

EXECUTION COPY

CHANNEL SHARING AND FACILITIES AGREEMENT

THIS CHANNEL SHARING AND FACILITIES AGREEMENT ("Agreement") is made as of January \_\_\_\_, 2016 between Spanish Broadcasting System Holding Company, Inc. ("SBS") and America-CV Station Group, Inc. ("ACV").

**RECITALS**

A. SBS owns and operates the following television broadcast stations, including its primary and all multicast streams ("SBS Stations"), pursuant to licenses issued by the Federal Communications Commission ("FCC"):

- i. WTCV(DT), Channel 32, San Juan, PR (FIN 28954) ("WTCV")
- ii. WVEO(DT), Channel 17, Aguadilla, PR (FIN 61573) ("WVEO")
- iii. WVOZ-TV, Channel 47, Ponce, PR (FIN 29000) ("WVOZ")

B. ACV owns and operates the following television broadcast station, including its primary and all multicast streams ("ACV Stations"), pursuant to licenses issued by the FCC:

- i. WJPX(DT), Channel 21, San Juan, PR (FIN 58340) ("WJPX")
- ii. WJWN-TV, Channel 39, San Sebastian, PR (FIN 58342) ("WJWN")
- iii. WKPV(DT), Channel 19, Ponce, PR (FIN 58341) ("WKPV")
- iv. WIRS(DT), Channel 41, Yauco, PR (FIN 39887) ("WJRS")

The SBS Stations and the ACV Stations shall each be referred to individually as a "Station" and collectively as the "Stations".

C. SBS and ACV desire to participate in the broadcast incentive auction conducted by the FCC under Section 6403 of the Middle Class Tax Relief and Job Creation Act (Pub. L. No. 112-96, § 6403, 126 Stat. 156, 225-230 (2012) which is known as FCC Auction 1001 ("Incentive Auction") under the Channel Sharing Rules (as defined below).

D. SBS and ACV have agreed to a plan designed to preserve the parties' respective ability to continue to provide broadcast programming services in Puerto Rico.

E. If a party's participation in the Incentive Auction is Unsuccessful (as defined in Section 1.2(d) below) in a Submarket (as defined in Section 1.2(d) below) and the other party's participation in the Incentive Auction is Successful (as defined in Section 1.2(d) below) in the same Submarket, the Successful party will relinquish the television channel currently licensed to it by the FCC in the respective Submarket, and the parties will share on a jointly licensed basis the 6 MHz channel assigned to the Unsuccessful party by the FCC ("Shared Channel" or "Shared Channels"), which is currently exclusively licensed to such party.

F. SBS and ACV desire to set forth their agreement with respect to the manner in which: (i) the resulting revenues from the Incentive Auction are to be received, maintained and divided, and (ii) the Shared Channels and shared facilities are to be jointly used and operated.

G. If SBS and ACV share Shared Channel(s) pursuant to this Agreement, the parties will operate certain assets, including the transmission equipment located at the existing transmitter sites ("Transmitter Sites") and other equipment necessary for channel sharing that will be used by the parties in the operation of their respective television stations broadcasting on the Shared Channel(s) (the "Shared Equipment," and together with the Transmitter Sites, the "Transmission Facilities").

H. SBS and ACV intend for the agreement to be in accordance with the FCC Report and Order adopted in GN Docket No. 12-268, 29 FCC Rcd 6567 (2014) ("Incentive Auction Order"), the Report and Order adopted in ET Docket No. 10-235, 27 FCC Red 2626 (2012) ("Channel Sharing Order"), the First Order on Reconsideration and Notice of Proposed Rulemaking, 30 FCC Rcd 6668 (2015) ("First Channel Sharing Reconsideration Order"), the Second Order of Reconsideration in GN Docket No. 12-268, released June 17, 2015 ("Second Incentive Auction Order"), the Second Order on Reconsideration, released October 21, 2015 ("Second Channel Sharing Reconsideration Order"), and the Procedures Public Notice, adopted August 11, 2015 ("Procedures PN"), including without limitation the FCC regulations adopted at 47 C.F.R. §§ 1.2200-1.2209 and 73.3700, as amended (as hereinafter amended, collectively the "Channel Sharing Rules") on the terms set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, taking the foregoing recitals into account and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 AUCTION PARTICIPATION

1.1. Term. The term of this Agreement ("Term") will begin on the date of this Agreement and, unless extended or earlier terminated in accordance with this Agreement, will continue until:

(a) If both parties are Successful in the Incentive Auction with respect to all Submarkets, the date that the FCC announces by public notice that the reverse and forward auctions are complete.

(b) If a party is Unsuccessful in the Incentive Auction and the other party is Successful in the Incentive Auction with respect to one or more Submarkets (*i.e.*, the parties channel share in the Submarket), the Term shall be perpetual unless terminated in accordance with this Agreement; or



(c) if neither SBS nor ACV is Successful in the Incentive Auction in any Submarket, the first to occur of: (i) the date that both SBS and ACV have exited from the Incentive Auction with respect to all Stations, or (ii) the date on which both SBS and ACV have been notified by the FCC that their status with respect to all Stations in the Incentive Auction is not needed.

1.2. Auction.

(a) FCC Application. SBS and ACV shall each timely file and thereafter diligently prosecute application(s) ("FCC Applications") on Form 177 to participate in the Incentive Auction with respect to all of its Stations. With respect to the Stations in the Submarkets designated in Subsection 1.2(b) below, the FCC Applications should designate that the licensee will be a channel Host with the other party's station in that Submarket except that no channel sharing shall be entered into with respect to the San Sebastian Submarket, which shall remain exclusively with ACV. Prior to filing their respective FCC Application(s), each party shall provide the other party with a copy of its FCC Application(s) for review. The parties shall cooperate in good faith with respect to the FCC Application(s) and the Incentive Auction, and each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC Application(s), and shall furnish all information required by the FCC. Each party shall notify each other of all documents filed with or received from the FCC with respect to this Agreement or the transactions contemplated hereby. Each party shall furnish the other party with such information and assistance as a party may reasonably request in connection with its preparation of its FCC Application(s). Neither party shall take any action that would frustrate, delay, undermine or otherwise result in the dismissal of either party's FCC Application(s).

(b) Designation of Submarkets. The parties agree that the Stations serve four (4) distinct submarkets in Puerto Rico, as follows (each a "Submarket" and together the "Submarkets"):

San Juan Submarket:

WTCV \*

WJPX

Ponce Submarket:

WVOZ

WKPV\*

Mayaguez Submarket:

WVEO

WIRS\*

San Sebastian Submarket

WJWN

\*/Station designated for continued participation in the Incentive Auction, as set forth in Subsection 1.2(c), below.



(c) Designation of Stations for Continued Participation in the Incentive Auction. Upon commencement of the Incentive Auction, each party shall agree to accept the opening bid with respect to each of its Stations. In the first round of bidding, SBS shall drop out of the Incentive Auction with respect to WVOZ and WVEO, but shall continue to participate with respect to WTCV. In the first round of bidding, ACV shall drop out of the Incentive Auction with respect to WJPX and WJWN, but shall continue to participate with respect to WKPV and WIRS. In the event that any of the SBS Stations or the ACV Stations (as defined in Sections A and B of the Recitals) is "frozen" in the first round of bidding (*i.e.* is deemed provisionally Successful before dropping out of the Incentive Auction), the parties shall immediately cooperate and shall use their best efforts to modify their strategy in order to maintain island wide coverage. In any scenario, the proceeds shall be collected, pooled and distributed in accordance with Schedule 1.2(e) regardless of whether or not a Station participates in channel sharing after the completion of the Incentive Auction. Either party that is Successful shall agree to relinquish its 6 MHz channel. After the auction, the parties shall share the remaining 6 MHz channel in each of the San Juan Submarket, the Ponce Submarket and the Mayaguez Submarket. No channel sharing shall take place with respect to WJWN or the San Sebastian Submarket and WJWN shall not be relinquished in the Incentive Auction under any circumstances but shall remain solely with ACV (unless it is "frozen" in the first round of bidding, in which case the proceeds shall be collected, pooled and distributed in accordance with Schedule 1.2(e)).

(d) Definition of Successful and Unsuccessful Auction Participation. For purposes of this Agreement, "Successful" participation in the Incentive Auction is defined as the FCC and SBS and/or ACV entering into a binding commitment whereby the FCC will purchase the 6 MHz channel used by the ACV Station or the SBS Station in any Submarket. For purposes of this Agreement, "Unsuccessful" participation in the Incentive Auction is defined as a party dropping out of the Incentive Auction with respect to its Station in a Submarket or being informed by the FCC that its Station in the Submarket is not needed. Except as set forth in this Agreement, neither party shall take any action, directly or indirectly, and/or refrain from undertaking necessary action that would reasonably be expected to result in the loss of either ACV's or SBS's eligibility to participate in the Incentive Auction.

(e) Division of Auction Revenue.

(i) The parties agree to allocate all auction payments received as a result of the Successful participation(s) in the Incentive Auction pursuant to the allocation set forth in Schedule 1.2(e). Auction payments will be pooled and allocated on an aggregate basis for all Stations that are Successful in the Incentive Auction.

(ii) SBS and ACV, through their respective representatives (which for the purposes of this provision shall mean, in the case of SBS, Mr. Raúl Alarcón and in the case of ACV, Messrs. Carlos Vasallo and Emilio Braun, or their duly authorized designees) shall jointly and simultaneously provide written direction to the FCC to disburse all Incentive Auction payments to a bank account jointly owned by SBS and ACV, or to a trust or escrow account for their benefit (the decision of whether to use a bank account or escrow account shall be mutually agreed to by SBS and ACV). The bank and/or escrow agent shall be instructed to disburse funds



from the account only pursuant to the joint written instructions provided by Messrs. Alarcón and Vasallo/Braun, or their respective authorized designees, on behalf of SBS and ACV. The funds allocated to SBS pursuant to Schedule 1.2(e) may only be disbursed to SBS. The funds allocated to ACV pursuant to Schedule 1.2(e) may only be disbursed to ACV. For the avoidance of doubt, the parties agree that: (a) only Mr. Alarcón may designate a duly authorized SBS representative and, in the event of his death, disability, or at such time as he no longer has an ownership interest in SBS, such authority shall pass exclusively to Mr. Garcia or the then-acting Chief Executive Officer of SBS; and (b) only Mr. Vasallo and Mr. Braun may designate a duly authorized ACV representative and, in the event of the death or disability of either of them, or at such time as either of them no longer has an ownership interest in ACV, his respective authority shall pass exclusively to any person authorized by ACV through the unanimous approval of the Board of Directors of ACV.

(iii) The tax basis of the Station(s) and any Federal or State tax owed due to the characterization of this Agreement as an asset sale by either party will have no impact on the amount of proceeds shared by the parties. These proceeds shall be allocated between the parties pre-tax. If a party is required by the FCC to establish an escrow from auction proceeds payable due to a problem with the Licensee and not the specific station, the amount withheld or placed in escrow shall solely reduce the aggregate proceeds payable to the affected party. Unless the entire payment is held back, any FCC action to withhold auction proceeds shall not reduce the amount payable to the other party. The licensee whose proceeds are held back shall be entitled to its portion of the proceeds when released by the FCC or from escrow. If the FCC holds back any portion of the proceeds with respect to a Station in general, and to not a specific party/licensee, then, in such case, the amount held back shall be treated as amounts not yet received for purposes of Schedule 1.2(e) and shall be disbursed pursuant to the aforementioned Schedule 1.2(e) if and when released by the FCC.

## **ARTICLE 2**

### **CAPACITY AND FCC LICENSES**

This Article 2 shall apply to the operations of the Shared Channel if one party is Successful and the other party is Unsuccessful in a Submarket.

#### **2.1. Allocation of Bandwidth.**

(a) Pursuant to the Channel Sharing Rules, the parties wish to share each remaining 6 MHz Shared Channel (or 19.39 Megabits per second ("Mb/s") as allocated under the current ATSC system) in the Submarkets (with the exception of WJWN, which shall not be shared or sold in the Incentive Auction), as set forth in an Engineering Plan to be agreed upon after completion of the Incentive Auction, which may be modified from time to time by mutual written agreement of the parties but which, at a minimum, shall provide that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) channel, or, if technically feasible, at least one High Definition (HD) program stream at all times. For purposes of references to post-Incentive Auction channel sharing, the Successful party in a Submarket shall be referred to as the "Guest" and the Unsuccessful party in a



Submarket shall be referred to as the "Host" and the station operated by Host on a Shared Channel shall be referred to as the "Host's Station," and the station operated by Guest on the Shared Channel shall be the "Guest's Station" and collectively as the "Stations".

(b) The parties shall implement a fixed allocation based on a 50/50 split of bits of the Shared Channel for their respective broadcast needs. If the parties mutually agree, the parties may implement a weighting system as allowed by the encoding pool to allow each party to prioritize its program streams rather than use a fixed allocation of bits of the Shared Channel. In connection therewith, (i) both the Host and Guest will designate one program stream with the highest priority and (ii) other sub-channels will have a lesser priority as mutually agreed by the parties based on empirical testing by Host and Guest, and the parties shall cooperate to devise a system that produces the best results for each party with minimum picture degradation.

2.2. Encoding. The Host and Guest shall each have the right to monitor and audit the Shared Channel's encoding system to ensure compliance with Section 2.1. Both the Host and Guest shall be required to maintain and make available to the other party all records of such encoding upon reasonable written request during normal business hours.

2.3. Changes to Allocation. In the event that a new standard of modulation is implemented by Host, Host and Guest shall cooperate to divide the available bandwidth on an equal basis consistent with this Agreement.

2.4. Commitment to Provide Capacity. Host shall transmit content provided by Guest using the Shared Equipment. Except as provided herein, Host shall not alter the content provided by Guest; provided however, that Host may: (i) encode, compress and/or modulate the content as required to multiplex together Host and Guest content streams using the parameters agreed to in this Agreement, and (ii) combine the event information table ("EIT") and other information into a common PSIP format for transmission as agreed to in this Agreement.

2.5. FCC Licenses.

(a) Authorizations. The Host and Guest each respectively represent and warrant to the other that it has obtained all FCC and any other governmental licenses, approvals and authorizations necessary for its operations on its respective station. Each of Host and Guest shall maintain all such licenses, approvals and authorizations in full force and effect during the Term. Neither party shall make any filing with the FCC to modify the Shared Channel without the prior written consent of the other party.

(b) Repacking. In the event that Host's Station is assigned a new operating channel in the repack of television broadcast stations following the Incentive Auction, then Host and Guest shall each prepare, file on a timely basis and prosecute in good faith the necessary applications for FCC construction permit and license in order to operate on a shared basis on the newly-assigned Shared Channel. Each party will provide to the other party a copy of its



application prior to filing with the FCC. No party shall make any filing with the FCC to modify the Shared Channel without the prior written consent of the other party.

(c) FCC Fees. The Host and Guest shall each be responsible for timely payment of all fees owed by it to the FCC with respect to its television station using the Shared Channel. The Host and Guest shall be responsible for fifty percent (50%) of any joint fees, if any, assessed by the FCC on the Shared Channel.

### **ARTICLE 3** **POST-AUCTION OPERATIONS**

This Article 3 applies to the operation of a Shared Channel after this Incentive Auction is complete.

#### **3.1. Transmission Facilities.**

(a) Operations. Subject to any restrictions imposed by the owner of the Transmitter Site, Host shall provide Guest with access to the Shared Equipment during normal business hours and as promptly as practicable outside of normal business hours. Host and Guest shall not act contrary to the terms of any lease for the Transmitter Site, permit any lien, claim or encumbrance to come into existence on the Transmission Facilities, make material alterations to the Transmission Facilities, or interfere with the business and operation of the other's television station or the other's use of such facilities. Both the Host and Guest may use the Transmission Facilities only for the operation of their respective television station in the ordinary course of business and for no other purpose. Both the Host and Guest shall comply in all material respects with all federal, state and local laws applicable to their operations from the Transmission Facilities, including, without limitation, all rules and regulations of the FCC regarding channel sharing. The Host and Guest shall each maintain, at their own expense, sufficient insurance with respect to its use of the Shared Equipment and operations from the Transmitter Site during the Term in the amounts customary in the television industry and shall name the other party as an additional insured under such policies.

(b) Shared Transmission Facilities. A general list of items of Shared Equipment is attached as Schedule 3.1(b) and will be further agreed upon by the parties after the completion of the Incentive Auction. Subject to Section 3.6 with respect to the sharing of expenses, during the Term, Host shall: (i) maintain and repair the Shared Transmission Facilities in accordance with good engineering practices customary in the television industry and shall keep the other reasonably informed as to all material repairs to such facilities and (ii) make any payments required for operation of the Shared Transmission Facilities. Title to all such Shared Transmission Facilities shall remain with Host, and neither Host nor Guest shall move, damage or interfere with such facilities. Guest shall be solely responsible for all costs associated with the termination of its leases for its transmitter site and any equipment. In the event the parties are unable to reach an agreement, the Parties shall use the Shared Equipment of the Host. For avoidance of doubt, this Subsection 3.1(b) shall not be applicable to Station WJWN-TV.



(c) Transmitter Modifications. The parties will implement the modifications to the Transmission Facilities agreed upon after completion of the Incentive Auction in order to: (i) facilitate the insertion of multiple program streams on the Shared Channel and (ii) implement changes resulting from any new channel assigned by the FCC to the Shared Channel in any repacking following the Incentive Auction. In addition, if the parties mutually agree that modifications to or replacement of the Shared Transmission Facilities is necessary to ensure that each of their Stations continues to operate in accordance with good engineering practices customary in the television industry, the parties shall cooperate in good faith to permit the implementation of such modifications, including by filing and prosecuting any necessary applications with the FCC, ordering equipment, building or leasing a new Transmitter Site and facilitating the installation and testing of new equipment at the Transmitter Site.

(e) Exclusive Equipment. Each of Host and Guest shall maintain, repair and replace any equipment owned solely by it located at the Transmitter Site in accordance with good engineering practices customary in the television industry. Title to all such equipment solely owned by Host or Guest shall remain with such broadcaster, and the other party shall not move, repair, damage or interfere with any such equipment; provided however, that either party, with the cooperation of the other party, shall be permitted to use or temporarily modify the operation of the other party's equipment as reasonably necessary to respond to unanticipated, emergency circumstances.

(f) Contractors. All contractors and subcontractors of each of Host and Guest who perform any service for Host or Guest at the Transmitter Site or any other shared facilities shall hold licenses or governmental authorizations appropriate to and necessary for the work being performed. Any such contractor shall carry insurance issued by companies licensed in the state where the Transmitter Site or such other shared facility is located.

(g) Hazardous Materials. Each of Host and Guest shall: (i) comply with all environmental laws applicable to its operations from the Transmitter Site and any other shared facilities, (ii) not cause or permit the release of any hazardous materials on, to or from the Transmitter Site or any other shared facilities in violation of any applicable environmental laws, (iii) not take any action that would subject the Transmitter Site or any other shared facilities to permit requirements for storage, treatment or disposal of hazardous materials, and (iv) not dispose of hazardous materials on the Transmitter Site or any other shared facilities except in compliance with applicable law.

3.2. Interference. Each party shall use commercially reasonable efforts to avoid interference with their respective operations from the Transmitter Site and to promptly resolve any interference that arises in connection with such operation. Neither party shall make changes or installations at the Transmitter Site or any other shared facilities that will impair or interfere in any material respect with the other party's signals or broadcast operations or use of the Shared Channel. In the event interference to such signals or operations does occur, the interfering party shall notify the other party in writing and take all commercially reasonable steps to correct such interference in all material respects as soon as possible and within one (1) business day.



3.3. Cooperation. In the event it is necessary for Host or Guest to reduce, limit or temporarily cease use of the Shared Equipment, the Shared Channel or its own equipment located at the Transmitter Site or any other shared facilities so that the other party may install, maintain, repair, remove or otherwise work upon its broadcast equipment or the Shared Equipment at the Transmitter Site or any other shared facility, the requesting party shall cooperate in a commercially reasonable manner. If necessary, the non-requesting party shall temporarily reduce, limit or cease use of the Shared Equipment, the Shared Channel or its own equipment located at the Transmitter Site or any other shared facility, provided that the requesting party takes all reasonable steps to minimize the amount of time the non-requesting party shall operate with reduced facilities and that the requesting party takes all reasonable steps to schedule such installation, maintenance, repairs, removal or work at a time convenient to the non-requesting party.

3.4. Force Majeure. Neither party shall be liable to the other for any default or delay in the performance of its non-monetary obligations under this Agreement to the extent that the default or delay is caused by an event outside of its reasonable control, including without limitation a fire, flood, earthquake, war, act of terrorism, labor dispute, government or court action, failure of facilities or act of God.

3.5 Risk of Loss. The risk of any casualty loss, damage or destruction to the Transmission Facilities shall be borne jointly by Host and Guest and shall be shared equally, provided that each party agrees to apply all of the insurance proceeds, if any, that it receives in connection with the repair or replacement of any damage or destruction to the Transmission Facilities and agrees to share the remaining costs on an equal basis.

3.6. Expenses.

(a) Shared Costs. Guest shall reimburse Host within thirty (30) days after invoice for its share, based on the Capacity Allocation, of the costs reasonably incurred by Host. Shared costs shall be split 50/50.

(b) Sole Costs. Each of Host and Guest shall be solely responsible for its insurance costs for the Transmission Facilities, costs for any necessary microwave link between its station's studio site and the Transmitter Site, any capital expenses related solely to its Station using the Shared Channel, all expenses related to any equipment solely owned by it and located at the Transmitter Site, and all of its expenses not related to the Transmission Facilities.

(c) Relocation and Repacking Costs. Host will seek reimbursement from the TV Broadcaster Relocation Fund for the costs it reasonably incurs in relocating the Host Station to a new channel as a result of the FCC's repacking process following the Incentive Auction. Guest shall reimburse Host based on the Guest's Capacity Allocation on the Shared Channel for any amounts that are: (i) incurred by Host in relocating to a new shared channel that are required and solely associated with the transmission portion of station broadcast expenses, and (ii) not reimbursed by the TV Broadcaster Relocation Fund. Any costs incurred by Guest associated with the move to the Transmission Facilities and the installation or modification of any dedicated



Guest equipment (including exciters, direct fiber feeds to MVPDs, labor, *etc.*) that are not reimbursed from the TV Broadcaster Relocation Fund shall be shared by Host and Guest on an equal basis.

(d) Tax Issues. The parties will cooperate with each other and work together in good faith to minimize the overall taxes due on the transaction described in this Agreement consistent with applicable law. In connection with such cooperation, the parties will give consideration of the structures referenced the IRS letter, dated July 3, 2014, entitled "Federal Tax Principles Applicable to the FCC's Proposed Broadcast Incentive Auction." Notwithstanding the foregoing, in no event shall either party be required to consent to transactions not contemplated herein that would increase such party's individual tax costs.

3.8 Post-Auction Operations Breach. Neither party shall be deemed to be in default or have committed a material breach of Article 3 until the party alleged to have committed a material breach involving post-auction operations (*i.e.*, those breaches solely involving Article 3) ("Defaulting Party") first receives written notice of the breach or default from the non-defaulting party and is afforded thirty (30) days notice to cure the alleged breach or default. The parties agree that any breach of either parties' post-auction operation commitments shall not, in any way, impact, alter or otherwise give rise to a basis to challenge the revenue allocation set forth in Schedule 1.2(e).

#### **ARTICLE 4** **REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1 Representations and Warranties of Each Party. SBS and ACV each represent and warrant to the other that, as of the Effective Date: (a) it is a corporation duly organized and validly existing under the laws of its place of organization; (b) it owns its respective Stations and possesses the full power and authority to carry on its business, enter into and perform this Agreement, and consummate the transactions contemplated hereby; (c) neither needs the permission, authority or approval ("Authority") of any other shareholder, including in the case of ACV, Omar Romy ("Romay"), Telecinco and Grupo Pegaso and/or any court-ordered receiver or trustee ("ACV Shareholders") to enter into this Agreement and/or that such Authority has already been secured; (d) there are no pending actions, lawsuits, legal, administrative or arbitration proceedings and, to each party's respective knowledge, threatened actions by any person, entity or governmental authority that could adversely affect its ability to enter into and perform under the Agreement; (e) it has taken all necessary action to enter into and fully perform this Agreement; (f) the execution, delivery, consummation and performance of the obligations and transactions contemplated under this Agreement will not constitute a breach of, conflict with or otherwise violate any other agreement or arrangement, whether written or oral, by which it is bound; (g) it is in compliance with all court orders and will comply with all material laws with respect to its rights and obligations under this Agreement; and (h) this Agreement is its legal, valid and binding obligation, enforceable in accordance with the terms and conditions hereof.

4.2 No Additional Consents Necessary. Each of SBS and ACV shall obtain and provide to the other all necessary consents under the Transmitter Lease Agreement and any other agreement to which it is a party that are necessary for the other party's Station to utilize the Transmitter Facilities and to operate on the Shared Channel as contemplated herein.



4.3 Compliance with Law. Each party shall comply with this Agreement, the Channel Sharing Rules, and in all material respects with all applicable laws, rules and regulations with respect to its ownership and operation of its Stations, the other party's Stations and its use of the Shared Channel. Each party shall be solely responsible for all content it transmits on the Shared Channel. The obligations of the parties under this Agreement are subject to the rules, regulations and policies of the FCC and all other applicable laws. In addition, each party shall comply with all leases, licenses or similar agreements applicable to the Transmission Facilities.

4.4 Control. Consistent with FCC rules, each party shall control, supervise and direct the day-to-day operation of its Stations (including such party's employees, programming and finances), and the other party shall control, supervise and direct the day-to-day operation of such party's Stations (including such party's employees, programming and finances), and nothing in this Agreement affects any such respective responsibilities. Neither party shall hold itself out as the licensee of the other's television station using the Shared Channel, and nothing in this Agreement shall give either party an ownership interest in the other party's station. Neither party shall use the call letters, logos, trademarks, service marks or related intellectual property of the other's television station in any medium.

4.5 Cooperation. Each party shall cooperate with one another in good faith as to any reasonable requests made by the other with respect to operation of the Shared Channel or the Transmission Facilities. Neither party shall take any action or fail to take any action which would frustrate, delay, undermine or otherwise interfere with the other's use of capacity on the Shared Channel or the Transmission Facilities.

## **ARTICLE 5**

### **INDEMNIFICATION**

5.1. General Indemnification. Subject to Section 5.3, and to the fullest extent permitted by law, SBS and ACV shall indemnify, defend and hold free and harmless the other party, as well as their respective parents, affiliates, subsidiaries, officers, directors, employees, agents and representatives, from and against any and all loss, liability, actions, claims, suits, liens, judgments, demand, damages and costs and expenses (including reasonable attorneys' fees, expert witness fees and related costs and expenses, even if not otherwise deemed a taxable cost) (collectively "Losses") arising from any third-party claims that are caused by, arise out of, or relate in any way to: (i) any breach of any term, covenant, representation, warranty or promise made by it under this Agreement; (ii) its negligence, willful misconduct or other acts or omissions; (iii) the violation of or failure to comply with any applicable laws, codes, rules, orders, judgments, decrees, ordinance and/or provisions of any federal, state or local government agency, authority or court having jurisdiction; and (iv) the operation of its television station using the Shared Channel and the programming or advertising broadcast on such station, including without limitation for indecency, libel, slander, infringement of trademarks or trade names, infringement of copyrights and proprietary rights, violation of rights of privacy and other violations of rights or FCC rules or other applicable law.

5.2 ACV's Additional Indemnification. ACV agrees to indemnify, defend and hold SBS harmless from and against any Losses arising from any legal claim, challenge or action



initiated by: (i) Romay, (ii) any person or entity claiming to act on Romay's behalf, (iii) any other ACV Shareholder, and/or (iv) any other third party relating to ACV's participation in the Incentive Auction and/or entry into this Agreement ("Romay /ACV Shareholder Litigation").

In the event of a Romay/ACV Shareholder Litigation, ACV agrees that SBS is entitled to an immediate disbursement of any and all funds, from the bank and/or escrow account or otherwise, that have been earmarked for and allocated to SBS pursuant to Schedule 1.2(e) ("SBS Funds"). ACV covenants that it shall promptly and immediately provide any and all needed approvals and authorizations to disburse the SBS Funds pursuant to SBS's written instruction provided that there is no existing court or governmental order precluding the disbursement of the SBS Funds (a "Precluding Order"). ACV acknowledges and agrees, absent a Precluding Order, it should immediately disburse the SBS Funds and the mere threat or existence of a Romay/ACV Shareholder Litigation is insufficient grounds to refuse immediate disbursement of the SBS Funds.

5.3 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT:

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT.

The parties agree and acknowledge that this limitation of liability provision does not apply, however, to: (a) any third-party claims brought against one of the parties due to the actions of the other party (e.g., a lawsuit initiated by Romay against SBS based on ACV's breaches of its representations and warranties); and (b) any violation by either party of Article I or Article 7.

5.4 Procedures. The party seeking indemnification hereunder will: (i) give the indemnifying party notice of the relevant claim, (ii) cooperate with the indemnifying party, at the indemnifying party's expense, in the defense of such claim, and (iii) give the indemnifying party the right to control the defense and settlement of any such claim, except that the indemnifying party shall not enter into any settlement without the indemnified party's prior written approval. The indemnified party shall have no authority to settle any claim on behalf of the indemnifying party.

5.5 Survival. The parties' obligations under this Article 5 shall survive any termination or expiration of this Agreement.

## **ARTICLE 6** **TERMINATION AND REMEDIES**

6.1. Termination.



(a) During or After Auction. This Agreement will terminate automatically in accordance with Section 1.1(a) and 1.1(c).

(b) Loss of License. This Agreement shall terminate automatically if the FCC authorization to operate either Host's Station or Guest's Station is revoked, relinquished, withdrawn, rescinded, canceled or not renewed by an action that is a final order, not subject to further appeal, and the party whose FCC authorization has been revoked, relinquished, withdrawn, rescinded, canceled or not renewed shall be deemed to be a terminated party for purposes of this Article 6.

(c) Effect of Termination. Upon the termination of this Agreement pursuant to Section 6.1(b), the terminated party shall have 180 days to make alternative channel sharing arrangements with a third party, including obtaining any necessary approvals from the FCC to relocate its Station to another channel. During the 180-day period, the terminated party may continue to transmit content on the Shared Channel. At the end of the 180-day period, the terminated party shall relinquish its spectrum usage rights with respect to all Shared Channel(s), and all such spectrum rights shall revert, to the remaining party. If the event of a termination under Section 6.1(c), the terminated party's spectrum usage rights to the Shared Channel shall revert to the remaining party. In the event of a termination under Section 6.1(b) or 6.1(c), the non-terminated party shall be deemed to have purchased all of the terminated party's right, title and interest in any Shared Equipment and any other assets (including leases) used in and necessary for the continued operation of the Transmission Facilities for the sum of \$1.00, which shall conclusively be deemed fair and adequate consideration.

(d) Survival. No termination shall relieve a party of liability for failure to comply with this Agreement prior to termination. Notwithstanding anything herein to the contrary, Articles 5 and 7, Section 3.6 and 6.2 as well as all other provisions related to obligations to pay expenses shall survive any termination of this Agreement.

## 6.2. Dispute Resolution

(a) Good Faith Negotiation. If a dispute arises between the parties under this Agreement, the parties agree to hold an in-person meeting attended by executive-level officers with decision making authority ("Executives"), as well as their respective legal counsel, to attempt to resolve the dispute in good faith prior to pursuing any formal legal action or remedies. The disputing party shall provide the other party written notice of any dispute. The parties' Executives shall meet at a mutually acceptable time and place within ten (10) days after receipt of the written notice. Should the parties not resolve the matter during the in-person meeting either party may pursue legal actions or remedies without restriction. Notwithstanding the foregoing, the good faith in-person negotiation obligation should not: (i) preclude either party from pursuing emergency relief via either a motion for temporary restraining order or motion for preliminary injunction in the event of exigent circumstances; or (ii) apply to any claims relating to the initiated against either party by a third-party relating to the Incentive Auction and/or entry into this Agreement.



(b) Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Florida applicable to contracts made and to be fully performed therein, without giving effect to the choice of law provisions thereof.

(c) Waiver of Right to Jury; Attorneys' Fees. ALL ISSUES, MATTERS, AND DISPUTES BETWEEN THE PARTIES CONCERNING THIS AGREEMENT SHALL BE TRIED BY A JUDGE IN A NON-JURY TRIAL IN THE STATE OR FEDERAL COURTS SERVING MIAMI-DADE COUNTY AND THE PREVAILING PARTY SHALL BE ENTITLED TO AN AWARD OF ITS REASONABLE ATTORNEYS' FEES AND ALL COURT COSTS INCURRED IN SUCH REGARD, INCLUDING THOSE ATTORNEYS' FEES AND COSTS INCURRED FOR ANY AND ALL APPLICABLE APPELLATE PROCEEDINGS.

(d) Specific Performance. Notwithstanding Section 6(a), in the event of failure or threatened failure by either party to comply with the terms of this Agreement, the other party shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement and/or compliance of this Agreement by a decree of specific performance. The prevailing party is an action or proceeding brought to enforce the performance or compliance of any provision of this Agreement may recover reasonable attorneys' fees and costs from the non-prevailing party.

## ARTICLE 7 NON-SOLICITATION / NON-TAMPERING

The parties agree that neither they nor any of their representatives shall, directly or indirectly, contact, solicit, hire or attempt to hire any employee, agent or independent contractor of the other party ("Restricted Employee"), or induce or attempt to induce any Restricted Employee to leave or terminate his employment with the other party either during the Term of this Agreement, or for a period of three (3) years after the expiration of this Agreement, for any reason. The parties agree that their commitment not to solicit or tamper applies to all Restricted Employees located in both the Miami and Puerto Rico markets.

## ARTICLE 8 MISCELLANEOUS

8.1. Confidentiality. Subject to the requirements of applicable law, all non-public information regarding ACV and SBS and their respective businesses and properties that is disclosed in connection with the performance of this Agreement (including without limitation any financial information) shall be confidential and shall not be disclosed to any other person or entity. This Section shall survive any termination or expiration of this Agreement.

8.2. Information.



(a) Each party shall provide the other party with copies of any FCC notice of violation or notice of apparent liability, or any other notice from any governmental entity, that it receives with respect to the technical operations of its station that is Channel Sharing. Host shall provide Guest with copies of any notices it receives from lessor(s) with respect to the Transmission Site.

(b) If either party becomes subject to litigation or similar proceedings before the FCC (including, without limitation, initiation of enforcement actions), Internal Revenue Service or other court or governmental authority that is reasonably likely to have a material adverse effect on such party or its television station using or proposed to be using the Shared Channel, then it shall immediately provide written notice of such proceeding to the other party and provide all information with respect thereto as reasonably requested by the other party.

(c) Upon reasonable request by either party no more than once per quarter, the other party shall provide the requesting party with a statement certified by its CFO that it has the financial capability to pay the shared expenses and fulfill any other financial obligations hereunder for the upcoming six (6) months.

(d) If either party files a petition in bankruptcy, has an involuntary petition in bankruptcy filed against it which is not dismissed within sixty (60) days of the date of filing, files for reorganization or arranges for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of its assets or of the assets related to its television station using or proposed to be using the Shared Channel, or it makes an assignment for such purposes for the benefit of creditors, then it shall immediately provide written notice of such proceeding to the other party and provide all information with respect thereto as reasonably requested by the other party.

8.3. Assignment. No party may assign or sublease this Agreement, except that (i) Host shall assign its rights under this Agreement to any FCC-approved assignee or transferee of Host's Station and such assignee or transferee shall assume this Agreement in a writing delivered to the other party to this Agreement, and (ii) Guest shall assign its rights under this Agreement to any FCC-approved assignee or transferee of Guest's Station and such assignee or transferee shall assume this Agreement in a writing delivered to the other party to this Agreement. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns. No assignment shall relieve any party of any obligation or liability under this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

8.4. Severability. The transactions contemplated by this Agreement are intended to comply with the Communications Act of 1934, as amended, and the rules of the FCC. If any court or governmental authority holds any provision of this Agreement invalid, illegal, or unenforceable under any applicable law, then so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the



invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

8.5. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to SBS: Spanish Broadcasting System Holding Company, Inc.  
c/o Spanish Broadcasting System, Inc.  
7007 N.W. 77<sup>th</sup> Avenue  
Miami, Florida 33166  
Attention: Joseph A. Garcia  
Facsimile No.: N/A

With a copy (which shall not constitute notice to):

Lerman Senter PLLC  
2000 K Street, NW, Suite 600  
Washington, DC 20006  
Attention: Nancy A. Ory  
Facsimile No. (202) 293-7783

If to America CV: America CV Station Group, Inc.  
13001 NW 107th Ave  
Hialeah Gardens, FL 33018  
Attention: Mr. Carlos Vasallo, CEO  
Facsimile No.: N/A

With a copy (which shall not constitute notice to):

Marcell Felipe Attorneys  
1001 Brickell Bay Dr, Suite 1504  
Miami, FL 33131  
Attention: Marcell Felipe, Esq.  
Facsimile No.: (305) 381-6225

8.6. Exclusive Negotiation; Right of First Refusal



(a) In the event either ACV or SBS (defined, for the limited purposes of this Section, as "Seller") intends to solicit an offer for the purchase of one or more the Stations identified in the Recitals section of this Agreement, it shall promptly notify the other party in writing. The party that is not the Seller (defined, for the limited purposes of this Section, as "Non-Seller") shall then have a forty five (45) day exclusive negotiation period to provide Seller with a written offer for the purchase of one or more of its Stations (including its interest in the Shared Channel, the Shared Equipment and the Transmission Facilities) unless it notifies the Seller in writing that it does not intend to enter into negotiations for the purchase of Seller's Stations. During the exclusive negotiation period, the Seller shall provide the Non-Seller with due diligence materials concerning the operation of the Stations at issue subject to a customary non-disclosure agreement and will not negotiate with any third party for the sale of the Station or Stations in which the Non-Seller has indicated any interest in purchasing. If at the end of the exclusive negotiation period, the parties have not reached an agreement with respect to the sale of the Seller's Station or Stations, the Seller shall be free to negotiate with third parties for the sale of any and all Stations provided that it shall not accept any third party offer or make any offer to a third party containing financial terms that are more favorable to the third party offeror than the financial terms contained in any offer made by the Non-Seller during the exclusive negotiation period unless the Seller has first provided the Non-Seller with a right to match the financial terms of any offer in accordance with the terms of Section 8.6(b).

(b) In the event that the Seller receives a bona fide offer for the purchase of one or more of the Seller's Stations ("Bona Fide Offer," and as further defined below), the Seller shall present the Non-Seller with a copy of the Bona Fide Offer immediately upon receipt thereof. The Non-Seller shall have the right of first refusal to purchase the Seller's Station or Stations on the same terms and conditions as set forth in the Bona Fide Offer. The Non-Seller shall have fifteen (15) days from receipt of the Bona Fide Offer to exercise its right of first refusal. If the Non-Seller exercises its right of first refusal, the parties shall proceed in good faith and with due diligence to draft and execute a definitive written agreement which reflects the terms of the offer. If the Non-Seller elects not to exercise its right of first refusal, the Seller may, enter into an agreement for the sale of its Station or Stations with such third party only if the terms and conditions of such sale are the same as, or more favorable to Seller, than the terms and conditions set forth in the Bona Fide Offer provided by Seller to the Non-Seller. As used in this Section, Bona Fide Offer shall mean a written offer from a prospective purchaser which contains sufficient documentation and detail and does not contain any conditions to closing or other provisions that a reasonable seller would consider not customary for the industry so that Seller is able to determine in its reasonably exercised discretion that such offer represents a legitimate offer from a party that would be financially capable of closing the transaction. This Section 8.6 shall not be triggered by the sale of the equity of a party.

8.7. Further Assurances. Each party hereto covenants and agrees promptly to execute, deliver, file or record such agreements, contracts, instruments, registrations, certificates and other documents and to perform such other and further acts as the other party hereto may reasonably request or as may otherwise be necessary or proper to consummate and perfect the transactions contemplated hereby.



8.8 Miscellaneous. This Agreement may not be amended except in a writing executed by both parties. No waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such waiver or consent is sought. No party shall be authorized to act as an agent of or otherwise to represent the other party to this Agreement. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to the subject matter hereof.

8.9 Counterparts; Facsimile or PDF Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signed copy of this Agreement or of any other document or agreement referred to herein, or copy or counterpart thereof, delivered by facsimile transmission or by e-mail in portable document format (PDF), shall for all purposes be treated as if it were delivered containing an original manual signature of the whose signature appears in the facsimile or e-mail, and shall be binding upon such party in the same manner as though an originally signed copy had been delivered.

\* \* \*

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SIGNATURE PAGE TO CHANNEL SHARING AND FACILITIES AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed this Channel Sharing and Facilities Agreement as of the date first set forth above.

**SPANISH BROADCASTING  
SYSTEM HOLDING COMPANY,  
INC.**

By: 

Name: Raúl Alarcón  
Title: President & Chief Executive  
Officer

By: 

Name: Joseph A. Garcia  
Title: SEVP & Chief Financial  
Officer

**AMERICA-CV STATION GROUP,  
INC.**

By: 

Name: Carlos Vasallo  
Title: President & Chief Executive  
Officer



## SCHEDULE 1.2(e)

### *Revenue Allocation*

The parties agree that in the event that a party accepts a bid and such party is designated by the FCC as a winning bidder, the aggregate winning bid proceeds paid to the exiting parties shall be collected and pooled and, immediately upon availability, distributed only to SBS and ACV in the following manner:

All aggregate amounts generated from any of the SBS Stations or the ACV Stations (as defined in Sections A and B of the Recitals) in connection with the Incentive Auction shall be pooled and shall be divided as follows:

- a. Up to and including the first

SBS:

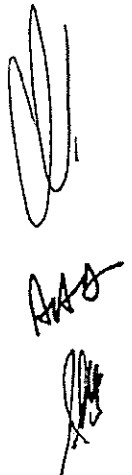
ACV: -

- b. All amounts generated in excess of  
shall be divided as follows:

SBS:

ACV:

For the avoidance of doubt, the parties acknowledge that the threshold is an aggregate number, and is not Submarket specific (*i.e.*, all of the proceeds from the Submarkets are to be pooled and treated as a collective amount, and not segregated or accounted for separately).

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## SCHEDULE 3.1(b)

### *Shared Equipment*

- A. At transmitter:
  - 1. Dish receiving antenna, at transmitter
  - 2. Elliptical waveguide from dish to receivers
  - 3. STL microwave receivers
  - 4. Supporting tower, if separate from broadcast antenna tower
- B. Program input & monitoring equipment:
  - 1. Transport stream microwave receiver automatic changeover switch
  - 2. Disaster recovery encoder for direct satellite feed(s)
  - 3. Transport stream disaster recovery automatic changeover switch
  - 4. Transport stream monitoring switch
  - 5. Transport stream monitoring decoder(s)
  - 6. Audio & video monitoring devices
  - 7. Transport stream data monitor device (if installed)
  - 8. Transmission parameters (currently 8VSB) monitoring equipment
  - 9. Off-air monitoring receivers (if not individually owned)
  - 10. Transmitter remote control system
- C. Broadcast transmitter equipment, if used:
  - 1. Main transmitter, including:
    - a. Exciter(s)
    - b. RF driver amplifiers
    - c. RF final power amplifiers
    - d. RF emission mask filter, if separate from backup transmitter
    - e. External cooling apparatus, if liquid cooled
    - f. Voltage regulator and/or transient suppressor, if used
    - g. Exciter/controller-only uninterruptible power supply, if used
  - 2. Backup or alternate-main transmitter, including
    - a. Exciter(s)
    - b. RF driver amplifiers
    - c. RF final power amplifiers
    - d. RF emission mask filter, if separate from main transmitter
    - e. External cooling apparatus, if liquid cooled
    - f. Voltage regulator and/or transient suppressor, if used
    - g. Exciter/controller-only uninterruptible power supply, if used
  - 3. Transmitter RF switch, if used
  - 4. System test dummy load & associated cooling apparatus
  - 5. Indoor interconnecting transmission lines
  - 6. If using multichannel antenna provided by the site lessor, channel combiner filter
  - 7. If using individual, channel-specific antenna:
    - a. Transmission line to antenna

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- b. Transmitting antenna, including mounting brackets
- c. Supporting tower, if owned by station
- 8. If used, backup channel-specific antenna:
  - a. Transmission line to antenna
  - b. Transmitting antenna, including mounting brackets
  - c. Supporting tower, if owned and separate from main antenna tower
- D. Supporting facilities:
  - 1. Electric power distribution
    - a. Main and subsidiary distribution panels feeding all listed equipment
    - b. Transformers necessary to power all listed equipment
    - c. Distribution wiring from panels to listed equipment
    - d. Primary transient suppressor, if used
    - e. Uninterruptible power supply (UPS) or supplies feeding listed equipment
  - 2. Backup electric power generation, if used
    - a. Engine-generator set
    - b. Automatic transfer switch
    - c. Fuel storage tank(s), if separate from engine-generator set
  - 3. Heating, ventilation, air conditioning (HVAC)
    - a. Air conditioner units, including outdoor heat exchanger units
    - b. Outside air fans, ductwork, and filters, if used
    - c. Redundancy controllers, if used
    - d. Building monitoring system interfaces, if used
  - 4. Properties, if owned by station
    - a. Transmitter building
    - b. Site fencing, including tower fence if owned by station
    - c. Driveways and parking areas
    - d. Security monitoring system(s)

together with any replacements thereof or additions thereto

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