

## **MUTUAL UPGRADE AGREEMENT**

This MUTUAL UPGRADE AGREEMENT (“Agreement”) is dated as of the 2nd day of November, 2017 (the “Effective Date”), by and among Western Pacific WACP, LLC (“WACP Licensee”), Virginia Broadcasting, LLC (“WVIR Licensee”), Maranatha Broadcasting Company, Inc. (“KJWP Licensee”), and PMCM TV, LLC (referred to herein as “PMCM” or “WJLP Licensee”) (collectively, the four parties are referred to herein as “the Parties” and each may be referred to herein as a “Party”).

### **R E C I T A L S**

- A. WACP Licensee is the licensee of TV broadcast station WACP(TV), channel 4, Atlantic City, New Jersey (FCC Id. 189358) (“WACP”) pursuant to authorizations issued by the Federal Communications Commission (“FCC”).
- B. WVIR Licensee is the licensee of TV broadcast station WVIR(TV), channel 2, Charlottesville, Virginia (FCC Id. 70309) (“WVIR”) pursuant to authorizations issued by the FCC.
- C. KJWP Licensee is the licensee of TV broadcast station KJWP(TV), channel 2, Wilmington, Delaware (FCC Id. 1283) (“KJWP”) pursuant to authorizations issued by the FCC.
- D. WJLP Licensee is the licensee of TV broadcast station WJLP(TV), channel 3, Middletown Township, New Jersey (FCC Id. 86537) (“WJLP”) pursuant to authorizations issued by the FCC.
- E. The Parties each wish to upgrade the facilities of their television stations but cannot do so without the consent of the other Parties and the permission of the FCC.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements set forth in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

### **SECTION 1. DEFINITIONS**

WACP, WVIR, KJWP, and WJLP are referred to herein as the “Stations” or each as a “Station.” Capitalized terms used in this Agreement shall have the meanings ascribed to them in the preamble or elsewhere in the Agreement.

### **SECTION 2. REPRESENTATIONS AND WARRANTIES**

Each of the Parties represents and warrants to each of the other Parties as follows:

2.1 **Standing.** It is a business entity duly organized, validly existing, and in good standing under the laws of the state of its organization. Each of the Parties has all requisite authority to execute and deliver this Agreement and the documents contemplated hereby, and to

perform and comply with all of the terms, covenants, and conditions to be performed and complied with by the Parties under the terms of this Agreement.

2.2 Authorization and Binding Obligation. Each of the Parties is legally qualified, empowered and authorized to enter into this Agreement. The execution, delivery, and performance hereof shall not constitute a breach or violation of any agreement, contract or other obligation to which it is subject or by which the Party is bound. This Agreement has been duly executed and delivered by each Party and constitutes the legal, valid, and binding obligation of each Party, enforceable in accordance with its terms. Each person executing this Agreement represents and warrants that he/she is authorized to legally bind the Party on whose behalf he/she has signed.

### **SECTION 3 COVENANTS AND AGREEMENTS**

#### **3.1 Filings.**

(a) FCC Applications. Subject to PMCM's compliance with Section 3.1(b) of this Agreement, the Parties each agree that each Party shall file an application for a construction permit to modify its facilities to specify the facilities substantially as set forth on Exhibit 1 hereto (each an "Application" and collectively, "the Applications") according to the following timetable: (i) WVIR Licensee shall file its Application with the FCC no later than November 2, 2017; and (ii) WACP Licensee, KJWP Licensee, and WJLP Licensee shall each file its Application with the FCC on the first day of the limited filing period during which the FCC will temporarily lift the freeze on the filing and processing of modification applications, as announced by FCC staff on October 19, 2017 in DA 17-1033 (the "Freeze Window"). Each Party shall request waivers of Sections 73.622(f) and 73.623(c) of the FCC's Rules, relying on this Agreement and appropriate public interest considerations, and shall agree to processing of its Application contingent on the grant of all of the Applications, with such waiver of Section 73.3517 (the contingent application rule) as may be needed to accomplish this goal and any other waivers that may be necessary for grant of the Applications. If the FCC dismisses, denies or otherwise rejects the Application filed on or before November 2, 2017 or any Application filed on the first day of the Freeze Window, but leaves open the possibility of re-filing any such Application when the FCC resumes its normal process for accepting applications for the improvement of television stations, the Parties agree to remain bound by this Agreement until any such Applications can be refiled in the normal course of FCC processing. The Parties shall cooperate to file on the first day for such applications in the normal course if the FCC provides prior notice of that resumption of normal processing. Each Party agrees to diligently prosecute its Application and not challenge any other Application. If the FCC determines that it cannot grant the Applications as proposed, but the FCC would grant the Applications with the facilities specified in the Applications but at a lower power that would not subject any Station to more interference than it would receive were all of the Applications granted as initially filed, then the Parties agree to so amend their Applications in order for all of the Applications to be granted. Following the conclusion of the Construction Period described in Section 3.4 of this Agreement, each Party agrees to accept any interference that may result from the grant of the Applications, on the condition that its own Application is granted by the FCC. Each Party authorizes the inclusion of this Agreement in the Applications, noting the acceptance of interference to be submitted to the FCC to support the Applications. If all of the Applications contemplated by

this Agreement have not been granted by December 31, 2018, any Party not then subject to a suit claiming specific performance under Section 3.2 of this Agreement may terminate this Agreement by written notification to the other Parties, except that the provisions of Section 3.1(b) of this Agreement shall survive any termination of this Agreement.

(b) Withdrawal of Petitions for Reconsideration and Related Pleadings. Within two (2) business days of the date WACP Licensee files its Application, PMCM shall submit notifications (“Notifications”) to the FCC withdrawing with prejudice PMCM’s pending Petitions for Reconsideration (the “Petitions”) in MB Docket Nos. 09-230 and 13-40 and all related pleadings in those proceedings. PMCM hereby covenants that, after it files the Notifications, it shall not seek to challenge, revive any challenge or otherwise object in any forum or venue to the FCC’s channel 5 allotment at Seaford, Delaware, the results of FCC Auction 90, the WMDE(TV) community of license change from Seaford, Delaware to Dover, Delaware, the issuance of the WMDE(TV) construction permit or the issuance of the WMDE(TV) license. WACP Licensee’s obligation to submit its Application pursuant to Section 3.1(a) of this Agreement is specifically contingent on PMCM’s timely compliance with its obligations under this Section 3.1(b) of this Agreement, and if PMCM has not so complied, WACP Licensee may, in addition to and without limiting any other rights and remedies available under this Agreement, (i) request that the FCC hold the Applications in abeyance pending resolution of PMCM’s breach of this Agreement; (ii) withdraw its Application; and/or (iii) terminate its own participation in this Agreement without further obligation or liability.

3.2 No Inconsistent Action; Enforcement. No Party shall take any action that is inconsistent with its obligations under this Agreement. In consideration of the mutual promises contained herein, and of the time and expense each Party has spent in furtherance of this Agreement and the facilities changes contemplated hereunder, and recognizing that damages in the event of breach of this Agreement by a Party hereto may be difficult, if not impossible, to ascertain, it is therefore agreed that each such Party, in addition to and without limiting any other remedy it may have under law or equity, will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each Party hereby waives any and all defenses it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. Each Party shall waive and shall be deemed to have waived any requirement for the posting of bond or other security or for any showing of the inadequacy of money damages. In any successful action to enforce their rights under this Agreement, any and all successful Parties shall be entitled to reimbursement, upon presentment, of reasonable attorney fees and other out-of-pocket expenses in connection with the enforcement of its rights hereunder. With the exception of the rights retained by WACP Licensee pursuant to Section 3.1(b) of this Agreement, no Party shall have the right to claim any monetary damages beyond out-of-pocket expenses. No Party shall have the right to claim punitive or exemplary damages, or damages for lost business opportunities or diminution of the market value of or revenue potential of its Station.

3.3 Cooperation. The Parties hereto shall cooperate fully with each other in connection with any and all actions required to be taken as part of their respective obligations under this Agreement and take all commercially reasonable actions necessary to secure grants of

the Applications. If additional information is requested by the FCC about any of the Applications, each Party agrees to provide such information as the FCC reasonably requests.

3.4 FCC Actions. If the FCC grants the Applications, each Party shall expeditiously take action to construct the facilities authorized pursuant to its Application and to file with the FCC an application for license to cover the facilities so constructed. The Parties acknowledge that the construction of each Party's new facilities may not be completed at the same time, but all Parties shall be provided with a period of up to 18 months from the grant of the construction permits for upgraded facilities in which to complete construction (the "Construction Period"). Following the expiration of the Construction Period, no Party will object to the commencement of operations with the facilities specified in any of the Applications because its own construction has not been completed, so long as the commencement of operations does not violate any terms or conditions of the grant of any of the Applications. A Party may choose to apply for and construct facilities at a reduced power level from what is outlined in Exhibit 1, provided that such reduced power facilities do not adversely affect the ability of any other Party to obtain or fully effectuate its authorization for, or to operate, the facilities at the power levels set forth in such Party's Application. In that event, the Party that opted for reduced power retains the right to construct facilities at the power levels outlined in Exhibit 1 at any future date and each of the other Parties agrees to not interpose any objection to any subsequent filing to increase power to the full facilities set out in Exhibit 1.

#### **SECTION 4. TERM AND TERMINATION**

The term of this Agreement shall begin as of the Effective Date and shall continue in effect until such time as

- (a) this Agreement is terminated by mutual consent in writing;
- (b) any of the Applications is denied by the FCC without the potential for re-filing as described in Section 3.1(a) above; or
- (c) as otherwise provided in Section 3.1 above.

#### **SECTION 5 MISCELLANEOUS**

5.1 Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial delivery service, facsimile transmission or registered or certified mail, return receipt requested, (c) deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service or on the return receipt or on the date sent by facsimile with receipt confirmed by telephone, and (d) addressed as follows:

If to WACP Licensee: 400 N. Ashley Drive, Suite 2500  
Tampa, FL 33602  
Tel: (813) 286-4140  
Fax: ( 13) 579-4474

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

David A. O'Connor  
Wilkinson Barker Knauer, LLP  
1800 M Street, NW, Suite 800N  
Washington, DC 20036

If to WVIR Licensee: 503 East Market Street  
Charlottesville, VA 22902-5301  
Tel: (434) 220-2900  
Fax: (434) 229-2916

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

Anne Goodwin Crump  
Fletcher Heald & Hildreth, PLLC  
1300 N. 17th Street, Suite 1100  
Arlington, VA 22209-3801  
Fax: (703) 812-0486

If to KJWP Licensee: 300 East Rock Road  
Allentown, PA 18103  
Tel: (610) 798-4000  
Fax: (610) 791-3000

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

David D. Oxenford  
Wilkinson Barker Knauer, LLP  
1800 M Street, NW, Suite 800N  
Washington, DC 20036

If to WJLP Licensee: Attn: Richard Morena CFO  
1329 Campus Way  
Wall Township NJ 07753  
Tel: (732) 751-1119 ext 4100 Fax: (732) 751-1726

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

Dennis P. Corbett  
Telecommunications Law Professionals PLLC  
1025 Connecticut Avenue, NW, Suite 1011  
Washington, DC 20036

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this Section 6.1.

5.2 Benefit and Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns. Any Party may assign its rights and obligations under this Agreement to any successor licensee, and each Party agrees that it shall cause any authorized assignee, transferee or successor in interest to assume all of that Party's respective rights and obligations under this Agreement, and that any purported assignment, transfer or other disposition of any license in violation of this section shall be deemed void and of no force or effect.

5.3 Further Assurances. The parties shall execute any other applications, agreements or documents that may be necessary and desirable to the implementation and consummation of this Agreement.

5.4 Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Delaware (without regard to the choice of law provisions thereof).

5.5 Headings. The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

5.6 Amendments. This Agreement cannot be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.


5.7 Counterparts. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

*[SIGNATURE PAGE TO MUTUAL UPGRADE AGREEMENT]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Mutual Upgrade Agreement as of the Effective Date.

**WESTERN PACIFIC WACP, LLC**

By:   
Name: John C. Troutman  
Title: Vice President

**VIRGINIA BROADCASTING, LLC**

By: \_\_\_\_\_  
Name: Harold B. Wright  
Title: Vice-President

**MARANATHA BROADCASTING, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**PMCM TV, LLC**

By: \_\_\_\_\_  
Name:  
Title:

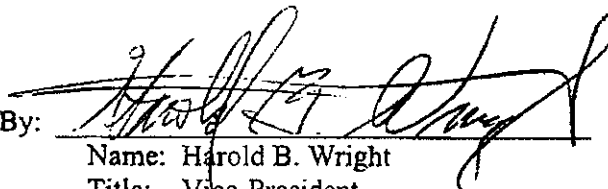
*[SIGNATURE PAGE TO MUTUAL UPGRADE AGREEMENT]*

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**WESTERN PACIFIC WACP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**VIRGINIA BROADCASTING, LLC**

By:  \_\_\_\_\_  
Name: Harold B. Wright  
Title: Vice-President

**MARANATHA BROADCASTING, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**PMCM TV, LLC**

By: \_\_\_\_\_  
Name:  
Title:



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By: \_\_\_\_\_  
Name:  
Title:

**VIRGINIA BROADCASTING, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**MARANATHA BROADCASTING, INC.**

By:  \_\_\_\_\_  
Name: BILLY FISHER  
Title: PRESIDENT & GM

**PMCM TV, LLC**

By: \_\_\_\_\_  
Name:  
Title:

*[SIGNATURE PAGE TO MUTUAL UPGRADE AGREEMENT]*

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By: \_\_\_\_\_  
Name:  
Title:


**VIRGINIA BROADCASTING, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**MARANATHA BROADCASTING, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**PMCM TV, LLC**

By:   
Name: Robert E. McAllan  
Title: CEO

## **Exhibit 1**

### **Facilities to be proposed**

**November 2, 2017**

#### **WACP:**

North Latitude: 39° 44' 4.00"

West Longitude: 74° 50' 27.00"

NAD-83

ASR # 1042989

Height of antenna radiation center above mean sea level (AMSL): 287.7meters (943.9 feet)

Height of antenna radiation center above average terrain (HAAT): 258.4 meters (847.8 feet)

ERP: 79.4 kW

#### **WVIR-TV:**

North Latitude: 37° 59' 01"

West Longitude: 78° 28' 53"

NAD-83

ASR # 1018769

Height of DTV antenna radiation center 534.8 meters above mean sea level (1754.6 feet)

Height of DTV antenna radiation center 362 meters above average terrain (1187.7 feet)

ERP: 79.4 kW

#### **KJWP-TV:**

North Latitude: 40° 02' 30.14"

West Longitude: 75° 14' 10.08"

NAD-83

ASR # 1231524

Height of DTV antenna radiation center 378.9 meters above mean sea level (1243.1 feet)

Height of DTV antenna radiation center 310.8 meters above average terrain (1019.69 feet)

ERP: 74.3 kW

#### **WJLP (WTC SITE) - One World Trade Center, The Freedom Tower**

North Latitude: 40° 42' 46.8"

West Longitude: 74° 00' 47.3"

NAD-83

ASR # 1263701

Height of DTV antenna radiation center 484.6 meters above mean sea level (~ 1590 feet)

Height of DTV antenna radiation center 476 meters above average terrain (~ 1563 feet)

ERP: 18.11 kW