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Federal Communications Commission
Office of Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In re Applications of)	MM DOCKET NO. 92-6
)	
NORMANDY BROADCASTING CORP.)	File No. BRH-910129UR
)	
For Renewal of License of)	
Station WYLR(FM) (95.9 MHz))	
Glens Falls, New York)	
)	
and)	
)	
LAWRENCE N. BRANDT)	File No. BPH-910430MB
)	
For a Construction Permit for)	
a New FM Station on 95.9 MHz)	
at Glens Falls, New York)	

To: The Commission

MOTION TO REOPEN RECORD AND ENLARGE ISSUES

Lawrence Brandt ("Brandt") by his attorney and pursuant to Sections 1.229 and 1.258 of the Commission's Rules hereby petitions to reopen the record in the above-captioned proceeding and to add the following issues with respect to Normandy Broadcasting Company ("Normandy"):

1. To determine whether Normandy has transferred control over Stations WYLR(FM) and WWSC(AM), to Calvin H. Carr without Commission consent in violation of Section 310(d) of the Communications Act of 1934, as amended;
2. To determine whether Normandy has failed to operate Stations WYLR and WWSC in the public interest;
3. To determine whether Normandy has failed to maintain a main studio for Stations WYLR and WWSC in compliance with the requirements of Section 73.1125 of the Commission's Rules.
4. To determine in light of the evidence adduced under the foregoing issues whether Normandy has the requisite qualifications to continue as the licensee of Station WYLR.

Background

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This case involves the application of Normandy for renewal of its license for Station WYLR(FM), Glens Falls, New York, and Brandt's mutually exclusive application for a new FM station to operate on WYLR's frequency. The case was designated for hearing on January 21, 1992, on issues which included the comparative issue and an issue

To determine whether the findings and conclusions about the character of Normandy in *Barry Skidelsky*, 6 FCC Rcd 2221 (ALJ 1991) should disqualify Normandy in the Glens Falls renewal proceeding.¹

After an evidentiary hearing, the ALJ issued an initial decision ("Initial Decision") in this case wherein he concluded that

Normandy is found to be unqualified as a Commission licensee and not entitled to a license renewal for Station WYLR(FM), Glens Falls, New York, because Normandy has failed to prove exculpation or mitigation from the adverse character violations found against in in [the Queensbury Proceeding] and that therefore Normandy is disqualified to own and/or operate WYLR(FM)

¹ This issue is quoted here as it read after it was modified by the ALJ to conform it to a ruling of the Review Board, 7 FCC Rcd 1392 (Rev. Bd 1992). The Board's ruling was in response to a petition for reconsideration of the Board's decision a comparative proceeding for a new FM Station in Queensbury, New York (the "Queensbury Proceeding"), 7 FCC Rcd 1 (Rev. Bd 1992), filed by the Mass Media Bureau wherein the Bureau had urged the Board to resolve to character issues with respect to Normandy that had been left unresolved in the that proceeding since resolution of those issues could be decisionally significant in this proceeding. In denying the Bureau's petition for reconsideration, the Review Board held that the misrepresentation issues that had been tried in the Queensbury Proceeding should not be relitigated in this proceeding, and directed the ALJ in this proceeding to frame an issue exactly as the Board had framed one in *Ocean Pines FM Broadcasting Partnership*, 4 FCC Rcd 3490 (Rev. Bd 1989) which would provide for the ALJ in this proceeding to decide the legal effect of the adverse character findings in the Queensbury Proceeding on Normandy's qualifications to continue as the licensee of WYLR.

because Normandy has not established that it can be relied upon to hereafter provide truthful and candid information to the Commission.

Normandy Broadcasting Corp., FCC 92D-72 released December 30, 1992.

Normandy and the Mass Media Bureau filed Exceptions to the Initial Decision. Brandt filed a Consolidated Reply to those Exceptions, and the Review Board held an oral argument in the case on April 30, 1993. Pursuant to time guidelines that were adopted by the Commission in its *Report and Order* in General Docket 90-264, 6 FCC Rcd 157 (1990), the Review Board should have issued a decision in this routine case involving only two applicants and limited issues before the end of June, 1993. However, when the Commission issued its Public Notice, FCC 94-41, freezing certain comparative proceedings on February 25, 1994 (the "Freeze Notice"), almost 14 months after the release of the ID and 10 months after oral argument, the Review Board still had not issued its decision in this case.

The Freeze Notice suspended all proceedings in comparative cases pertaining to comparative issues. However, the Notice explicitly stated that the Review Board was to continue to issue decisions "in cases in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case." In view of the ALJ's conclusion in the Initial Decision that Normandy was unqualified to continue as the licensee of WYLR, this case was exempt from the freeze and the Review Board should have proceeded to render a decision on the Exceptions to the

Initial Decision. However, rather than discharge this obligation, following the release of the Freeze Order, the Review Board remanded this case to a settlement judge.

On January 16, 1996, Brandt filed a Petition for Extraordinary Relief with the Review Board in which he requested that the Board reassume jurisdiction over this case from the settlement judge to whom it was assigned and rule on the Exceptions. The Board denied the petition. In doing so, it observed that

Brandt's request . . . fails to appreciate that the character findings in [the Queensbury Proceeding] were never affirmed on appeal . . . that it is inappropriate to give findings of an Initial Decision collateral estoppel effect where those findings have not actually been litigated to a final decision in which they were necessary to the outcome.²

The Board also explained its having sent the case to a settlement judge rather than issue a decision on the correctness of the ALJ's conclusion that Normandy was unqualified to remain the licensee of WYLR by noting that, after oral argument, it had "tentatively voted not to affirm the [disqualification of Normandy], but to resolve the case instead on the comparative

²This observation was directly at odds with the Board's clear instruction to the ALJ in its order cited at note 1, *supra*, not to relitigate the misrepresentation issues that were tried in the Queensbury Proceeding, but rather, to determine the legal effect of the adverse character findings in the Queensbury Proceeding on Normandy's qualifications to continue as the licensee of WYLR. The ALJ in this case had followed the Board's instruction to the letter. It remains Brandt's position that the Board should have ruled on the correctness of the ALJ's conclusion that the adverse character findings in the Queensbury Proceeding did disqualify Normandy from continuing as the licensee of WYLR. However, whether or not the Board should have rendered such a ruling is not at issue at this time.

factors."³

NEWLY DISCOVERED EVIDENCE⁴

On January 15, 1996, Normandy entered into a Time Brokerage and Asset Purchase Agreement (the "TBA") with one Calvin H. Carr ("Carr"). A copy of the TBA is attached as Exhibit A hereto. The TBA provides for Carr to program Station WYLR and its sister AM station, WWSC twenty-four hours per day, seven days per week, for 20 years, unless the purchase and sale of the stations which is provided for in the event the stations' licenses are renewed is consummated sooner. (TBA §3). Not only does the TBA not

³It is Brandt's position that a "tentative vote" not to uphold the disqualification of Normandy did not provide a justification for sending the case to a settlement judge, as a tentative vote is far short of a decision of the Board that the ALJ erred in disqualifying Normandy. If the Board believed that the ALJ had erred in holding Normandy unqualified, it should have issued a decision in which it explained wherein the ALJ had erred. Based upon the record of this case, Brandt submits that it would not have been possible for the Board to have written a reasoned decision holding that the misrepresentations that Normandy had been found guilty of in the Queensbury Proceeding were not disqualifying in this case.

⁴The information on which this Petition is based was gathered over the course of several months through the services of a private investigator retained by Brandt after information came to the attention of Brandt's communications counsel indicating that Normandy had abandoned control over WYLR and WWSC to Carr. Because of the nature of the information and the fact that it could only be gathered, over time, through the services of a private investigator, it was only after the evidence had been gathered and submitted to Brandt's communications counsel in its entirety that Brandt could be deemed to have come into the possession of the newly discovered evidence which serves as the basis for this petition. This point in time occurred on April 9, 1997, when Brandt's undersigned counsel received the Affidavits from Michael Seidel and Thomas Erdman attached hereto along with tape recordings of certain of the meetings at WYLR/WWSC referred to in the Mr. Erdman's Affidavit of so that the accuracy of the statements in Erdman's Affidavit could be confirmed. As this Petition is being filed within 15 days of April 9, it is timely.

contain the typical reservation of time by the licensee for the presentation of public service programming, but the TBA reflects that such a reservation of time was considered and even included in the original agreement, but was deleted by agreement of the parties.

Brandt, who is not a resident of the Glens Falls area, first learned of the existence of the TBA in late 1996. The same source that informed him of the TBA, also provided anecdotal information indicating that Normandy had turned all aspects of the operation of WYLR and WWSC over to Carr as the broker, and that Normandy had not employees at the station. Based upon this information, Brandt retained the services of a private investigator in the Glens Falls area, Michael Seidel ("Seidel"), to obtain first hand information concerning the operations of WYLR and WWSC under the TBA.

During the months of January and February, 1997, Seidel and an associate, Thomas A. Erdman ("Erdman") made numerous visits to the studios of WYLR/WWSC for the purpose of obtaining a copy of the TBA, copies of the stations' issues and programs lists, and other documents relating to the ownership and operation of the station and for the purpose of ascertaining the extent to which Normandy and its sole stockholder, Christopher Lynch were involved in the management and operations of the stations. Exhibits B and C hereto are Affidavits from Seidel and Erdman which set out the information that they gathered in the course of their visits to the stations and through face to face and telephone discussions with Lynch. Copies of the issues lists for

WYLR/WWSC which were provided to Erdman by Lynch are attached to Erdman's Affidavit.

The documents attached hereto establish the following facts:

- ▶ Normandy has turned over 100% of the air time on WYLR and WWSC to Carr as a time broker without any reservation of time for Normandy, as the licensee of the stations, to present public service programming to serve the needs of the stations' community of license.
- ▶ Although the TBA provides for Normandy to maintain control over the stations through the employment of a Station General Manager and a Chief Engineer (TBA §§ 8 & 10), Lynch, who is rarely if ever present at the stations and who does not maintain an office at the stations, fills both of these positions.⁵ (See Siedel Affidavit and Erdman Affidavit §7).⁶
- ▶ As Normandy has no employees other than Lynch who claims to wear the hats of Station Manager and Chief Engineer, and as Lynch is rarely if ever at the station, Normandy is in violation of the main studio rule. See, *Main Studio and Program Origination Rules (Clarification)*, 3 FCC Rcd 5024 (1988), *Jones Eastern of the Outer Banks, Inc.*, 6 FCC 3615 (1991), *reconsid.* 7 FCC Rcd 2335 (1992).
- ▶ The issues lists obtained from the WYLR/WWSC public file (i) do not list a single program responsive to issues as having been aired in any quarter since the

⁵Although Erdman states that Mr. Vega who was identified to Erdman and Seidel as the "station manager" told him that both he, Vega, and Jacobsen were paid by Normandy, this statement is clearly false as to Jacobsen who had already told Erdman that he, Jacobsen, was not on Normandy's payroll. The statement is probably also false as to Vega since, according to Jacobsen, Vega was "out making sales calls" when Erdman and Seidel arrived at the stations on January 8, 1997, and any sales calls would have been on behalf of the Broker, not Normandy, as Normandy had no time on the stations to sell. Thus, Vega too is obviously employed by the broker, not Normandy.

⁶The statements that Lynch made to Erdman and Seidel are admissions against interest and, as such, cannot be dismissed as hearsay.

first quarter of 1991⁷ and (ii) were obviously fabricated to comply with the request for the lists as they are identical copies except that the periods supposedly cover have been written over the date which appeared on the original list from which they were copied and the lists for the 3rd and 4th quarters of 1996 and the 1st quarter of 1997 supplemental sheets which are identical except for the crude dating.

The Record Must Be Reopened

The Affidavits and other documents attached hereto establish a *prima facie* case that (i) Normandy and Lynch have abandoned control over stations WYLR and WWSC to the broker/purchaser of the stations, Carr, (ii) Normandy has abdicated its responsibility to present programming over WYLR and WWSC to address the needs and issues of the stations' community of license and service areas, and (iii) Normandy has not presented a single program over either station responsive to an issue that it has identified as significant since at least 1991. The Affidavits and other documents attached hereto also establish a *prima facie* case that Normandy is not in compliance with the requirements of Section 73.1125 of the Commission's Rules relating to the maintenance and staffing of a main studio, or Section 73.3526(9) relating to the maintenance of issues/programs lists and that Normandy has fabricated "issues lists" in an awkward and futile attempt to hide its non-compliance with the latter requirement.

⁷In the Initial Decision, the ALJ found that Normandy had been in non-compliance with Section 73.3526(9) of the Commission's rules which requires stations to maintain lists of programs aired in response to community issues and observed that "[t]he arrogance of non-compliance is most graphically illustrated by the total absence of reporting in 1984 and 1985 when there were absolutely no FM programs." Initial Decision ¶72. What the ALJ so aptly referred to as the "arrogance of non-compliance" has continued throughout the current renewal period.

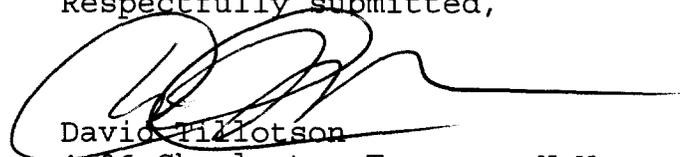
The abdication of control over a broadcast station not only is a direct violation of Section 310(d) of the Communications Act of 1934, as amended, but it violates the well established principle that broadcast licensees, as public trustees, must maintain ultimate control over the management, programming and operations of their stations. Abdication of control has long been held to be a grounds for denying or revoking a broadcast license. See, e.g., *Fresno FM LP*, 6 FCC Rcd, 1570 (1991); *Cosmopolitan Broadcasting Company*, 59 FCC 2d 558 (1978), *aff'd* 581 F2d 917 (D.C. Cir. 1978), *cert. denied* __ U.S. __ (1979); *Lorraine Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). Moreover, although the Commission has retreated from its position in *Cosmopolitan* that extensive time brokerage, *per se*, amounts to an abdication of licensee control, it has emphasized that its post-*Cosmopolitan* acceptance of extensive time brokerage "does not diminish the licensee's ultimate responsibility for programming broadcast over his facilities." *Time Brokerage Agreements*, 45 RR 2d 763, 765. The degree to which Normandy has relinquished control over WYLR/WWSC is as great, if not greater, than the degree to which the applicant who was disqualified in *Fresno FM LP*, *supra*, for abandoning control to a time broker. Like the situation in *Fresno FM LP*, Lynch's arrangements with his broker has "crossed the line from . . . an excusable lack of adequate oversight to a *de facto* transfer of control, an offense of first magnitude."

Normandy, like the licensee in *Fresno FM*, is a licensee in name only, with "control (if any) over core licensee responsibilities in the hands of [its] paying spectrum tenant."

In view of the fundamental place that the concept of licensee control continues to hold in the Commission's regulatory policies for the broadcast industry, the Commission should promptly grant this motion so that a full record can be developed regarding the extent of Normandy's abandonment of control over WYLR and WWSC and, if the evidence establishes that Normandy has abdicated control, the license for WYLR can be terminated and a new license for the station's frequency can be awarded to Brandt.

WHEREFORE, for the foregoing reasons, this Motion should be granted, the record should be reopened for further hearings on the issues as to Normandy's qualifications to continue as the licensee of WYLR set out above.

Respectfully submitted,



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Attorney for Lawrence Brandt

Dated: April 16, 1997

EXHIBIT A

TIME BROKERAGE AND ASSET PURCHASE AGREEMENT

This Time Brokerage and Asset Purchase Agreement ("Agreement") is entered on JAN 15, 1996, by and between Normandy Broadcasting Corp. ("Licensee"), the licensee of radio Stations WWSC and WYLR (FM), Glens Falls, New York (collectively "Stations"), and Calvin H. Carr ("Broker").

Whereas, Licensee is engaged in the business of radio broadcasting on the Stations pursuant to licenses issued by the Federal Communications Commission (the "Commission") and has available broadcasting time on the Stations;

Whereas, Broker desires to avail itself of Stations' broadcast time for the presentation of programming service, including the sale of advertising time;

Whereas, Licensee desires to sell to Broker and Broker agrees to purchase from Licensee certain assets used in the operation of the Stations (including the licenses issued by the Commission) upon (continued on page 2)

certain terms and conditions, including the prior approval of the Commission; and

WHEREAS, the 1991 license renewal application of Station WYLR(FM) (BRH-910129UR) was denied in the Initial Decision of Commission Administrative Law Judge Richard L. Sippel (FCC 92D-72, released December 30, 1992), and an appeal from that decision is currently pending before the Commission's Review Board, and the 1991 license renewal application of Station WWSC (BR-910129UO) is currently pending before the Commission;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, have agreed and do agree as follows:

1. Facilities. Licensee agrees to make broadcasting transmission facilities of the Stations available to Broker and to broadcast on the Stations, or cause to be broadcast, Broker's programs which may originate either from Broker's studios or from Licensee's studios. The programs to be broadcast are described in Attachment I hereto. The compensation to be paid to Licensee for the programs shall be as set forth in Attachment II hereto. Broker

and Licensee represent to each other that they have, and will have throughout the term of this Agreement, the capability of transmitting either by STL or phone lines from their respective broadcast and transmission studios.

2. Payments. Broker hereby agrees to pay Licensee for the broadcast of the programs hereunder the amounts specified in Attachment II on a monthly basis. Payment for programs are due and payable in full five (5) days following the end of the preceding broadcast month. The failure of Licensee to demand or insist upon prompt payment in accordance herewith shall not constitute a waiver of its right to do so. Broker shall receive a payment credit for any programming produced by it and not broadcast by either or both of the Stations, such credit to be determined by multiplying the total monthly payment due by the ratio of the amount of time preempted or not accepted to the total number of broadcast hours made available for broadcast by Broker each month. In making such calculations, it shall be assumed that the monthly payment attributed to WWSC shall be fifty percent (50%) of the total specified in Attachment II and that the monthly payment for WYRL shall be the remaining fifty percent (50%) of said amount.

3. Term. The term of this Agreement shall commence on the Effective Date as provided in Section 29, below, and shall be for a period of ~~ten~~ ^{twenty (20) years} from the effective date of this Agreement as hereinafter specified, unless terminated by one of the parties as provided herein and except, however, that this Agreement shall automatically terminate upon the consummation of any assignment of the Commission licenses for the Stations from Licensee to Broker as contemplated under Section 19, below.

4. Programs. Broker shall furnish or cause to be furnished the artistic personnel and material for the programs as provided by this Agreement and all programs shall be in good taste and in accordance with Commission requirements. All programs shall be prepared and presented in conformity with the regulations prescribed in Attachment III hereto. All advertising spots and promotional material or announcements shall comply with all applicable federal, state and local regulations and policies and shall be produced in accordance with quality standards established by Broker.

5. The Stations' Facilities.

5.1. Operation of Stations. The Stations operate in accordance with the authorizations issued to the Licensee by the Commission, with an effective radiated power of 1.0 kilowatt for WWSC (from an antenna mounted such that its center of radiation is _____ meters above average terrain located at _____), and an effective radiated power of ~~240~~^{3,000} watts for WYLR (from an antenna mounted such that its center of radiation is _____ meters above average terrain located at _____). Throughout the term of this Agreement, Licensee shall make the Stations available to the Broker for operation with the maximum authorized facilities twenty-four hours a day, seven days a week, except for downtime occasioned by routine maintenance (not to exceed two hours each Sunday morning ~~between the hours of 12 Midnight and 6:00 a.m.) and as much as one hour each Sunday morning during the period 6:00 a.m. - 10:00 a.m., which the Licensee shall use for purposes of presenting public service programming.~~ Any maintenance work affecting the operation of the Stations at full power shall be scheduled upon at least forty-eight hours prior notice with the agreement of the Broker, such agreement not to be unreasonably withheld.

OPK
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5.2. Interruption of Normal Operations. If WWSC and/or WYLR suffer loss or damage of any nature to its transmission facilities which results in the interruption of service or the inability of either station to operate with its maximum authorized facilities, Licensee shall immediately notify Broker, and shall undertake, at its sole expense (unless the loss or damage is caused by the negligence or malfeasance of the Broker), such repairs as necessary to restore the full-time operation of the affected station(s) with its maximum authorized facilities within seven days from the occurrence of such loss or damage. If such repairs are not made within the allotted period, Broker may give notice to Licensee of Broker's intention to terminate this Agreement, in which event this Agreement shall terminate on the tenth day following such notice, any other provision of this Agreement notwithstanding.

6. Handling of Mail. Except as required to comply with Commission rules and policies, including those regarding the maintenance of the public inspection file (which shall at all times remain the responsibility of Licensee), Licensee shall not be required to receive or handle mail, cables, telegraph or telephone

calls in connection with programs broadcast hereunder unless Licensee at the request of Broker has agreed in writing to do so.

7. Programming and Operations Standards. Broker agrees to abide by the standards set forth in Attachment III in its programming and operations. Broker further agrees that if, in the sole judgment of Licensee or the Stations' General Manager, Broker does not comply with said standards, Licensee may suspend or cancel any program not in compliance.

8. Responsibility for Employees and Expenses. Broker shall employ and be responsible for the salaries, taxes, insurance and related costs for all personnel used in the production of its programming (including salespeople, traffic personnel, board operators and programming staff). Licensee will provide and be responsible for the personnel necessary for the over-all control of the Stations and the production and broadcast transmission of Licensee's programs (specifically including, without limitation, the Station General Manager and Chief Engineer), and will be responsible for the salaries, taxes, insurance and related costs for all the Stations' personnel used in the broadcast transmission of Broker's programs. Whenever on the Station's premises, all

personnel shall be subject to the supervision and the direction of Licensee's General Manager and/or Chief Engineer. Licensee shall be responsible for the payment of its income taxes, all property taxes on assets used in the operation of the Stations, slander/defamation insurance, damage insurance on all assets of the Stations, all Commission fees and assessments, and utilities of all kinds. Licensee shall be entitled to no specific compensation for Broker's use of the Stations' studio site, WWSW transmitter site, or WYLR transmitter site, which Licensee shall make available to Broker. Broker shall pay for all telephone calls associated with program production and listener responses, for all fees to ASCAP, BMI and SESAC, and for any other copyright fees attributable to its programming broadcast on the Stations.

9. Advertising and Programming Revenues. Broker shall retain all revenues for the sale of advertising time on the programs it delivers to the Stations and may sell such advertising in combination with the sale of advertising on by any other broadcasting stations of its choosing.

10. Operation of Stations. Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority and power over the operation of the Stations during the period of this Agreement. Licensee shall provide and pay for the General Manager and Chief Engineer for the Stations, who shall report solely to and be accountable solely to Licensee and who shall direct the day-to-day operation of the Stations. Licensee shall retain control, to be reasonably exercised, over the policies, programming and operations of the Stations, including, without limitation, the right to decide whether to accept or reject any programming or advertisements, the right to preempt any programs in order to broadcast a program deemed to be by Licensee to be of greater national, regional, or local interest than programming offered by the Broker, and the right to take any other actions necessary for compliance with the laws of the United States; the State of New York; the rules, regulations, and policies of the Commission (including the prohibition on unauthorized transfers of control); and the rules, regulations and policies of other federal governmental authorities, including the Federal Trade Commission and the Department of Justice. Licensee shall at all times be solely responsible for ascertaining community issues and needs, for meeting all of the Commission's requirements with respect to

presentation of local public service programming, for maintaining the political and public inspection files and the Stations' log, and for the preparation of programs/issues lists. Broker shall, upon request by Licensee, provide Licensee with information with respect to such of Broker's programs which are responsive to public needs and interest so as to assist Licensee in the preparation of required issues/programming reports, and will provide upon request other information to enable Licensee to prepare other records, reports and logs required by the Commission or other local, state or federal governmental agencies. Licensee shall be solely responsible for reviewing and processing all requests for political advertising and for complying with the Commission's regulations regarding political broadcasts.

11. Special Events. Licensee reserves the right, in its discretion, to preempt any of the broadcasts of the programs referred to herein, and to use part or all of the time contracted for herein by Broker for the broadcast of events of special importance. In all such cases, Licensee will use its best efforts to give Broker reasonable notice of its intention to preempt such broadcast or broadcasts, and, in the event of such preemption,

Broker shall receive a payment credit for the broadcasts so omitted.

12. Force Majeure. Any failure or impairment of the Stations' facilities or any delay or interruption in broadcasting programs, or the failure at any time to furnish facilities, in whole or in part, for broadcasting, due to acts of God, strikes, or threats thereof, force majeure, or to causes beyond the control of Licensee, shall not constitute a breach of this Agreement, and Licensee will not be liable to Broker, except to the extent of allowing in each such case an appropriate payment credit for time not provided or broadcasts not carried based upon a pro rata adjustment to amount due as specified in Section 2, calculated upon the length of time during which the failure or impairment exists or continues.

13. Right to Use the Programs. The right to use the programs produced by Broker and to authorize their use in any manner and in any media whatsoever shall be, and remain, vested solely in Broker.

14. Payola. Broker agrees that it will not accept any compensation or any kind of gift or gratuity of any kind

whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, materials, supplies or other merchandise, services or labor, whether or not pursuant to written contracts or agreements between Broker and merchants or advertisers, unless the payer is identified in the program as having paid for or furnished such consideration in accordance with Commission requirements. Broker agrees annually, or more frequently upon the request of Licensee, to execute and provide Licensee with a Payola Affidavit, substantially in the form attached hereto as Attachment IV.

15. Compliance with Law. Broker agrees that, throughout the term of this Agreement, Broker will comply with all laws and regulations applicable in the conduct of Licensee's business including those of the Commission, and Broker acknowledges that Licensee has not urged, counseled, or advised the use of any unfair business practice.

16. Indemnification; Warranty. Broker will indemnify and hold Licensee harmless against all liability for libel, slander, illegal competition or trade practice, infringement of trade marks, trade names, or program titles, violation of rights of privacy, and

infringement of copyrights and proprietary rights resulting from the broadcast of programming furnished by Broker. Further, Broker warrants that the broadcasting of its programs will not violate any rights of others and Broker agrees to hold Licensee, the Stations, and their respective officers, directors, agents, stockholders, employees, and subsidiaries, harmless from any and all claims, damages, liability, costs and expenses, including reasonable attorneys' fees, arising from the broadcasting of such programs. Licensee reserves the right to refuse to broadcast any and all programs containing matter which is, or in the reasonable opinion of Licensee may be, or which a third-party claims to be, violative of any right of theirs or which may constitute a personal attack as the term is and has been defined by the Commission. Broker's obligation to hold Licensee harmless against the liabilities specified above shall survive any termination of this Agreement until the expiration of all applicable statutes of limitation.

17. Events of Default; Cure Periods and Remedies.

17.1 Events of Default. The following shall, after

17.1.1. Non-Payment. Broker's failure to timely pay the consideration provided for in Section 2 hereof;

17.1.2. Default in Covenants or Adverse Legal Action. The default by either party hereto in the material observance or performance of any material covenant, condition or agreement contained herein, or if either party shall (a) make a general assignment for the benefit of creditors, (b) files or has filed against it a petition for bankruptcy, for reorganization or an arrangement, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which, if filed against such party, has not been dismissed or discharged within 60 days thereof; or

17.1.3. Breach of Representation. If any material representation or warranty herein made by either party hereto, or in any certificate or document furnished by either party to the other pursuant to the provisions hereof, shall prove to have been false or misleading in any material respect as of the time made or furnished.