

## **MUTUAL UPGRADE AGREEMENT**

This MUTUAL UPGRADE AGREEMENT ("Agreement") is dated as of the 24th day of May, 2018 (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").

### **RECITALS**

- 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 entered into a Mutual Upgrade Agreement dated November 2, 2017 (the "November Agreement") pursuant to which each proposed to upgrade the facilities of their respective television stations, but the FCC has notified the parties that the applications filed to implement the November Agreement cannot be approved without the changes to which the Parties agree in this Agreement.

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." WACP, KJWP and WJLP are referred to as the "Upgrading Stations." WACP Licensee, KJWP Licensee and WJLP Licensee are referred to herein as "Upgrading Licensees." 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. The Upgrading Licensees agree to amend their respective applications filed to implement the November Agreement to specify the facilities substantially as set forth on Exhibit 1 hereto (each an "Application" and collectively, "the Applications") on or before May 25, 2018. Each Party shall request waivers of Sections 73.622(f) and 73.623(g) of the FCC's Rules to the extent such waiver may be necessary, 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 Applications, but leaves open the possibility of re-filing the Applications 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 the Applications can be refiled in the normal course of FCC processing, but subject to the right to terminate after June 15, 2018, as set forth below. 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 alternative facilities that would not subject any Station to more interference than it would receive were all of the Applications granted, 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 June 15, 2018, any Party whose Application has not been granted without conditions unreasonably adverse to that Party may terminate this Agreement by written notification to the other Parties, except that the provisions of Section 5.6 of this Agreement shall survive any termination of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Parties agree that no Party may begin construction of facilities proposed in Exhibit 1 hereto (including alternative facilities as mutually agreed pursuant to this subparagraph or as provided in Paragraph 3.4) unless and until the FCC has granted all of the Applications and issued all of the construction permits for the facilities proposed in Exhibit 1 hereto (including alternative facilities as mutually agreed pursuant to this subparagraph or as provided in Paragraph 3.4).

(b) Provisions as to WVIR. On or before June 4, 2018, WVIR Licensee agrees to amend its application filed to implement the November Agreement to reduce the power specified therein to not more than its currently authorized power of 10 kW, provided that WVIR Licensee may specify a nondirectional antenna. WVIR Licensee consents to any interference to be caused to WVIR by reason of the Applications and subsequent construction of the facilities set forth in those Applications, with parameters not exceeding the equivalent of those set forth in Exhibit 1 hereto. In exchange for this acceptance of interference, the Upgrading Parties agree to not object to any application for WVIR to upgrade its facilities in the future, at such time as the FCC may agree to entertain such an upgrade proposal, to not more than the equivalent of the parameters set forth on Exhibit 2 hereto.

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 monetary 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, shall 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 any damages caused by any breach by PMCM of its covenants in Section 5.6, 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 one another 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 reasonably promptly.

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 12 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 Exhibits 1 or 2, 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 Exhibits 1 or 2 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 Exhibits 1 or 2.

#### **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 or dismissed 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 as the first business day of attempted delivery at the correct location, 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: (813) 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  
Tel. (202) 383-3429  
Fax: 202-783-5851

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  
Tel. (703) 812-0426  
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  
Tel. (202) 383-3337  
Fax: (202) 783-5851

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  
Tel. (202) 789-3115  
Fax: (202) 789-3112

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, and shall be obligated to, 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 with respect to obligations under this Agreement.

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 and Effect of Prior Agreements. This Agreement modifies the November Agreement and shall control to the extent that there is any conflict between the two Agreements. The provisions of the November Agreement which have already been implemented shall remain in effect unless a new obligation has been imposed on a party under the terms of this Agreement. PMCM hereby covenants that 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. The licensee of WMDE(TV) is an intended third party

*[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:

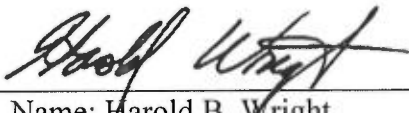
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**WESTERN PACIFIC WACP, LLC**

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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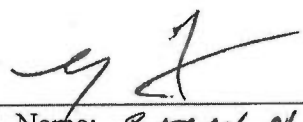
**WESTERN PACIFIC WACP, LLC**

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

**VIRGINIA BROADCASTING, LLC**

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

**MARANATHA BROADCASTING, INC.**

By:  \_\_\_\_\_  
Name: Benny M. Foster  
Title: Pres & GM.

**PMCM TV, LLC**

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

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

**VIRGINIA BROADCASTING, LLC**

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

**MARANATHA BROADCASTING, INC.**

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

**PMCM TV, LLC**

By: Robert E. McAllan  
Name: Robert E. McAllan  
Title: CEO

## **Exhibit 1**

### **Facilities to be proposed**

#### **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: 34 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: 34kW

#### **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: 9 kW

## **Exhibit 2**

### **WVIR-TV Facilities to be Proposed Post-Channel Change Build-Out**

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

North Latitude: 37° 59' 01"

West Longitude: 78° 28' 53"

NAD-83

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

Height of DTV antenna radiation center 367.9 meters above average terrain (1207.0 feet)

ERP: 34 kW

Non-directional antenna