

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of August 4, 2023, by and between **CHRISTIAN HERITAGE BROADCASTING, INC.**, a Minnesota non-profit corporation (“Seller”) and **PRAIRIE WINDS BROADCASTING, INC.**, a South Dakota corporation (“Buyer”).

### **RECITALS**

WHEREAS, Seller is the licensee of FM translator station K253AB, Aberdeen, South Dakota (FCC ID No. 72908) (the “Station”) pursuant to certain licenses, authorizations and approvals issued by the Federal Communications Commission (the “FCC”); and

WHEREAS, on the terms and conditions described herein and subject to the prior approval of the FCC, Seller desires to sell, and Buyer desires to purchase, the Station in exchange for the consideration set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **ARTICLE 1. SALE AND PURCHASE**

1.1. Assets. On the Closing Date (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, the assets which are owned by Seller and/or used or useful in connection with the operation of the Station (“Assets”), including without limitation the following:

(a) Licenses and Authorizations. All of the licenses, construction permits and other authorizations issued by the FCC to Seller in connection with the Station identified on **Schedule 1.1(a)**, together with all applications therefor and any renewals or extensions thereof (collectively the “FCC Authorizations”).

(b) Tangible Property. All equipment, transmitters, antennas, translators, studio-to-transmitter link (“STL”) links, broadcast boards, studio and remote equipment, surplus parts and backup equipment, and other tangible personal property used or held for use in the business and operation of the Station (the “Tangible Personal Property”) identified on **Schedule 1.1(b)** (“Tangible Personal Property”).

(c) Intangible Property. The Station’s call sign, “K253AB.”

(d) Files and Records. All files, documents, records, and books of account (or copies thereof) relating to the business and operation of the Station, including the Station’s FCC local public files, programming information and studies, technical information and engineering data, marketing and demographic data, sales correspondence, credit and sales reports, and logs.

The Assets shall be transferred to Buyer free and clear of all liens, claims and encumbrances of every kind and nature ("Liens") except for (i) taxes not yet due and payable and (ii) obligations arising out of the ownership or use of the Assets from and after Closing ("Permitted Liens").

1.2. Excluded Assets. Buyer shall not assume any contracts with respect to the Station, including, but not limited to, the tower site lease for the Station. Further, Buyer is not agreeing to, and shall not, assume any liability, obligation, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, expense or agreement arising from any music licensing-type agreement with any performing rights organization.

1.3. Purchase Price. Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, Buyer shall pay to Seller the sum of Forty-four Thousand Dollars and No Cents (\$44,000.00) ("Purchase Price"). The Purchase Price shall be paid by wire transfer of immediately available funds by Buyer to Seller, pursuant to wire instructions to be provided to Buyer prior to Closing, as follows:

(a) Concurrently with the execution of this Agreement, Buyer has delivered to Fletcher, Heald & Hildreth, PLC (the "Escrow Agent"), the sum of Five Thousand Dollars (\$5,000.00) to be held as an earnest money deposit, which shall be credited toward the Purchase Price at Closing (the "Earnest Money Deposit"), pursuant to an Escrow Agreement of even date herewith, a form of which is attached hereto as **Exhibit 1**, or returned to Buyer should the Closing not occur, as appropriate, under Article 7 hereof.

(b) On the Closing Date, Buyer shall deliver to Seller the remaining balance of Thirty-nine Thousand Dollars (\$39,000.00).

1.4. Prorations and Adjustments. The business and operation of the Station until 12:01 a.m. on the day of Closing ("Adjustment Time") shall be for the account of Seller and thereafter for the account of Buyer. All of the Station's expenses shall be prorated between Seller and Buyer as of the Adjustment Time in accordance with generally accepted accounting principles, and the Purchase Price shall be adjusted accordingly. Such prorations may include, but are not limited to, real and personal property taxes (except for transfer taxes) upon the basis of the most recent tax bills and information available, business and license fees, utility expenses and similar prepaid and deferred items such as FCC annual regulatory fees. On the Closing Date, the prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date.

## **ARTICLE 2. FCC APPLICATION; CLOSING**

2.1. FCC Application. Buyer and Seller shall jointly file an application with the FCC ("FCC Application") requesting the FCC's written consent to the assignment of the FCC Authorizations from Seller to Buyer within five (5) business days from the execution of the Agreement. The parties shall diligently take all steps necessary, proper, or desirable to expedite the prosecution of the FCC Application to a favorable conclusion. The written consent to an FCC Application by initial order of the FCC is referred to herein as the "FCC Consent." Except

as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the FCC Application; however, the fee to be paid to the FCC in conjunction with the filing of the FCC Application (“FCC Fee”) will be borne by Buyer.

2.2. Closing. The consummation of the transactions contemplated herein shall take place on a mutually acceptable date within ten (10) business days after the date that the FCC Consent (defined below) to the assignment of licenses has become a Final Order (the “Closing”). The term “Final” shall mean that action shall have been taken by the FCC which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

### **ARTICLE 3. REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1. Seller. Seller hereby makes the following representations and warranties to Buyer:

(a) Organization. Seller is a non-profit corporation duly organized, validly existing and in good standing under the laws of the state of Minnesota. Seller has the requisite power and authority to own and operate the Station, to conduct the business of the Station as is now conducted, and to execute, deliver and perform the transactions contemplated in this Agreement and the documents to be made pursuant hereto.

(b) Authority. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Seller enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No Conflicts, Defaults. The execution, delivery and performance of this Agreement by Seller and the documents to be made pursuant hereto does not or will not: (a) conflict with any organizational documents of Seller, law, judgment, order, or decree to which Seller, the Station or the Assets are subject; (b) require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent; (c) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument,

license or permit by which Seller is bound; or (d) result in the creation or imposition of any Lien against the Station or the Assets.

(d) FCC Authorizations. Seller is the authorized legal holder of the FCC Authorizations as set forth on **Schedule 1.1(a)**. The FCC Authorizations constitute all of the licenses and authorizations required under the Communications Act of 1934, as amended (“*Communications Act*”) and the rules, regulations and policies of the FCC (“*FCC Rules*”) for, and used in the operation of, the Station. The FCC Authorizations are in full force and effect and have not been revoked, suspended, cancelled, rescinded or terminated and have not expired. There is not now pending or threatened, any action by or before the FCC or any other body to revoke, cancel, rescind, modify or refuse to renew any of the FCC Authorizations or other permits, and Seller has not received any notice of any pending, issued or outstanding order by or before the FCC or any other body, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against the Station or Seller.

(e) Tangible Personal Property. **Schedule 1.1(b)** contains a list of all material items of Tangible Personal Property included in the Assets. Seller has good and marketable title to each item of Tangible Personal Property set forth on **Schedule 1.1(b)**, free and clear of all Liens, except Permitted Liens. The Tangible Personal Property is in good operating condition and repair, ordinary wear and tear excepted, and is functioning in the manner and purposes for which it was intended.

(f) No Litigation. Except for proceedings affecting segments of the broadcasting industry in general, to Seller’s knowledge: (a) Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree with respect to or affecting the Station or the Assets; (b) there is no third party claim, litigation, proceeding or investigation pending or, to Seller’s knowledge, threatened against Seller with respect to the Station in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes; (c) there is no third party claim, litigation, proceeding or investigation pending or, to the best of Seller’s knowledge, threatened against Seller with respect to the Station, which is reasonably likely to have a material adverse effect upon the business, assets or condition, financial or otherwise, of the Station or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

(g) Broker. No broker, finder or other person, other than Griffin Media Brokers, LLC, whose fee shall be paid by Seller, is entitled to a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby.

3.2. Buyer. Buyer represents and warrants to Seller as follows:

(a) Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of South Dakota. Buyer has the requisite power and

authority to execute, deliver and perform the transactions contemplated in this Agreement and the documents to be made pursuant hereto.

(b) Authority. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. The Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Buyer enforceable in accordance with their respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) FCC Qualification. Buyer is legally, financially, and otherwise qualified under the Communications Act and FCC Rules to hold the FCC Authorizations. Acquisition of the FCC Authorizations by Buyer complies with the Communications Act and FCC Rules with respect to FM translator stations as they exist on the date of this Agreement.

(d) No Conflicts. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto does not or will not: (a) conflict with any organizational documents of Buyer, law, judgment, order, or decree to which Buyer is subject; or (b) require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent.

(e) Broker. No broker, finder or other person is entitled to a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action by Buyer.

### 3.3. Seller Covenants.

(a) Seller shall operate the Station only in the ordinary course of business, consistent with past practice, and keep all books and accounts, records, and files in the usual and ordinary manner.

(b) Seller shall, after the date hereof and prior to Closing, not sell, lease, mortgage, pledge or otherwise dispose of any Assets unless deemed necessary by Seller, provided that Seller shall notify Buyer promptly of any such action.

## **ARTICLE 4. CONDITIONS PRECEDENT TO OBLIGATION TO CLOSE**

4.1. The performance of the obligations of the parties under this Agreement is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by the opposing party:

(a) Representations, Warranties, and Covenants. The rerepresentations and warranties of the parties made in this Agreement shall be true and correct in all material respects as of the Closing.

(b) Covenants. Seller and Buyer shall each have performed and complied in all material respects with all of the obligations to be performed by such party prior to or as of the Closing Date.

(c) FCC Consent. The FCC Consent shall have become a Final Order.

(d) Deliveries. Each party shall have complied with its respective obligations set forth in Article 5.

## **ARTICLE 5. CLOSING DELIVERIES**

5.1. Deliveries by Seller. At the Closing, Seller shall deliver to Buyer the following:

(a) An Assignment and Assumption of FCC Authorizations assigning the FCC Authorizations to Buyer;

(b) A Bill of Sale;

(c) Joint notice to the Escrow Agent directing the release of the Earnest Money Deposit to Seller as payment of a portion of the Purchase Price; and

(d) Such other documents and instruments of conveyance, assignment and transfer that may be reasonably necessary to sell, assign, transfer, convey, or otherwise provide good and marketable title in and to the Assets to Buyer free and clear of Liens, except for Permitted Liens.

5.2. Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

(a) The Purchase Price in immediately available wire transferred funds as provided in Section 1.3;

(b) An Assignment and Assumption of FCC Authorizations assuming the FCC Authorizations from Seller;

(c) Joint notice to the Escrow Agent directing the release of the Earnest Money Deposit to Seller as payment of a portion of the Purchase Price due from Buyer; and

(d) Any other documents and instruments of assumption that may be reasonably necessary to purchase and acquire the Assets and to assume the Assumed Obligations.

## **ARTICLE 6. SURVIVAL**

The representations and warranties in this Agreement shall expire one (1) year after the

Closing ("*Survival Period*"), except as otherwise expressly stated herein. The covenants and agreements in this Agreement, and indemnification obligations with respect to such provisions, shall survive Closing until performed. No claim may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the earlier of the last day of the Survival Period or expiration of the applicable statute of limitations. In the event such notice is given, the right to indemnification with respect thereto shall survive the Survival Period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

## **ARTICLE 7. TERMINATION AND REMEDIES**

7.1. Termination. This Agreement may be terminated at any time prior to the Closing Date as follows:

- (a) By mutual written consent of both parties; or
- (b) By written notice of one party (provided it is not in material default hereunder) to the other party if such defaulting party fails to perform the obligations to be performed by it, or otherwise breaches in any material respect any of its representations or warranties, under this Agreement and such failure or breach is not cured within thirty (30) calendar days ("*Cure Period*") after the defaulting party receives notice of such breach or default; or
- (c) By written notice of one party to the other if the FCC denies the FCC Application or designates it for a trial-type hearing, provided, however, that the right to terminate this Agreement under this Section 7.1(c) shall not apply to any party whose action or inaction shall have been a cause for such dismissal; or
- (d) By written notice of one party to the other if Closing does not occur within one (1) year after the date of this Agreement.

Termination of this Agreement shall not relieve any party of any liability it would otherwise have for a breach or default under this Agreement.

7.2. Specific Performance. In the event of a material breach by Seller of any representation, warranty, covenant or agreement under this Agreement, at Buyer's election, in addition to any other remedy available to it, Buyer shall be entitled to an injunction restraining any such material breach and the enforcement of this Agreement by a decree of specific performance requiring Seller to fulfill its obligations under this Agreement, in each case, *provided that*, Buyer proportionately and reasonably demonstrates in relation to the claim economic loss or other actual damage, but without any bond or other security being required.

7.3. Liquidated Damages. In the event that this Agreement is terminated by Seller pursuant to Section 7.1(b), Seller shall be entitled to retain the Earnest Money Deposit as liquidated damages. Seller hereby waives all other legal and equitable remedies it may otherwise have as a result of any breach or default by Buyer under this Agreement.

#### 7.4 Indemnification.

(a) Subject to the limitations set forth herein, following the Closing, Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations, warranties or certifications made in or pursuant to, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement or any other transaction documents.

(b) Subject to the limitations set forth herein, following the Closing, Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations, warranties or certifications made in or pursuant to, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in, this Agreement or any other transaction documents; or (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Stations subsequent to the Closing.

(c) If any party (the "Indemnitee") receives notice or otherwise obtains knowledge of any matter with respect to which another Party (the "Indemnifying Party") may be obligated to indemnify the Indemnitee under this Section 12.4, then the Indemnitee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnitee in connection therewith; provided that no failure or delay in the giving of such notice shall affect the Indemnitee's rights under this Section 7.4 except to the extent that such failure or delay has materially prejudiced the Indemnifying Party's ability to defend the matter in question.

(d) If the Indemnifying Party is entitled to and does elect to assume the defense of any matter pursuant to Section 7.4(c) and conducts such defense in a reasonably vigorous manner, then (i) the Indemnitee, at the Indemnifying Party's expense, shall fully cooperate as reasonably requested by the Indemnifying Party in the defense of such matter, (ii) the Indemnifying Party shall keep the Indemnitee informed of all material developments and events relating to such matter, (iii) the Indemnitee shall have the right to participate, at its own expense, in the defense of such matter, and (iv) except with the prior written consent of the Indemnitee, the Indemnifying Party will not, in the defense of such matter, consent to the entry of any judgment (other than a judgment of dismissal on the merits without cost), or enter into any settlement, that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnitee of a release from all Damages in respect of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(e) Any representation, warranty or certification that is specifically identified in a written claim for indemnification delivered within the period herein provided shall survive until the claim in question is either settled or finally adjudicated.



## ARTICLE 8. GENERAL PROVISIONS

8.1. Risk of Loss. The risk of loss of or damage to any of the Assets shall remain with Seller at all times until 12:01 a.m. local time on the day of Closing, and Buyer shall bear such risk on and after the Closing Date.

8.2. Expenses. 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. The FCC Fee under Section 2.1 of this Agreement shall be borne by Buyer.

8.3. Further Assurances. Each party shall execute all such instruments and take all such actions as any other party may reasonably request, without payment of further consideration, to effectuate the transactions contemplated by this Agreement, including without limitation the execution and delivery of confirmatory and other transfer documents in addition to those to be delivered at Closing.

8.4. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and permitted assigns. This Agreement and any rights or obligations hereunder may be assigned by Buyer or Seller only with the prior written consent of the other party, which shall not be unreasonably withheld.

8.5. Notices. Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery, confirmed facsimile transmission, confirmed delivery by a nationally recognized overnight courier service, or on the third (3<sup>rd</sup>) day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be address as follows (or to such other address as any party may request by written notice):

if to Seller, then to:

Christian Heritage Broadcasting, Inc.  
402 E. Pike  
Osakis, Minnesota 56360  
Attn: David McIver  
Tel: (320) 421-0777  
Email: david@praiselive.org

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

Fletcher, Heald & Hildreth  
1300 N. 17<sup>th</sup> Street  
Suite 1100  
Arlington, VA 22209  
Attn: Sara Hinkle, Esq.  
Tel: (703) 812-0415  
Email: hinkle@fhhlaw.com

If to Buyer, then to:

Prairie Winds Broadcasting, Inc.  
3302 South Highway 281

Aberdeen, South Dakota 57401  
Attn: Brian Lundquist  
Tel: 605-229-3632  
Email: [brian@hubcityradio.com](mailto:brian@hubcityradio.com)

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

Sciarrino & Shubert, PLLC  
330 Franklin Road  
Ste. 135A-133  
Brentwood, TN 37027-3280  
Attn: Dawn M. Sciarrino, Esq.  
Tel: (202) 256-9551  
Email: [dawn@sciarrinolaw.com](mailto:dawn@sciarrinolaw.com)

8.6. Amendments and Waivers. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

8.7. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

8.8. Severability. If any court or governmental authority holds any provision in 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.

8.9. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the state of South Dakota without giving effect to the choice of law provisions thereof.

8.10. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date set forth above.

**SELLER:**

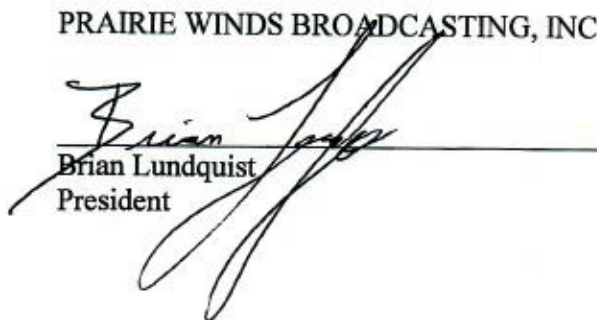
CHRISTIAN HERITAGE BROADCASTING, INC.



David McIver  
Executive Director

**BUYER:**

PRAIRIE WINDS BROADCASTING, INC.



Brian Lundquist  
President

**Schedule 1.1(a)**

**CURRENT FCC LICENSES AND AUTHORIZATIONS  
AND ASSOCIATED AUXILIARY STATIONS**

FM Translator K253AB  
Facility ID Number: 72908  
Main Station KCGN-FM, Ortonville, MN  
*Licensee: Christian Heritage Broadcasting, Inc.*  
FRN: 0005071147

Type of Authorization	FCC File Number	Grant Date	Current Expiration Date
License Renewal Authorization	LMS: 0000125014	03/22/2021	04/01/2029
License to Cover for FM Translator	BLFT-20050914AAB	12/14/2005	
Assignment of Authorization	BALFT-19991123AGE	02/25/2000	

Antenna Structure Registration (ASR) Number	ASR File Number and Issue Date	Registered Tower Owner	Registered Geographic Coordinates
None			

Broadcast Auxiliary Stations	Call Sign	FCC File Number	Grant Date	Current Expiration Date
NONE				

Satellite Earth Stations	Call Sign	FCC File Number	Location	Receive Site
NONE				

**Schedule 1.1(b)**  
**Tangible Personal Property**

None.