

Subscribed and sworn to before me

this 24 day of Nov, 1997

W. Patrick Bushman

Notary Public, **W. PATRICK BUSHMAN**  
Notary Public, State of New York  
Warren County, No. 5170518525  
My Commission Expires Nov. 30, 19--

My commission expires: Nov 30, 1997

**TIME BROKERAGE AGREEMENT**

**ATTACHMENT IV**  
**ASSET PURCHASE AGREEMENT**

Date: 30 October, 1997

**ASSET PURCHASE AGREEMENT**

By and Between

**NORMANDY BROADCASTING CORPORATION**  
and

**ENTERTRONICS, INC.**

for

**WWSC(AM) AND WYLR(FM), Glens Falls, New York**

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ASSET PURCHASE AGREEMENT

This Agreement dated this 30<sup>th</sup> day of October, 1997, by and between: (1) Normandy Broadcasting Corporation (herein referred to as "Seller"), and (2) Entertronics, Inc. (herein referred to as "Buyer").

WHEREAS, Seller holds valid, current, and unexpired licenses issued by the Federal Communications Commission (herein referred to as "FCC" or "Commission") for WWSC(AM) and WYLR(FM), Glens Falls, New York (herein referred to as the "Stations"); and

WHEREAS, Seller is desirous of selling and assigning Stations to Buyer, and Buyer is desirous of buying and acquiring Stations from Seller;

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants contained herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

1. Assets Sold and Purchased. Subject to the approval of the FCC and to the terms and conditions hereof, Seller agrees to sell and Buyer agrees to purchase the following assets, all of which Seller agrees are free and clear of any and all liens and encumbrances of any nature whatsoever:

a. FCC Authorizations. All FCC authorizations for operation of Stations as listed in Exhibit A, and hereby incorporated herein.

b. Physical Assets. All property and equipment listed in Exhibit B, hereby incorporated herein, which shall be sold and assigned to Buyer by Seller free and clear of all liens and encumbrances whatsoever.

c. Technical Data. All of Seller's schematics, blueprints, engineering data, and other technical information pertaining to the construction and/or operation of the Stations.

d. Cash. No cash or bank deposits of Seller are to be sold or assigned hereunder; and the same are expressly excluded from this Agreement.

e. Antenna Site Lease. The right to use the antenna site specified in the Stations' license (herein "the Premises") in accordance with the terms and conditions set forth in the Agreements attached hereto in Exhibit C.

f. Intangible Assets. Rights Seller may have, including but not limited to, to call letters of Stations and any promotional use thereof.

g. Assumed Liabilities. Buyer assumes none of Seller's liabilities except for those liabilities listed in the attached Exhibit D.

h. Accounts Receivable. All of Seller's Accounts Receivable due on the date of Closing shall be assigned to Buyer. A List of the Seller's current accounts receivable, and the amount due upon execution of this Agreement, is attached as Exhibit E.

i. Contractual Obligations. Except for the contractual obligations for the Premises, the Buyer shall assume none of Seller's contractual obligations of the Seller except for those agreements attached in Exhibit F.

2. Amount of Purchase Price. In consideration for the sale, assignment, and conveyance to it of the assets listed above, Buyer

*ACM*



*Two Hundred Seventy Five Thousand*

agrees to pay Seller approximately ~~One Hundred Thousand Dollars~~

*275,000*  
~~(\$100,000.00)~~

as set forth in paragraph 3.a. below, subject to the below listed prorations and adjustments:

a. Taxes. Any sale, use or transfer taxes, if applicable to the purchase and sale contemplated hereby, shall be divided equally by the Buyer and Seller.

b. Prorations. Any and all taxes and assessments of any nature and kind, if any, shall be prorated as of 12:00 midnight of the Closing Date.

3. Payment of Purchase Price.

a. At Closing. The Purchase Price specified in herein shall be paid by Buyer to Seller on the Closing Date specified in paragraph 5, infra.

b. Payment. At Closing Buyer shall pay Seller ~~One Hundred Thousand Dollars (\$100,000.00)~~ *Two Hundred Fifty Thousand Dollars plus Twenty Five Thousand dollar cash on hand.*

*250,000*

4. FCC Approval.

*(25,000)*

a. FCC Approval Required. Consummation of the purchase and sale provided for herein is conditioned upon the FCC having given its consent in writing, without any condition materially adverse to Buyer or Seller, to the assignment from Seller to Buyer of all FCC authorizations of Seller relating to the operation of the Stations.

b. Filing of Application. The parties agree to proceed as expeditiously as practical, to file or cause to be filed applications requesting FCC consent to the transaction herein set forth, and to file said application (i.e., FCC Form 314 or

successor form of similar import) all as set forth in section 22 of the Time Brokerage Agreement between the parties. The parties agree that said Application will be prosecuted in good faith and with due diligence. Each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of the assignment application, and all fees paid to the FCC in connection with the assignment of Stations' authorizations from Seller to Buyer will be borne by Buyer.

5. Closing Date and Place. The Closing shall take place no less than five nor more than 15 days after the date the FCC gives its written consent to the assignment ( The "Closing Date") at a location to be agreed upon by the parties.

6. Seller's Representations and Warranties. Seller represents, warrants, and covenants as follows:

a. Authority of Seller. Seller is a corporation and is fully licensed and authorized by all required governmental agencies to conduct his business and operate the Stations.

b. Seller's Authority. Except as specifically stated in this Agreement, Seller has full power and authority to sell, transfer, assign, and convey all property herein being sold and assigned, and to execute, deliver and perform this Agreement.

c. Seller Holds Current and Valid FCC Authorizations. Seller has the power and authority to own and operate the Stations and the business and properties related thereto and holds, and on the Closing Date will hold, current and valid authorizations from the FCC which are necessary for Seller to own and operate the

Stations. No action or proceeding is pending or, to the knowledge of the Seller, threatened, or on the Closing Date will be threatened or pending, before the FCC or other governmental or judicial body, for the cancellation, or material and adverse modification, of Stations' authorizations except rulemaking proceedings of general applicability.

d. No Material Default in Contractual Commitments.

Seller is not, and on the Closing Date will not be, in material default of any contractual commitment to which it is a party, or by which it is bound, and which is to be assigned to and assumed by Buyer.

e. Good Title to Properties. Seller has, and on the Closing Date will have, clear title and ownership, free of all liens, encumbrances or hypothecation, of all assets and property, and rights being assigned to Buyer hereunder.

f. Claims and Litigation. There is no claim or litigation or proceeding pending or, to the Seller's knowledge, threatened, <sup>as excepted set forth in Schedule A CPL</sup> which affects the title or interest of Seller to or in any of the property or assets intended to be sold, assigned, and conveyed hereunder.

g. Antenna Site. The Stations are operating in full compliance with all FCC licenses, rules, regulations and policies, and that it knows of no violations, investigations or any facts which could reasonably lead to a change in its current status or a loss of its current antenna site. Any such violations, investigations or facts will be conveyed to Buyer immediately upon

execution of this Agreement or as soon as they are learned thereafter.

h. Disclosure. No representation or warranty made by Seller in this Agreement, or any statement or certificate furnished to or to be furnished by the Seller to Buyer pursuant hereto, or in connection with the transactions contemplated hereby contains, or will contain any untrue statement of a material fact or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

7. Buyer's Representations and Warranties. Buyer represents, warrants, and covenants to Seller as follows:

a. Buyer's Authority. Buyer is a New York corporation and not disqualified by law or limited by pre-existing contract or agreement from owning or operating the Stations.

b. Cooperate with Lessor. Buyer shall cooperate with Seller and Lessor in good faith to secure Lessor's approval of the assignment of the antenna site lease to Buyer.

c. Disclosure. No representation or warranty made by Buyer in this Agreement, or any statement or certificate furnished to, or to be furnished by, Buyer to Seller pursuant hereto, or in connection with the transaction contemplated hereby, contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained therein not misleading.

8. Risk of Loss. Risk of loss, damage, or destruction to the property and assets to be sold and conveyed hereunder shall be upon

the Seller until the Closing Date, and after Closing is consummated upon the Buyer.

9. **Brokers.** Buyer and Seller hereby represent and warrant to the other that neither is bound or obligated to pay any sales commission, brokers or finders fees in connection with the transaction contemplated herein. Buyer shall hold Seller harmless from the claims of any broker claiming that said broker has provided services to the Buyer with respect to the purchase of these Stations. Seller shall hold Buyer harmless from the claims of any broker claiming that said broker has provided services to the Seller with respect to the sale of these Stations.

10. **Indemnification by Seller.** Seller shall indemnify and hold harmless Buyer against and in respect of:

a. **Operations Prior to Closing.** Any and all liabilities, obligations, claims, and demands arising out of: the right to own or operate the Stations (including, but not limited to, claims related to compliance with FCC rules and regulations), any breach by Seller of this Agreement, or any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein.

b. **Defense.** Should any claim covered by the foregoing indemnity be asserted against Buyer, Buyer shall notify Seller promptly and give it an opportunity to defend the same and Buyer shall extend reasonable cooperation to Seller in connection with such defense. In the event that Seller fails to defend the same within a reasonable time, Buyer shall be entitled to assume, but

12. Conditions Precedent to Buyer's Obligations to Close.

Buyer shall not be obligated to close under this Agreement unless and until the following conditions precedent have been met:

a. The FCC shall have given its consent in writing to the assignment of FCC authorizations to operate the Stations from Seller to Buyer without any material adverse conditions to the Buyer.

b. Seller shall have performed and complied with all the agreements, obligations, and conditions required by this Agreement to be performed or complied with by it, prior to or as of the Closing Date.

c. Seller shall hold a valid, current, and unexpired license for the Stations.

d. Lessor of the Premises shall have consented to the assignment of the antenna site lease to Buyer.

e. The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

13. Conditions Precedent to Seller's Obligations to Close.

Seller shall have no obligation to close under this Agreement unless and until the following conditions precedent are met:

a. The FCC has given its consent in writing to the assignment of the FCC authorizations to operate the Stations from Seller to Buyer with no material adverse conditions to Seller.

b. The representations and warranties of Buyer as set

forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

c. Buyer shall have performed and complied with all the agreements, obligations, and conditions required by this Agreement to be performed or complied with by it, prior to or as of the Closing Date.

14. Buyer's Performance at Closing. At the Closing, Buyer will:

a. Pay to Seller the purchase price specified in paragraph 2 herein.

b. Deliver to Seller such instruments as Seller may reasonably require in order to consummate the transactions provided for in this Agreement.

15. Seller's Performance at Closing. At the Closing, Seller shall:

a. Deliver to Buyer the FCC authorizations listed in Exhibit A, together with such assignments of the same as Buyer may reasonably require.

b. Deliver to Buyer such assignments, bills of sale, general instruments of transfer, and further instruments of conveyance as Buyer may reasonably require to effectuate the assignment from Seller to Buyer of the Stations and the assets being transferred and assigned herein.

16. Survival of Warranties. All representations, warranties, and covenants made by the parties in this Agreement shall be deemed

made for the purpose of inducing the other to enter into this Agreement and shall survive the Closing and remain operative in full force and effect following Closing for as long as applicable.

17. No Assignment. Neither party may assign This Agreement without the other party's prior written consent, except for assignments by Buyer to an organization or entity de facto controlled by Buyer, as such controlled is defined by the rules, regulations and policies of the FCC.

18. Term.

a. Term of Agreement. This Agreement shall be in effect for a term commencing on the date of this Agreement and terminating nine months later. In the event the Closing of this transaction shall not take place within the time limit hereinabove set forth solely by reason of the inability of Seller or Buyer to provide the various consents and approvals as set forth in paragraph 4 herein, then this Agreement shall automatically terminate and both parties shall be relieved of any further liability or obligations hereunder, unless extended by mutual consent.

b. Termination on Notice for Hearing. If the Commission designates the application contemplated by this Agreement for hearing either party shall have the option of terminating this Agreement by written notice to the other party prior to the commencement of the hearing, and in such an event this Agreement shall terminate at the option of either party and both parties shall then be relieved of any and all liabilities or

obligations hereunder.

19. Specific Performance and Remedies. The parties recognize the uniqueness of the Stations and their assets, authorizations, and attributes that are associated with its operation, and for that reason agree that Buyer shall have the right to specific performance of this Agreement upon default of Seller. Election by Buyer of this equitable right of specific performance shall not be in lieu of any claim to damages.

20. Termination for Breach.

a. Breach. Either party may terminate this Agreement for a breach of the Agreement or of a warranty and/or representation made in the Agreement by giving written notice of the termination to the breaching party, provided, however, that the breaching party has received written notice of the breach which is not cured within 15 days after receiving notice of the breach.

b. Venue/Damages. Any litigation initiated concerning this Agreement shall be brought in a court of competent jurisdiction in New York. The prevailing party in any such litigation shall be entitled to be reimbursed for reasonable attorney's fees, expenses and disbursements expended in connection with the litigation.

21. Notices. Any notices, requests, demands, or consents required or permitted to be given hereunder shall be in writing, sent by certified or registered mail, postage prepaid, or by prepaid telegram, confirmed by mail, as follows:

If to Seller:

Christopher Lynch  
Normandy Broadcasting Corporation  
P.O. Box 24  
Glens Falls, NY 12801

If to Buyer:

David Covey  
Entertronics, Inc.  
128 Glen Street  
Glens Falls, NY 12801

With Copy to:

Joseph E. Dunne III, Esq.  
Attorney At Law  
Suite 300  
150 E. Ninth Street  
Durango, CO 81301

or to such other addresses as either party may designate from time to time by written notice to the other party.

22. Further Assurances. Each of the parties hereto shall execute and deliver to the other party hereto such other instruments as may be reasonably required in connection with the performance of this Agreement.

23. Construction. Except as governed by federal law, this Agreement shall be construed and enforced in accordance with the laws of the state of New York.

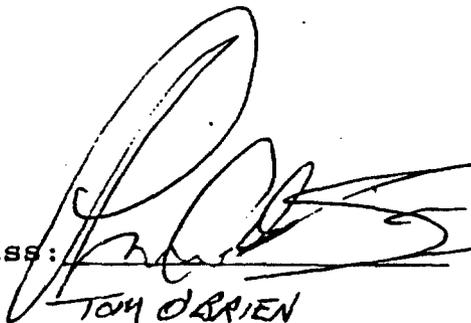
24. Entire Agreement. This Agreement supersedes all prior agreements and understandings between the parties and may not be changed or terminated orally, and no attempted change, termination, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties.

25. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement.

26. Interpretation. Each party has cooperated in the drafting and preparation of this Agreement. Accordingly, any construction to be made in this Agreement shall not be construed against any party on the basis of that party being the "drafter."

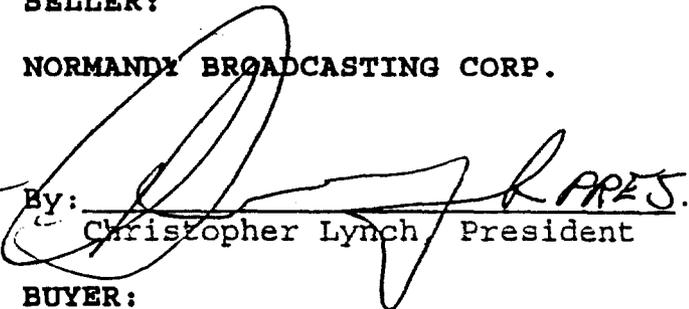
27. No Retained Interest. The parties warrant that this agreement is the only agreement between them regarding the Stations. Seller shall have no retained interest in the Stations or FCC license, and both parties warrant compliance with FCC Rule 73.1150.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Witness:   
TOM O'BRIEN

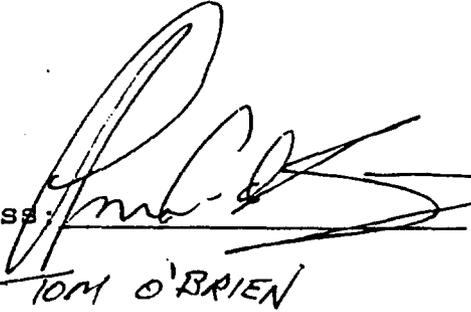
SELLER:

NORMANDY BROADCASTING CORP.

By:   
Christopher Lynch, President

BUYER:

ENTERTRONICS, INC.

Witness:   
TOM O'BRIEN

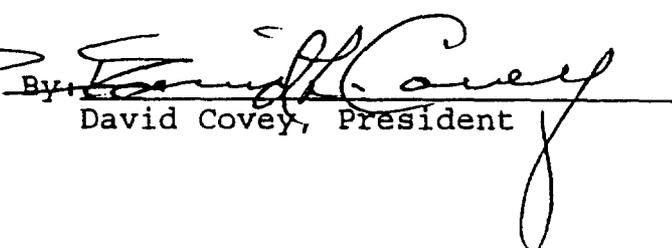
By:   
David Covey, President

EXHIBIT B

VERIFIED STATEMENT OF DAVID COVEY

## VERIFIED STATEMENT

I, David Covey, make the following statement under penalty of perjury under the laws of the State of New York and the United States of America.

1. I am the president of Entertronics, Inc. ("Entertronics"). Entertronics has been on-the-air on FM station WCKM, Lake George, New York since April 21, 1994.

2. Entertronics has signed a "Time Brokerage and Asset Purchase Agreement" concerning radio stations WWSC(AM) and WYLR(FM), Glens Falls, New York, with Normandy Broadcasting Corp.

3. I am a native of Glens Falls. I have been working as a broadcaster in Glens Falls since 1965, when I went to work for Normandy Broadcasting Corp., when it was owned by Mr. Lynch's father, John B. Lynch, as an announcer on WWSC(AM). I worked at WWSC until June, 1993, as an announcer, salesman, chief engineer and, finally, as WWSC's station manager.

4. I am proud of the record of local service that Entertronics has compiled in a short license term as a new broadcaster. WCKM is an active and supportive member of the Glens Falls community. For example, every year we donate the time and are co-host for the annual telethon for the Glens Falls Symphony. Likewise, we donate the time for the annual telethon for the Prospect Child and Family Center in Glens Falls. I have been an honorary member of the Marine Corp League for 15 years, and every year we provide PSAs and free time to promote the Marine Corp

League's "Toys for Tots" project every Christmas. WCKM has supported a local Glens Falls area charity, "Operation Santa Claus," to the point that leaders of the organization credit us with raising one-third of their yearly budget. We provide free time and other support to the Lower Adirondack Regional Arts Council ("LARAC"), the only formal arts council in this radio market. We give free time to, provide PSAs for, and otherwise support a number of other non-profit community organizations that list our station as their primary media sponsor.

5. For example, every year we have endorsed and supported the Annual Walk for Juvenile Diabetes in Glens Falls. Indeed, over the last few years we have solicited donations from our sponsors so that the station can cover as a remote "event" certain community activities, such as the Annual Walk for Juvenile Diabetes, and the collection efforts for the homeless by the local Salvation Army, which publicize and generate support for these community organizations.

6. The programming on WCKM, which Entertronics now pays to carry on WWSC and WCQL, includes a heavy dose of issue responsive local programming. Community leaders and governmental figures in Glens Falls and the area are often guests on WCKM's morning show, "Morning Club." Even during weekday drive-time WCKM has a heavy dose of public affairs programming.

7. On Sunday morning we are proud of our line-up of local issue responsive programming. The first program broadcast is "Insight," which is hosted by the WCKM news director, Jim Scott, who

has a 40 year career in the Albany and Glens Falls radio market. This focus of this show is on local newsmakers and community leaders who discuss current community issues. Our next show is "Trends and Issues," a show devoted to airing opinions on local issues which have arisen during the preceding week, hosted by Claire Griffith, a local educator. WCKM also broadcasts a Sunday show entitled "WCKM Arts on the Air," which gives listeners news and insight about local arts and cultural events which is hosted by an educator with 25 years of experience, Sue Ford.

8. Both me and many members of Entertronics staff are broadcasters with a long connection to the community. We bring that regard for the community into our programming decisions, and in our support for many organizations in the community.

  
David Covey

Executed on this 29<sup>th</sup> day of January, 1998.

EXHIBIT C

SETTLEMENT AGREEMENT

## SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 30<sup>th</sup> day of January 1998, by and between Normandy Broadcasting Corp. ("Normandy") and Lawrence N. Brandt ("Brandt"), and Entertronics, Inc. (Entertronics).

WHEREAS, Normandy has on file before the Federal Communications Commission (the "Commission" or the "FCC") an application seeking the renewal of the license for FM broadcast station WCQL, Glens Falls, New York (BRH-910129UR); and

WHEREAS, Brandt has on file with the FCC a mutually exclusive application for 95.9 MHz in Glens Falls, New York (BPH-910430MB); and,

WHEREAS, Entertronics has entered into a "Time Brokerage and Asset Purchase Agreement" with Normandy which provides that Entertronics has the right to purchase WCQL should Normandy's renewal application be granted; and

WHEREAS, Normandy's and Brandt's applications have been through a hearing, an Initial Decision, and the case is presently on appeal pending before the Commission; and

WHEREAS, the parties to this Agreement believe that the dismissal of Brandt's application will serve the public interest by allowing the expeditious grant of Normandy's renewal application, ending the seven years of uncertainty that has hung over the authorization, and permitting the prompt assignment of the Stations to Entertronics, Inc., a fully qualified local broadcaster.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and subject to the approval of the Commission, the parties hereto agree as follows:

1. Dismissal of Application. Subject to the terms and conditions of this Agreement, Brandt agrees to dismiss with prejudice its pending construction permit application for 95.9 MHz in Glens Falls, New York (File No. BPH-910430MB).

2. Payment to Brandt. Subject to the terms and conditions set forth herein, and in consideration of Brandt's agreement to dismiss its mutually exclusive application, Normandy agrees, as provided below, to pay to Brandt the sum of ONE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$137,500.00), as set forth in paragraph 4 below.

3. Commission Approval. The provisions of this Settlement Agreement are subject to approval by the Commission. The parties agree to expeditiously file with the Commission all pleadings, affidavits and other supporting documents, in proper form, required by Section 73.3525 of the Commission's Rules and Regulations, or other rules or policies which may be applicable, including but not limited to the Verified Statements included in Attachment A. The parties also agree to take such other and further action as may be reasonably required to carry out the purpose, terms and conditions of this Agreement. Brandt and Normandy acknowledge that a Motion to Reopen the Record and Remand (the "Motion") now pends at the Commission, and both agree to urge the Commission to defer action on the Motion pending its decision in a Final Order on the Joint Request for Approval of Agreement. Until the Commission reaches a