

06-01-2023

TIME BROKERAGE AGREEMENT

By and Between

GREATER JOHNSTOWN SCHOOL DISTRICT WCRO-AM

and

LIGHTNER COMMUNICATIONS, LLC

Dated: June 1st, 2023

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TIME BROKERAGE AGREEMENT

This Time Brokerage Agreement (the "Agreement"), made and entered into as of the 1st day of June, 2023, by and between, **The Greater Johnstown School District**, a Pennsylvania Public School entity ("Licensee") on the one hand, and **LIGHTNER COMMUNICATIONS, LLC**, a Pennsylvania limited liability company ("Broker") on the other hand

WITNESSETH: THAT,

WHEREAS, Licensee is the licensee of, and operates radio broadcast station WCRO(AM), Facility ID 18050, Johnstown, Pennsylvania, and FM Translator station W275CV(FX), Facility ID 200537, Johnstown, PA (the "Station"), and have requested that Broker provide substantially all of the programming for the Station, and wish to broker substantially all of the broadcast or program time during the Station's broadcast day, and, as the owner and/or lessee of the operating equipment associated with the Station, has agreed to permit Broker to utilize said equipment in connection with the foregoing;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements between Owner and Broker hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party hereto, Licensees and Broker, intending to be legally bound, do hereby agree as follows:

1. Definitions. The following terms shall, for the purposes of this Agreement, have the meanings ascribed herein:

(a) Programming. The term "Programming" shall mean the entertainment programs provided to the Station by Broker, as well as advertising for products and services, other commercial advertising, and other material contained therein.

(b) Commencement Date. The term "Commencement Date" shall mean 12:45 pm EST on June 1st, 2023.

(c) FCC. The term "FCC" shall mean the Federal Communications Commission.

(d) Final Order. The term "Final Order" shall mean the action of the FCC that revokes, rescinds or denies renewal of the Station's license, said action being no longer subject to administrative or judicial review, reconsideration or appeal.

(e) Term. The "Term" of this Agreement shall commence on the Commencement Date and shall terminate on December 31, 2024 unless terminated earlier pursuant to the provisions of this Agreement.

2. Time Brokerage. During the Term hereof, for the consideration provided in paragraph 3 below, Owner hereby sells to Broker one hundred sixty six (166) hours per week on the Station, provided that Owner shall retain, with respect to the Station, and without reduction in the consideration to be paid by Broker to Owner, two (2) hours per week to present news, public affairs programming, public service announcements, and other programming reasonably necessary for the Station to be responsive to the ascertained needs, interests, and issues of its community of license and service area. All contracts, advertising agreements, purchase orders, and other similar documents and instruments negotiated and executed by Broker on its behalf as Broker after the Commencement Date shall be in the name of Broker, provided that Broker shall not represent or warrant in any fashion that it is the licensee of the Station.

3. Payments. In consideration of the execution of this Agreement by Owner, and for the broadcast of the Programming and the other benefits made available to Broker pursuant to this Agreement, during the Term, Broker shall pay Owner: (a) an “LMA Monthly Payment” as set forth on *Schedule A* attached hereto; and (b) “Reimbursement Payments” as set forth on *Schedule B* attached hereto.

4. Right to Reject or Preempt Programs. Notwithstanding the grant to Broker by Owner of the right set forth in Section 2 hereof, Owner shall retain full authority and power over the operation of the Station at all times during the term of this Agreement. Owner shall retain complete control over the policies and operations of the Station, including specifically the Station’s personnel, finances and the Programming, and also including, without limitation, the right to decide whether to accept or reject any of the Programming (including but not limited to advertisements) for broadcast by the Station, in advance of such broadcasts, and the authority to preempt any of such Programming for other programming deemed by Owner, in its sole discretion, to be of greater national, regional, or local importance, or necessary to address the needs, interests, and issues of its Stations’ community of license and service area.

5. Facilities.

(a) Owner has provided equipment for the Station that is operating within parameters and in compliance with FCC standards, and Broker has had an opportunity to inspect that equipment and accepts that equipment as is. Owner will engage an engineer mutually agreeable to Broker to maintain the necessary transmission equipment to continue to deliver a broadcast signal for the Station in accordance with the terms and specifications of its FCC licenses. Owner shall be responsible for ensuring that the Station’s transmitting facilities shall continue to comply in material respects at all

times with the relevant rules, regulations and policies of the FCC and other applicable governmental authorities.

(b) Owner shall continue to maintain loss and liability insurance coverage for the Station's facilities commensurate with standard industry practices, and shall also maintain its existence in good standing, pay all taxes and assessments owed by it on account of its ownership of its property or its operation of the Station, including the Station's transmitting facilities, or on account of this Agreement or otherwise. In the event that any FCC authorizations (other than license renewal or other routine filing fees) shall be required by either the Licensee or Broker in order to enable Broker to originate and relay programs to the Station's transmitting facilities for broadcast by the Station, or to change the call letters of the Station, both parties shall cooperate in obtaining such authorizations subject to reimbursement as set forth in Schedule B. Licensee shall continue to maintain the EAS authorization and online public inspection file of the Station as now established.

6. Expenses. During the Term, Broker shall be responsible for: (a) the salaries, taxes, insurance and related costs for all personnel used in the production of the Programming supplied to the Station; and (b) the costs of delivering the Programming to the Station. Owner shall be responsible for paying directly all other operating expenses, including but not limited to: (i) the salaries, taxes, insurance and related costs for the employees of Owner; (ii) the costs of maintaining the Station's access to the Station's transmitter sites and conducting operations therefrom, including any property taxes, rent and utilities at the transmitter site(s) for the Station ("Transmitter Site Expenses"); (iii) the costs of maintaining the Station's equipment in operating condition, including any replacements thereof ("Equipment Expenses"); and (iv) expenses reasonably incurred to

maintain the Station's FCC licenses ("License Expenses" and collectively with the Transmitter Site Expenses, and Equipment Expenses, "Reimbursed Expenses" for the purposes of *Schedule B*). Each party shall be responsible for paying directly all income taxes relating to such party's earnings from this arrangement. During the Term, Broker shall obtain and maintain in full force and effect in its own name and expense all music licenses, including without limitation ASCAP, BMI, SESAC, GMR and Sound Exchange ("Music Licenses") as are required for the Programming and as shall be required by the licensor of those Music Licenses.

7. Force Majeure. Any failure or impairment of facilities or any delay or interruption in broadcasting the Programming, or failure at any time to furnish facilities, in whole or in part, for broadcasting, due to acts of God, strikes or threats or force majeure or due to causes beyond the control of Licensees or Broker, shall not constitute a breach of this Agreement.

8. Compliance with Laws. Broker hereby represents and warrants to Owner that all Programming presented by Broker for broadcast by the Station pursuant to this Agreement will comply with all legal requirements, including, but not limited to, the FCC's rules, regulations and policies. Owner reserves the right to refuse to broadcast any Programming which, in Owner's opinion, determined in good faith, is inconsistent with its duty to operate in the public interest. In the event that, in the opinion of Owner, the Programming furnished by Broker fails to conform to Owner's requirements, Owner shall have the right, without prejudice to any other rights it may also have, to:

- (a) Furnish and/or substitute broadcast material prepared by it,
- (b) Edit the proffered Programming, or
- (c) Refuse to furnish the Station's transmission facilities to Broker.

In all such cases, however, Owner will endeavor to notify Broker of any changes or substitutions in advance of the broadcast wherever reasonably possible. In no event shall any preemption, deletion or failure to broadcast Broker's programs take place for the commercial or economic advantage of Owner and Owner shall not sell any preempted time to any third party.

9. Political Advertising. Owner will oversee and take ultimate responsibility for the Station with respect to the provision of equal opportunities, lowest unit charge, and reasonable access to political candidates, and compliance with the political broadcast rules of the FCC. Broker shall cooperate with Owner as Owner complies with the political broadcast rules of the FCC. Broker shall supply such information promptly to Owner as may be necessary to comply with the lowest unit charge requirements of federal law. To the extent that Owner believes necessary, in its sole discretion, Broker shall release advertising availabilities to Owner to permit it to comply with the political broadcast rules of the FCC, including but not limited to Section 315 of the Communications Act of 1934, as amended; provided, however, that revenues received by Owner as a result of such a release of advertising time shall promptly be remitted to Broker, net of any direct out-of-pocket costs incurred by Licensee in selling the political advertising and administering its broadcast.

10. Payola. Broker will not accept any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, material, supplies or other merchandise, services or labor (collectively "Consideration"), whether or not pursuant to written contracts or agreements between Broker and merchants or advertisers, unless the payer is identified in the program for which Consideration was provided as having paid for or furnished such Consideration, in accordance with and to the extent required by the Communications Act and FCC requirements.

11. Response to Inquiries. Owner will use commercially reasonable efforts to cooperate with Broker in responding to any question, comment, or complaint from any third party with respect to any Programming broadcast by the Station that was presented for such broadcast by Broker; provided, however, Broker shall immediately forward to Owner all written questions, comments or complaints. All responses to questions, comments or complaints with respect to Programming are subject to the approval of Owner with respect to its Station. If requested by Licensee, Broker shall cooperate fully with respect to all responses to such questions, comments or complaints.

12. Control of the Station.

(a) All obligations of Owner hereunder are subject to its overriding obligation as a public trustee to serve the needs and interests of its service area and to broadcast programming that Owner views as consistent with those needs and interests and the rules and regulations of the FCC. Broker shall not exercise control over the Station, and Owner shall be solely responsible for the operation of its Station and maintenance of the FCC licenses for the Station.

(b) Broker recognizes that Licensee, as the Station's licensee, has the authority and obligation to remain in complete control of the operation of the Station. Nothing herein shall be construed as in any way limiting Licensee's right and obligation as an FCC licensee to make the ultimate and non-delegable decisions concerning the programming to be broadcast on the Station, including but not limited to the right to reject or refuse to air such portions of Broker's Programming as Licensee may, in its sole discretion, believe is unsatisfactory, unsuitable, or contrary to the public interest.

13. Right to Use Programs. The right to use any programs (or portions thereof) presented by Broker for broadcast by the Station hereunder, and the right to authorize such use in any manner or in any media whatsoever, shall be and shall remain vested in Broker. Owner shall not authorize, cause or permit, without Broker's prior written authorization, any program or other material supplied to Owner under this Agreement to be recorded, duplicated, rebroadcast, or otherwise transmitted or used for any purpose other than broadcasting by the Station at the times specified by Broker and in the community and service area to which the Station is licensed, as provided herein. Owner shall broadcast all Programming (including all commercial advertising material) without modification, addition or deletion, provided that said Programming is not rejected or replaced pursuant to this Agreement, at the hours and on the days specified in Broker's program schedule.

14. Disclosure of Information. Owner and Broker recognize and acknowledge that during the term of this Agreement, they may from time to time become privy to information belonging to the other involving rates, program information, client list(s), and other information which is proprietary, valuable, special and unique to its respective business (whether or not specifically related to the Station), and that the appropriation of such information by the other could work substantial and irreparable harm to either Broker or Owner, as the case may be, and its respective business. As a result, neither Broker nor Owner shall communicate or disclose at any time during or after the term of this Agreement any information relating to client lists or other proprietary information, or any part thereof, to any other person, firm, corporation, association, or other entity for any reason or purpose whatsoever, except as may be required by the rules and regulations of the FCC. In addition, Broker and Owner shall exercise their respective best efforts to prevent the use of copyrighted material and trade secrets of the other by

any person or entity which prior thereto has not been authorized by Broker or Owner to use such information. Such prohibited disclosure by Broker or Owner shall constitute a breach of this Agreement, and in such event the other party may seek compensatory damages.

15. Non-Default Termination. This Agreement may be terminated by Broker or Owner, as provided by this Section and its subparts, if no default has occurred by such party and without fault or further obligation to any party to this Agreement in the following circumstances:

(a) License Termination. By Broker if (i) the Station is displaced from its original channel, or (ii) the main license for the Station is terminated, for whatever reason, by the FCC, and such order of termination has become a Final Order, and (iii) commercial broadcasting for the Station cannot be resumed within thirty (30) days of the cessation of operation.

(b) Modification of Facilities. By Broker, if any action by the FCC results in changes to the Station's facilities, including but not limited to, power, frequency, or hours of operation, such changes occurring at any time during the Term of this Agreement so that the broadcasting of Broker's Programming by Station is of a materially diminished value than it was as of the date of this Agreement.

(c) Implications of Law. By Broker or Owner in the event that this Agreement or the involvement of any party is deemed, preliminarily or otherwise, to be in material violation of the Communications Act of 1934, as amended, or any rule, policy or order of the FCC; provided, however, that the parties hereto must use their respective best efforts to rectify promptly any such material violation.

Upon a termination in accordance with this Section and its subparts, the parties hereto may promptly recover any equipment respectively owned by it and shall have no further obligation to otherwise pay further compensation or provide services as set forth in this Agreement, except that Broker will reimburse Licensee for any Monthly LMA Fee or expenses accrued to the date of termination for which it was otherwise obligated. The party terminating this Agreement pursuant to this Section or its subparts shall provide the other party with written notice of such termination, and the reason therefor, and the notice must be given at least thirty (30) days before the effective date of the termination, unless an earlier termination date is required to comply with FCC or statutory requirements.

16. Termination Upon Default. In the event of any Event of Default, the party not in default shall be under no further obligation to perform hereunder, and may, upon written notice to the other party, terminate this Agreement. In the Event of Default by Broker, (i) Owner shall cease to make available to Broker any further broadcast time or broadcast program distribution facilities, and (ii) Broker's obligation to purchase time on Station shall be terminated, and in such event, Broker shall transfer and assign to Owner all contracts, leases and agreements, to the extent assignable, and which Owner's requests be so assigned, and which were entered into in connection with the Programming for the Station by Broker, in an effort to afford to Owner the same benefits enjoyed thereunder by Broker. In the event of any Event of Default by Owner, Broker may pursue its remedies at law to recover damages. The following shall constitute an Event of Default under this Agreement:

(a) Non-Payment. Broker's failure to timely pay the consideration provided for herein. For the purposes of this Agreement, Broker shall be timely in its payments only so long as they are made within ten (10) business days from the date of

written notice from the Owner to Broker that a payment has not been made when due and payable.

(b) Default in Covenants. The default by either party in the observance or performance of any material covenant, condition, or agreement contained herein, which shall not have been cured within thirty (30) days after receipt of written notice from the non-defaulting party that the default occurred; or

(c) Breach of Representation. Should any material representation or warranty herein made (i) by any party, or (ii) in any certificate or document furnished by one party to another pursuant to the provisions hereof, prove to have been false or misleading in any material respect as of the time made or furnished.

17. Indemnification. Broker indemnifies and holds harmless Owner, its successors and assigns, affiliates, members, partners, directors, officers, employees, and agents, from and against expenses (including reasonable attorneys' fees and other expenses incidental thereto) of every kind, nature and description, arising out of claims made or liability assessed against Licensee, resulting from acts or omissions of Broker in the operation of the Station pursuant to this Agreement and not due to intentional or negligent acts or omissions of Owner.

18. Liabilities Upon Termination of this Agreement. Following termination of this Agreement for any reason, Broker shall be responsible for all liabilities, debts and obligations accrued from the purchase of air time and facilities including, without limitations, accounts payable, barter agreements, trade-out agreements, and unaired advertisements entered into by Broker or by Owner if approved by Broker, but not Owner's federal and local tax liabilities associated with Broker's payment to Licensee as provided for herein.

19. Due Authority; No Conflict. Owner hereby warrants and represents to Broker, and Broker hereby represents and warrants to Owner, that it is legally qualified under the laws of the State of its formation, and that it is duly authorized by all necessary corporate or action, to execute, deliver and perform its obligations under this Agreement, and that such execution, delivery and performance does not and will not violate, conflict with, constitute a default under, or upon the giving of notice or the lapse of time, or both, constitute grounds for termination of, or acceleration of obligations under, any charter, certificate, by-law, agreement, contract, instrument, indenture, franchise, lease, license, permit, rule, regulation, statute, ordinance, judgment, order, or decree to which such warrantor is subject or by which it is bound.

20. Further Assurances. Each party agrees to execute and deliver additional documents and take such other actions that another party may reasonably request for purposes of carrying out the transactions contemplated by this Agreement.

21. No Partnership or Joint Venture. This Agreement is not intended to be and shall not be construed as a corporate or joint venture agreement between the parties. Except as otherwise specifically provided in this Agreement, no party to this Agreement shall be authorized to act as agent of or otherwise represent any other party to this Agreement.

22. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. This Agreement may not be assigned by either party, either voluntarily or by operation of law, without the prior written consent of the other. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or give any

person or entity other than the parties hereto or their permitted assigns any rights, remedy or claim, legal or equitable, under or by reason of this Agreement.

23. Governing Law. This Agreement shall be governed by, construed and interpreted in accordance with, and enforceable under, the laws of the Commonwealth of Pennsylvania applicable to contracts made in such State and that are to be wholly performed in such State, without reference to the choice-of-law principles of such State, except to the extent preempted by applicable federal law.

24. Headings. The headings of the sections appearing in this Agreement are inserted only for convenience of reference, and shall not operate to alter the meaning of any provision appearing herein.

25. Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, or on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery and shall be addressed to the following addresses, or to such other address as any party may request by notice given in accordance with this paragraph:

To Owner:

Greater Johnstown School District
1091 Broad Street
Johnstown, PA 15906
Attention: Samantha Williams

To Broker:

Lightner Communications, LLC
1771 Beaver Dam Road
Claysburg, Pennsylvania
Attn: Matthew W. Lightner
Telephone: 814-239-8323

26. Entire Agreement. This Agreement and the schedules hereto sets forth the entire understanding between Licensee and Broker with respect to the subject matter hereof, and there are no other agreements, representations, warranties, or understandings, oral or written, with respect to the subject matter hereof.

27. Certifications. (i) Owner certifies that it maintains and will continue to maintain ultimate control over the Station's facilities, including specifically ultimate control over the Station's finances, personnel and programming as provided herein. (ii) Broker certifies that the arrangement contemplated by this Agreement complies with the provisions of Section 73.3555(a)(1) of the Commission Rules.

28. Station Operation Licensee certifies it has appointed a management-level employee to oversee station operations during the term of the TBA.

29. Quarterly Issues/Public File Licensee certifies it is responsible to prepare and file the quarterly issues/programs lists and all public file documents.

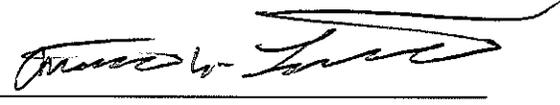
(SIGNATURE PAGE TO FOLLOW)

SIGNATURE PAGE TO TIME BROKERAGE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representative to execute this Agreement as of the date and year first above written.

LIGHTNER COMMUNICATIONS, LLC

BY:



MATTHEW LIGHTNER
AS ITS MANAGING-SOLE MEMBER

GREATER JOHNSTOWN SCHOOL DISTRICT

BY:



SAMANTHA WILLIAMS
BUSINESS MANAGER

Schedule A

LMA Monthly Payment

Beginning on the Commencement Date, and continuing during the Term, Broker shall pay to Licensee monthly, pro-rated for any partial months, the "LMA Monthly Fee" as follows: Zero (\$0.00) DOLLARS per month.

The LMA Monthly Fee shall be due by the seventh (7th) day of each calendar month, or if that day is a weekend or Federal or State holiday, the next business day, provided that, if the LMA Monthly Fee is not delivered by Broker by the fifteenth (15th) day of each calendar month, then Broker will owe Licensee a late fee of five percent (5%) (due with the next month's payment).

Schedule B

Reimbursement Payments

Licensee shall be responsible for all non-programming costs related to the operation and maintenance of the stations, consistent with its past practices. Notwithstanding any other provision of the LMA, Licensee shall continue to be responsible for and directly paying all operating costs of the stations, under the oversight and management of the Licensee's manager.