorization addressed to the Escrow Agent to release the Escrow Deposit to Seller;

(g) certified copies of resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby; and

(h) the Programming Agreement.

- (i) The Tower Lease Agreement.

ARTICLE 10: SURVIVAL AND INDEMNITY

The rights and obligations of Buyer and Seller under this Agreement shall be subject to the following terms and conditions:

10.1 **Survival of Representations and Warranties.** Except as stated below, the covenants, representations and warranties of Buyer and Seller contained in this Agreement shall survive the Closing for one (1) year from the Closing Date. Except as stated below, neither Seller nor Buyer shall have any liability whatsoever with respect to any covenant, representation or warranty unless a claim is made hereunder or an action at law or in equity is commenced prior to expiration of the one (1) year survival period for such representation or warranty.

10.2 General Agreement to Indemnify.

(a) Seller shall indemnify, defend and hold harmless Buyer and any employee, representative, agent, director, officer, affiliate or permitted assign of Buyer (each, a “Buyer Indemnified Party”) from and against any Losses asserted against, incurred or suffered by any Buyer Indemnified Party as a result of, arising out of or relating to: (i) the failure of any representation or warranty of the Indemnifying Party made in this Agreement to have been true and correct when made or as of the Closing Date as though such representation or warranty were made at and as of the Closing Date; (ii) the breach by the Indemnifying Party of any covenant or agreement of such Party contained in this Agreement or any collateral agreement to the extent not waived by the other Party hereto; (iii) the operation of the Station and ownership of the Purchased Assets prior to the Closing; or (iv) any Retained Liability.

(b) Buyer shall indemnify, defend and hold harmless Seller and any employee, representative, agent, director, officer, affiliate or permitted assign of Seller (each, a “Seller Indemnified Party,” and together with a Buyer Indemnified Party, an “Indemnified Party”) from and against any Losses asserted against, incurred or suffered by Seller Indemnified Party as a result of, arising out of or relating to: (i) the failure of any representation or warranty of the Indemnifying Party made in this Agreement to have been true and correct when made or as of the Closing Date as though such representation or warranty were made at and as of the Closing Date; or (ii) the breach by the Indemnifying Party of any covenant or agreement of such Party contained in this Agreement or any collateral agreement to the extent not waived by the other Party hereto;

(c) The term “Losses” shall include any and all claims, claims, actions, suits, proceedings, liabilities, obligations, losses and damages, amounts paid in settlement, diminution of value, interest, costs and expenses (including reasonable attorneys’ fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing), including consequential, indirect, incidental, special, punitive, and exemplary damages and lost-profits, whether based on contract, tort, strict liability, other law or otherwise.

10.3 **General Procedures for Indemnification.**

(a) The Indemnified Party seeking indemnification under this Agreement shall promptly notify in writing the Party or Parties against whom indemnification is sought (the “Indemnifying Party”) of the assertion and basis of any claim, or the commencement and basis of any action, suit or proceeding by any third party in respect of which indemnity may be sought hereunder (a “Third Party Claim”) and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless the Indemnifying Party has suffered material prejudice by such failure). The Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, to assume the defense and control the settlement of such Third Party Claim that involves (and continues to involve) solely money damages; provided, however, that prior to assuming any claim defense, the Indemnifying Party must show the other Party that they have the financial ability to pay out any potential monetary claim before they are allowed to assume its defense. Failure by the Indemnifying Party to so notify the Indemnified Party shall be deemed a waiver by the Indemnifying Party of its right to assume the defense of such claim.

(b) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(c) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that the other is defending, as provided in this Agreement, provided that the Indemnifying Party shall pay the cost of defense of both parties by separate counsel if a conflict of interest precludes common representation.

(d) The Indemnifying Party, if it has assumed the defense of any Third Party Claim as provided in this Agreement, shall not consent to, or enter into, any compromise or settlement of, or consent to the entry of any judgment arising from, any such Third Party Claim (which compromise, settlement, or judgment: (i) commits the Indemnified Party to take, or to forbear to take, any action; or (ii) does not provide for a complete release by such Third Party of the Indemnified Party) without the Indemnified Party’s prior written consent. If the conditions set forth herein are met but the Indemnified Party refused to settle any Third Party Claim, the Indemnifying Party may tender the settlement amount and be relieved of further liability. The Indemnifying Party shall not be entitled to require that any action be brought against any other person before action is brought against it hereunder by the Indemnified Party, but shall be subrogated to any right of action to the extent that it has paid or successfully defended against any Third Party Claim.

10.4 **Limitations.** Neither Buyer nor Seller shall be required to indemnify an Indemnified Party for Losses pursuant to Section 10.2(a)(i) or Section 10.2(b)(i), as applicable, unless the aggregate claim for Losses exceeds Twenty-Five Thousand Dollars (\$25,000), after

which the Indemnified Party shall be entitled to recover only such portion of the Losses that exceed such amount.

10.5 **Effect of Knowledge**. The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in this Agreement shall not be affected by any investigation conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement, waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any such covenant or agreements, will not affect the right to indemnification or any other remedy based on such representations, warranties, covenants and agreements.

ARTICLE 11: TERMINATION

11.1 **Termination**. This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by written notice of Seller to Buyer if Buyer: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Buyer on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Buyer's representations or warranties; or (iii) defaults in any material respect in the performance of any of Buyer's covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;
- (c) by written notice of Buyer to Seller if Seller: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Seller on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Seller's representations or warranties; or (iii) defaults in any material respect in the performance of any of Seller's covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;
- (d) by Buyer as provided in Section 12.6 (Risk of Loss); or
- (e) by written notice of Seller to Buyer, or Buyer to Seller: (i) if the Closing has not been consummated within twelve (12) months of the Effective Date of this Agreement; (ii) if, for any reason, the FCC denies or dismisses the Assignment Application and the time for reconsideration or court review under the Communications Laws with respect to such denial or dismissal has expired and there is not then pending with respect thereto a timely filed petition for reconsideration or request for review; or (iii) if, for any reason, the Assignment Application is designated for an evidentiary hearing, provided, however, that the right to terminate this Agreement under this clause (e) shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

11.2 **Cure Period**. The term "Cure Period" as used herein means a period commencing with the date that Buyer or Seller receives from the other Party written notice of breach or default hereunder and continuing until thirty (30) days thereafter; provided, however, that if the

breach or default cannot reasonably be cured within such period, but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the date on which the FCC Consent shall have become a Final Order or the date on which Buyer elects to waive the requirement for such Final Order as contemplated by Section 2.2(a). Except as set forth below, the termination of this Agreement shall not relieve any Party of any liability for breach or default under this Agreement prior to the date of termination.

11.3 **Liability; Right to Terminate.** A termination of this Agreement shall not relieve any Party hereto of any liability for which it otherwise would be subject. Notwithstanding anything in this Agreement to the contrary, no Party that is in material breach of this Agreement shall be entitled to terminate this Agreement except with the written consent of the other Party.

11.4 **Payment of Escrow Deposit.**

(a) **Buyer's Default.** Upon a termination of this Agreement by Seller pursuant to Section 11.1(b) above due to a breach by Buyer of any of its material obligations under this Agreement, Seller's sole remedy shall be the release of the Escrow Deposit from the Escrow Agent, as liquidated damages. Seller and Buyer each acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyer's breach of any of its material obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty.

(b) **Seller's Default.** Upon a termination of this Agreement by Buyer pursuant to Section 11.1(c) due to a breach by Seller of any of its material obligations under this Agreement, Buyer may terminate this Agreement and shall be entitled to release of the Escrow Deposit to it from the Escrow Agent. If Buyer stands willing, ready, and able to close and is not in breach, and if Seller nevertheless refuses to close and Buyer elects to terminate this Agreement, Buyer shall further be entitled to receive, as liquidated damages and not as a penalty, the sum of Two Hundred Eighty Seven Thousand Five Hundred Dollars (\$287,500.00) (the "Liquidated Damages Amount"). Instead of terminating this Agreement, upon a default by Seller, Buyer may seek specific performance as provided in Section 11.4(d) below.

(c) **Other Termination.** Upon a termination of this Agreement for any reason other than as a result of a breach by either Party of its material obligations under this Agreement, Buyer shall be entitled to the release of the Escrow Deposit, and thereafter neither Party shall have any further obligation to the other under this Agreement.

(d) **Specific Performance.** Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transactions contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform Seller's obligation to consummate the transactions contemplated hereby, Buyer shall be entitled to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transactions contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and the prevailing Party in litigation shall be entitled to

receive from the non-prevailing Party all court costs, attorney's fees and other out-of-pocket expenses incurred by the prevailing Party in enforcing or defending its rights under this provision.

ARTICLE 12: MISCELLANEOUS

12.1 **Governing Law; Waiver of Trial by Jury.** The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of New York (exclusive of those relating to conflicts of laws). Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated exclusively in the courts of the State of New York in New York County or federal courts in New York County, New York. The Parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them. EACH OF BUYER AND SELLER HEREBY WAIVES (ON BEHALF OF ITSELF AND ITS AFFILIATES), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY.

12.2 **Expenses; Taxes.** Except as provided in Section 2.1 and in this Section 12.2, each Party hereto shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including accounting, engineering and legal fees incurred in connection herewith. Any state or local sales, use, stamp or transfer taxes and other similar taxes payable in connection with consummation of the transactions contemplated herein shall be paid by the Party against whom such taxes are assessed by the applicable governmental authority.

12.3 **Entire Agreement; Amendment; No Waiver.** This Agreement, including the schedules and exhibits hereto, contain the entire agreement and understanding by and between the Parties, and no other representations, promises, agreements, or understanding, written or oral, not contained herein shall be of any force or effect, the terms of which are superseded and replaced by this Agreement. This Agreement may only be amended in a writing signed by the Parties. No oral agreement shall have any effect. No failure or delay in exercising any right hereunder shall be deemed or construed to be a waiver of such right, either prospectively or in the particular instance. This Agreement has been prepared by all of the Parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against any Party hereto.

12.4 **Confidentiality.** Except for information about the Station and the Purchased Assets acquired by Buyer (which shall be deemed confidential information of Buyer at the Closing) and except where such information is known through other lawful sources or where its disclosure is required in accordance with applicable law, including requirements of the FCC pursuant to the Assignment Application, each of Buyer and Seller shall keep confidential, and after the Closing Seller shall not use except for purposes of enforcing its rights hereunder, all information obtained by it with respect to the other Party (and in the case of Seller following the Closing, information about the Station and the Purchased Assets acquired by Buyer) in connection with this Agreement. If the transactions contemplated hereby are not consummated for any reason, Buyer and Seller shall return to each other or destroy, without retaining a copy thereof in any medium whatsoever, any schedules, documents or other written information,

including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby.

12.5 **Public Announcements.**

(a) Prior to the Closing Date, no Party shall, without the approval of the other Party hereto, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except (i) to announce that the transaction has been entered into and (ii) as and to the extent that such Party shall be so obligated by law or the rules of any stock exchange, in which case such Party shall give advance notice to the other Party and the Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

(b) Notwithstanding the foregoing, the Parties acknowledge that the rules and regulations of the FCC require that local public notice of the transactions contemplated by this Agreement be made after the Assignment Application has been filed with the FCC and that a copy of this Agreement be included as a material part of the Assignment Application, which will be made available for public inspection at the Station and in the FCC's records. The form and substance of the required public notice, to the extent not dictated by the rules and regulations of the FCC, shall be mutually agreed upon by Seller and Buyer.

12.6 **Risk of Loss.** The risk of loss to any of the Purchased Assets on or prior to the Closing Date shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Purchased Assets; provided, however, that in the event that any Purchased Asset or Purchased Assets incur(s) damages which are expected to exceed Fifty Thousand Dollars (\$50,000) to repair or any Purchased Asset or Purchased Assets having a fair market value of Fifty Thousand Dollars (\$50,000) or more is lost as of the date otherwise scheduled for the Closing, then Buyer may, at its option, upon prior written notice to Seller, either (a) postpone the Closing for a period of up to sixty (60) days while Seller shall repair or replace such Purchased Asset or Purchased Assets, (b) elect to close the transactions contemplated herein with such Purchased Asset or Purchased Assets in their damaged or lost condition, in which case Seller shall assign to Buyer all proceeds of insurance on such damaged or lost Purchased Asset or Purchased Assets, and Buyer shall have the responsibility to repair or replace such damaged or lost Purchased Asset or Purchased Assets, or (c) if such damage or loss exceeds Two Hundred Eighty Seven Thousand Five Hundred Dollars (\$287,500), may terminate this Agreement without penalty upon written notice to Seller. Should the Station not operate with at least 80% of its full, FCC-licensed facilities for a period of thirty (30) consecutive days, without appropriate notice or application the FCC, and for reasons other than *force majeure*, Buyer may elect to terminate this Agreement without penalty upon giving written notice thereof to Seller.

12.7 **Control of Station.** Buyer and Seller agree that Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Laws, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as holder of the FCC Authorizations.

12.8 **Successors and Assigns.** Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective

representatives, heirs, successors and assigns. Seller may not assign this Agreement or any part hereof without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed, and any attempted assignment without such consent shall be void. Buyer may not assign this Agreement or any part hereof without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed. In the event of any assignment of this Agreement, the assignee shall enter into a written agreement accepting joint and several liability for all obligations under this Agreement.

12.9 **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given (a) when personally served, (b) one business day following the day when sent by Federal Express or a similar overnight courier service, expenses prepaid, (c) three business days following the day when sent by postpaid registered or certified mail, or (d) when sent by email (provided that an additional copy is sent within two business days thereafter in accordance with the delivery method set forth in the preceding clauses (a) or (b)), in each case to the Parties at the following addresses:

If to **Seller**, then to:

Radiant Life Ministries, Inc.
Attn: Legal Counsel
11717 Route 37 – P.O. Box 1010
Marion, IL 62959
Email: mjd@tct.tv

If to **Buyer**, then to:

c/o HC2 Holdings, Inc.
450 Park Avenue, 30th Floor,
New York, NY 10022
Email: jferraro@hc2.com

and to (which shall not constitute notice):

Trey Hanbury
Hogan Lovells US LLP
555 13th St NW
Washington, DC 20004
Email: trey.hanbury@hoganlovells.com

Any Party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

12.10 **Further Assurances.** From time to time prior to, on and after the Closing Date, each Party hereto will execute all such instruments and take all such actions as the other Party

shall reasonably request, without payment of further consideration, in connection with carrying out and effectuating the intent and purpose hereof and all transactions contemplated by this Agreement, including the execution and delivery of any and all confirmatory and other instruments in addition to those to be delivered on the Closing Date, and any and all actions which may reasonably be necessary to complete the transactions contemplated hereby. The Parties shall cooperate fully with each other and with their respective counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement.

12.11 **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein, or its application to any particular circumstance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, such provision or such application shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without invalidating the remainder of such provision or any other provisions hereof, or its application in any other circumstance, unless such a construction would be unreasonable, and without invalidating such provision or its application in any other jurisdiction.

12.12 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

12.13 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. When a reference is made in this Agreement to a Party or to a Section, Exhibit or Schedule, such reference shall be to a Party to, a Section of, or an Exhibit or Schedule to, this Agreement, unless otherwise indicated. All terms defined in this Agreement shall have their defined meanings when used in any Exhibit or Schedule to this Agreement or any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. Whenever used in this Agreement, “business day” shall mean any day, other than a Saturday or a Sunday or a day on which banking and savings and loan institutions are authorized or required by applicable law to be closed in the State of Delaware. Whenever the words “include”, “includes”, “including” or “such as” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “or” when used in this Agreement is not exclusive. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”. Whenever used in this Agreement, any noun or pronoun shall be deemed to include the plural as well as the singular and to cover all genders. Any contract or statute defined or referred to herein means such contract or statute as from time to time amended, supplemented or modified, including (a) in the case of contracts, by waiver or consent and, in the

case of statutes, by succession of comparable successor statutes and (b) all attachments thereto and instruments incorporated thereby. The words “asset” and “property” shall be construed to have the same meaning and effect. References to a person are also to its permitted successors and assigns.

12.14 **Email; Counterparts.** This Agreement may be executed by email transmission and in counterparts, each of which shall constitute an original but together will constitute a single document.

[Signature Page Follows]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties have duly executed this Asset Purchase Agreement as of the date first above written.

BUYER:

HC2 STATION GROUP, INC.

By: Les Levi
Les Levi
Chief Operating Officer

SELLER:

RADIANT LIFE MINISTRIES, INC.

By: _____
Shane A. Chaney
Chief Financial Officer and Treasurer

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties have duly executed this Asset Purchase Agreement as of the date first above written.

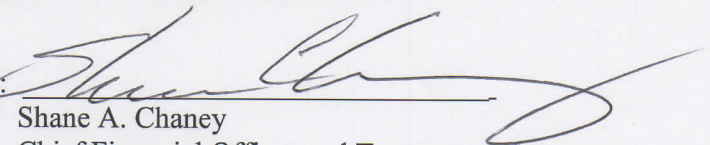
BUYER:

HC2 STATION GROUP, INC.

By: _____
Les Levi
Chief Operating Officer

SELLER:

RADIANT LIFE MINISTRIES, INC.

By:  _____
Shane A. Chaney
Chief Financial Officer and Treasurer

EXHIBITS

Exhibit A	Escrow Agreement
Exhibit B	Programming Agreement
Exhibit C	Tower Lease Agreement

SCHEDULES

1.1(a)	FCC & Other Governmental Authorizations
1.1(b)	Tangible Personal Property
1.1(c)	Assumed Contracts
1.1(d)	Intangible Property
1.2(f)	Excluded Personal Property
1.2(k)	Tower Site
3.5	FCC Complaints and Inquiries
3.6	Liens
3.8	Broker
3.10	Required Consents
3.14	Assumed Contract Defaults
3.16	Cable and Satellite Matters

Schedule 1.1(a)
FCC & Other Governmental Authorizations

Call Sign	Facility ID	Service	Community of License	Channel	Licensee
WJFB-TV	7651	Full Service TV	Lebanon, TN	44 (pre) 25 (post)	Radiant Life Ministries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on October 28, 2019, a copy of **DIRECTV, LLC'S ANSWER TO COMPLAINT FOR DENIAL OF CARRIAGE**, redacted to remove certain information for which DIRECTV has requested confidential treatment, was served upon those listed below. Following confirmation by counsel for HC2 that it has complied with 47 C.F.R. § 76.9(e), DIRECTV will promptly provide an unredacted copy of these materials.

HC2 Station Group, Inc.

via overnight delivery and via electronic mail on the following:

Jack N. Goodman
Law Offices of Jack N. Goodman
1200 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 776-2045
jack@jackgoodman.com


Matthew M. Duffy