

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made as of the 24 day of Aug., 2004, by and between ADRIAN LLOYD MYNATT, JR. DBA DYNAMIC BROADCASTING COMPANY (referred to herein as "Seller") and ABILENE RADIO CORPORATION, INC., a Texas corporation (referred to herein as "Buyer").

Seller is the licensee and owner of AM Broadcast Stations KWKC-AM and KZQQ-AM operating in Abilene, Texas ("Stations") pursuant to a license issued by the Federal Communications Commission (the "FCC"). On September 15, 1999, buyer assumed all rights to purchase the assets of Stations KWKC-AM and KZQQ-AM.

The parties have agreed that Seller shall transfer and Buyer shall acquire the Stations and the broadcast assets associated therewith, all on the terms and subject to the conditions set forth herein.

In consideration of the above and of the mutual promises and covenants contained herein, the parties, intending to be bound legally, agree as follows:

### 1. DEFINITIONS.

Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

**1.1 "Contracts"** means all contracts, agreements, leases, commitments and understandings, options, rights and interests, of Seller as they pertain to the Stations and their operation.

**1.2 "FCC Approval"** means action or actions by the FCC granting its approval of the assignment of the License (as defined in Section 1.4 below) as contemplated by this Agreement.

**1.3 "Final Order"** means a written action or order issued by the FCC, which sets forth the FCC Approval and (a) has not been reserved, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been filed for administrative or judicial review, reconsideration, appeal or stay and the time for filing any such requests, and the time for the FCC to set aside the action on its own motion, has expired, or (ii) in the event of review, reconsideration or appeal, the time for further review, reconsideration or appeal has expired, or (iii) unless the parties hereto agree to complete the said transaction following FCC Approval of the said sale as hereinafter provided.

**1.4 "Licenses"** means the licenses, permits and other authorizations issued by the FCC to Seller in connection with the conduct of the business and operations of the Station.

### 2. PURCHASE OF ASSETS

**2.1 Closing.** The closing of this Agreement (the "Closing") shall take place at 10:00a.m. on a mutually agreeable date between the first and fifteenth day following the date on which the FCC Approvals shall have become a Final Order, unless otherwise agreed between the parties, but in no event later than thirty (30) days after such date. The parties agree to exercise their best efforts to close this transaction on before October 31, 2004. The Closing shall take place at the studios of Stations KWKC-AM and KZQQ-

AM in Abilene, Texas or such other place as shall be mutually agreed by Buyer and Seller (the "Closing Place"). The date of the Closing is hereinafter referred to as the "Closing Date". The parties agree that the Final Order provision may be waived by Buyer, if there are no timely objections against the application or any reasonable basis to believe the FCC Approvals will be contested or appealed. If Buyer elects to close prior to a Final Order, Buyer shall give appropriate written notice to Seller not less than ten (10) days prior to Closing Date.

**2.2 Transfer of Assets.** On the Closing Date and at the Closing Place, Seller shall sell, assign, transfer and convey to Buyer all the assets, real, personal and fixed, tangible and intangible, owned or held by Seller and used or useful in the conduct of the business and operations of the Stations, whether now owned or hereafter acquired, including the following.

(a) All Seller's rights in and to the licenses, permits, and other authorizations issued to Seller by any governmental authority and used or useful in the conduct of business and operations of the Stations, a list of which is contained in Exhibit B.

(b) All land owned or held by Seller and used or useful in the conduct of the business and operations of the stations, a schedule of which is contained in Exhibit C.

(c) All equipment, office furniture and fixtures, office materials and supplies, tools, inventory, spare parts and other tangible personal property of every kind and description, owned or held by Seller and used or useful in the conduct of the business and operation of the Stations, a schedule of which is contained in Exhibit D,

(d) All Contracts listed on Exhibit E that are marked with an asterisk (the "Assumed Contracts"):

(e) All the rights in and to the call signs, trademarks, tradenames, service marks, franchises, copyrights in literary property and of any kind, jingles, licenses, permits and privileges owned or held by it and used or useful in the conduct of the business and operations of the stations together with any additions thereto between the date hereof and the closing date.

(f) Such files, records and logs as now exist or will exist at closing, relative to the necessary or appropriate to the conduct of the business and operations of the Stations as Buyer may reasonably require, including, without limitations, filings at the FCC and executed copies of all Contract to be assigned hereunder (but all of the foregoing shall thereafter be available for inspection and duplication by Seller, at its expense, upon request during normal business hours); and

(g) Notwithstanding the above, Buyer shall have the right to refuse to acquire any assets which it does not desire to possess and Buyer may also refuse to be responsible or assume any contracts which are not expressly included on Exhibit E hereof.

The assets to be transferred to Buyer hereunder are hereinafter collectively referred to as the "Station Assets". The Stations Assets shall be transferred to Buyer free and clear of debts, liens, security interests, trusts, claims, or other liabilities or encumbrances whatsoever except as specifically permitted by this Agreement.

**2.3 Excluded Assets.** It is expressly understood and agreed that the Stations Assets shall not include the following:

(a) Seller's books and records as are necessary to enable Seller to file his tax return and reports. Buyer will be given reasonable access to the items should it have legitimate need for review.

(b) Cash, or similar type investments, such as certificates or deposit, Treasury bills and other marketable securities"

(c) Any Contracts other than the Assumed Contracts.

**2.4 Consideration.** Buyer agrees to pay Seller Total consideration of Five Hundred Fifty Thousand Dollars (\$550,000)("Purchase Price") which consideration shall consist of the following:

(a) as of September 15, 1999, when Buyer assumed the rights to purchase the Stations, they have made down payments in the amount of \$6,000 to the buyer and assumed a debt in the amount of \$494,000 at Bank One, which shall constitute full payment of the total consideration.

### **3. ASSUMPTION OF OBLIGATIONS**

**3.1 Assumption of Obligations.** Buyer shall assume and pay, satisfy, or discharge the liabilities, obligations and commitments of Seller which first accrue or are to be performed or satisfied on or after Closing Date under the Assumed Contracts insofar as they relate to the period following the Closing Date and arise out of Buyer's conduct of the business and operation of the Stations on or after the Closing Date, in accordance with the Assignment and Assumption Agreement attached as Exhibit I.

**3.2 Limitations.** Buyer expressly does not, and shall not, assume or be deemed to assume any liabilities, contracts, leases, obligations or commitments of Seller of any nature whatsoever other than those expressly set forth in the Agreement.

### **4. GOVERNMENTAL ACTION**

**4.1 FCC Approval.** It is expressly understood and agreed that the assignment of the Licenses as contemplated by this Agreement is subject to the prior approval of the FCC.

(a) Buyer and Seller agree that a copy of this agreement shall be filed, together with an appropriate application for Commission approval of the assignment of the Station's license no more than ten (10) days following execution of this agreement. The parties shall thereafter prosecute the application with all reasonable diligence and otherwise use reasonable best efforts to obtain the grant of such applications as expeditiously as practicable. If reconsideration or judicial review is sought with respect to the FCC approval, Buyer and Seller shall oppose such efforts for reconsideration or judicial review vigorously.

**4.2 Other Governmental Approvals.** The parties acknowledge that, but for the approval of the FCC, to the best of their knowledge, no other governmental approvals are required to close this transaction as contemplated.

## **5. BUYER'S REPRESENTATIONS AND WARRANTIES**

**5.1 Organizations, Standing, and Authority.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. Buyer has full corporate power and 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 Buyer hereunder and thereunder.

**5.2 Authorization and Binding Obligations.** This Agreement has been duly executed by Buyer and constitutes the legal, valid, and binding obligation of Buyer, having been duly and validly authorized by all necessary corporate action on its part and enforceable against Buyer in accordance with its terms except as the enforceability hereof may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally or by court-applied equitable remedies.

### **5.3 FCC and Financial Qualifications.**

(a) Buyer possesses all of the requisite qualifications to become the licensee of the Stations and knows of no reason why the FCC should not find the Buyer fully qualified to hold the license of the Stations: and

(b) Buyer has the financial resources, assurances, and capabilities to consummate and fully perform this Agreement in Accordance with its terms.

**5.4 Disclosure.** No representation or warranty made by Buyer set forth herein, or in an exhibit hereto or schedule referred to herein, or in any certified or other document delivered or to be delivered in connection with the transaction contemplated by this Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statement not misleading.

## **6. SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Buyer as follows:

**6.1 Organizations and Standing.** Seller has all requisite power and authority to own, lease and operate the Stations and to carry on the business of Stations as now conducted and as proposed to be conducted by it between the date hereof and the Closing date.

**6.2 Authorization and Binding Obligation.** Seller has full power and authority to enter into and perform this Agreement and the transaction contemplated hereby. This Agreement has been duly executed and delivered by it and constitutes its valid and binding obligation enforceable in accordance with its terms, except as the enforceability hereof may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, or by court-applied equitable remedies, none of which Seller is presently aware or threatened.

**6.3 Governmental Authorizations.** Exhibit B is a true and complete list of the Licenses and all other licenses, permits and other authorizations from governmental and regulatory authorities which are required for the lawful conduct of the business and operations of the stations in the manner and to the full extent they are now conducted. Seller is the authorized legal holder of the licenses, permits, and authorizations listed in Exhibit B, none of which are subject to any restriction or condition, which would limit the full operation of the Stations authorized on the date hereof. Seller has delivered to Buyer true and complete copies of the licenses, permits and other authorizations listed in

Exhibit B (including any and all amendments and other modifications thereto). The licensed, permits and other authorizations listed in Exhibit B are in good standing and are in full force and effect, and the operation of the Stations are in accordance therewith.

**6.4 Titles To and Condition of Personal Property.** Exhibit D contains descriptions of all material tangible personal property and assets owned or held by Seller and used or useful in the conduct of the business and operations of the Stations. Exhibit C contains a description of all real property owned and held by Seller and used or useful in the conduct of the business and operations of the Stations. Seller owns and has good title to such properties, and none of such property is subject to any security interest, pledge, conditional sales agreement, or other lien or encumbrance (except for liens for current taxes not yet due and payable.) Seller has delivered to Buyer true and complete copies of all leases and other agreements of documents affecting the properties listed in Exhibit D and included in Exhibit G (Leases), (including any and all amendments and other modifications to such leases and other agreements), all of which are valid and enforceable and it is not in default under any of such leases and other agreements. The transmitting and studio equipment of the Stations are in good operating condition and repair (ordinary wear and tear expected), have been installed and maintained in accordance with good engineering practice, and will permit the Stations to operate in accordance with its license and the rules and regulations of the FCC, and all other applicable federal, state, or local laws or regulations.

**6.5 Contracts.** Exhibit E lists all Contracts currently in effect except (i) contracts for the sale of sponsorship of advertising time for cash and substantially in accordance with established rates; (ii) miscellaneous service contracts terminable at will without penalty; (iii) real property leases included in Exhibit G; and (iv) other miscellaneous contracts with total obligations of not more than \$1,000. Seller has delivered to Buyer true and complete copies of all written Contracts, and true and complete memoranda of all oral contracts listed in Exhibit E (including any and all amendments and other modifications to such Contracts). The Contracts listed in Exhibit E are valid and binding, and are enforceable by Seller in accordance with their terms. Seller has complied with the Contracts listed in Exhibit E and is not in default under any of such Contracts, nor has Seller been granted any waiver of forbearance with respect to any of such Contracts. Subject to obtaining any necessary consents to assignment as set forth in Exhibit E, Seller has full legal power and authority to assign its rights under such Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuity of any of such Contracts. The Contracts listed in Exhibit E include all those necessary to conduct the business and operation of the Stations as now conducted.

**6.6 Litigation.** There is no litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller or the Stations any federal, state or local court, or before any administrative agency (including, without limitation, any process proceeding which seeks the material modification of, forfeiture of, or opposes the renewal of, any of the licenses, permits, and other authorizations listed in Exhibit B), which might result in any material adverse effect upon the business, property, assets or conditions (financial or otherwise) of the Stations or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement. In particular, but without limiting the generality of the forgoing, there are no applications, complaints or proceedings pending or, to the best of Seller's knowledge, threatened before the FCC relating to the business and operations of

the Stations other than applications, complaints or proceedings which affect the radio broadcasting industry generally.

**6.7 Leases.** Exhibit G contains a true and complete list of all leases for real property used or useful in the business or operations of the Stations to which Seller is a party (the "Leases").

**6.8 Reports.** The filing requirements for all material reports and statements currently required to be filed for the Stations by Seller with the FCC and other governmental authorities having jurisdiction thereof have been timely and fully completed. Seller has kept and maintained the public reference files for the Stations as required by the FCC and such files remain current.

**6.9 Governmental Approvals.** With the exception of the FCC approved delineated at Section 4.1 hereinabove, and other consents described in Exhibits E and G affixed hereto, there are no consents, approvals, permits, or required submissions from or to any government or regulatory authority nor to or from any third party in order for the instant Agreement to be finalized and closed. Should Seller become aware of any consents and approvals as described herein, Seller will acquire them prior to or contemporaneous with the Closing hereunder.

**6.10 Insurance.** Seller will provide Buyer with an insurance binder within five days of execution of this Agreement listing the schedule of insurance for loss or damage in amounts sufficient under ordinary industry usage.

**6.11 Hazardous Materials.** No hazardous substances or waste, nor any toxic materials including but not limited to any resins, oils, pesticides, asbestos or asbestos-related products, or any petroleum-derived compounds, have been or are currently located on the property being sold to Buyer hereunder. In addition, none of the above materials have been stored on the real property to sold to Buyer hereunder, nor have any such hazardous materials been disposed of on such real property. Seller knows of no complaints or citations or official notices regarding hazardous materials, nor air or noise emissions, nor other health or safety-related matters affecting the real property being sold to Buyer hereunder. Seller is, or at Closing will be, in full compliance with federal, state, local laws governing environmental matters. Including the storage or disposition of the hazardous materials mentioned hereinabove. Should any hazardous materials be discovered prior to Closing, it shall be Seller's affirmative obligation to dispose of such hazardous material. Such removal must be in accordance with all local, state and federal laws. Further, at Closing, all assets to be acquired by Buyer will be in compliance with all relevant environmental and/or the removal of any hazardous material which may be contained in the Stations transmitter facilities and in use by the Stations at Closing, and which are later removed or disposed of by Buyer, shall be the responsibility of the Buyer.

## **7. COVENANTS OF SELLER**

**Pre-Closing Covenants.** Seller covenants and agrees with respect to the Stations that between the date hereof and the Closing Date, except as expressly stated in this Agreement or with the prior written consent of Buyer, Seller will do or refrain from doing each of the following:

### **(a) Negative Covenants.**

(1) **Contracts.** Seller will not enter into an agreement of a nature required to be listed in Exhibits E or G or amend or terminate any such agreement (or waive any

substantial right thereunder), or incur any obligation affecting the Stations Assets or the business of the Stations.

(2) **Encumbrances**. Seller will not create, assume or permit to exist any pledge, lien or other charge or encumbrance or rights affecting any of the Stations Assets, except for those in existence on the date of this Agreement and disclosed in Exhibits A and D and except for mechanics' liens and other similar liens which will be discharged prior to the Closing Date.

(3) **Disposition of Property**. Seller will not sell, assign, lease or otherwise transfer or disposed of any of the Stations Assets except in the ordinary course of business where no longer used or useful or in connection with the acquisition of equivalent replacement property of equivalent kind and value.

(4) **Licenses**. Seller will not cause or permit, by any act or failure to act, the licenses, permits and other authorizations listed in Exhibit B to expire or to be surrendered or modified, or take any action which would cause the FCC or any other governmental authority to institute proceedings for suspension, revocation or adverse modifications of any of said licenses, permits, and authorizations, or fail to prosecute with due diligence and pending applications to any governmental authority, or take any other action within its control which would result in the Stations being in noncompliance with the requirements of the Communications Act of 1934, as amended, or any other applicable law, or the rules and regulations of the FCC, or any other governmental authority having jurisdiction material to the transactions contemplated by this Agreement.

**(b) Affirmative Covenants.**

(1) **Maintenance of Assets**. Seller will maintain all of the property and assets of the Stations or replacements thereof in their present condition.

(2) **Authorizations**. Seller will conduct the business and operations of the Stations in accordance with all applicable engineering rules and regulation of the FCC and the licenses, permits and other authorizations issued to it by the FCC or by any other governmental authority, federal, state or local.

## **8. JOINT COVENANTS**

Buyer and Seller covenant and agree that between the date hereof and the Closing Date, they shall act in accordance with the following:

**8.1 Conditions**. If any event should occur, either within or without the knowledge or control of any party hereto, which would prevent fulfillment of the conditions upon the obligations of any party hereto or consummation of the transactions contemplated by this Agreement, the parties hereto will use their reasonable best efforts to cure same as expeditiously as possible.

**8.2 Confidentiality**. Buyer and seller shall keep confidential all information obtained by either of them with respect to the other in connection with this Agreement except such information that is readily available to the public from other sources. If the transactions contemplated hereby are not consummated for any reason each shall return to the other, without retaining a copy thereof, any confidential schedules, documents or other written information obtained from the other in connection with this Agreement and transactions contemplated thereby.

**8.3 Cooperation.** The parties hereto shall cooperate fully with each other in preparing, filing, prosecuting and taking any other actions necessary with respect to, any applications, requests, or actions which are or may be necessary to obtain the consent of any government instrumentality or any third part to, or are or may be necessary of helpful in order to accomplish the transactions contemplated by the Agreement.

**8.4 Governmental Approvals.** If the consent or approval of any governmental instrumentality contains any condition, the party upon which such condition is imposed shall use its best, diligent and good faith efforts to comply therewith before the closing date, provided however, that no party hereto shall be required hereunder to comply with any condition where compliance would be unduly burdensome or would have a material adverse affect upon its parent corporation or any of its parent corporation's subsidiaries.

**8.5 Control of the Stations.** To the extent not otherwise permitted under the Local Marketing Agreement (LMA) between the parties and the rules and policies of the FCC, buyer shall not, directly or indirectly, control, supervise or direct the operations of the stations; such operations, including complete control and supervision of all Station employees and policies shall be the sole responsibility of Seller.

## **9. CONDITIONS OF CLOSING BY BUYER**

The obligations of Buyer hereunto are, at its options subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

**9.1 Representations, Warranties, Covenants.** All representations and warranties of Seller made in the Agreement, or in any exhibit, schedule, certificate or other document delivered pursuant hereto shall be true and complete on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse and arise after the date hereof in the ordinary course of business. Buyer shall have received a Certificate, dated as of the Close Date, executed by the Seller, to the effect that the representations and warranties contained in this Agreement are true and complete on and as of the Closing Date as though made on and as of the Closing Date, except for changes contemplated by this Agreement or changes that are not materially adverse and arose in the ordinary course of business, and that Seller has complied with or performed all terms, covenants and conditions to be complied with or performed by it in all material respects on our prior to the Closing Date.

**9.2 Governmental approvals.** This Agreement is contingent upon approval by the FCC for assignment of the license rights from the Seller herein unto the Buyer and the FCC's approval shall have become a Final Order, unless specifically waived by Buyer. All other required governmental consents, approvals and waivers shall have been obtained and shall be no longer subject to review or reconsideration of any kind.

**9.3 Other Consents.** Seller shall have delivered to Buyer on or before the Closing Date all required nongovernmental consents, as noted on Exhibits E and G.

**9.4 Adverse Proceedings.** On the Closing Date there shall be no litigation proceeding or investigation before any administrative or judicial body, federal, state or local, pending or to the knowledge of Buyer or threatened, which might materially impair the ability of the Buyer to carry out the provisions of this Agreement.



**9.5 No Material Adverse Change.** There shall not have been any material adverse change in the property, assets, and conditions of the Stations.

**9.6 Instruments of Conveyance and Transfer.** Seller shall have delivered to Buyer deeds, bills of sales, endorsements, assignments and other instruments of conveyance and transfer effecting the sale, transfer, assignment and conveyance of the Stations Assets to Buyer including, without limitation, the following:

- (a) Bills of sale for all tangible personal property;
- (b) Warranty deed for all real property;
- (c) Assignments of all FCC licenses, permits and other authorizations;
- (d) Assignments of all other governments licenses, permits and authorizations;
- (e) The Assignment and Assumption Agreement, providing for the assignments of the Assumed Contracts, the Leases and all remaining Station assets, including intangible assets and all the books, logs and records of the Stations;
- (f) Such other instruments or documents as Buyer may reasonably request in connection with the transfer of the personal property to be transferred to it hereunder.

## **10. CONDITIONS OF CLOSING BY SELLER**

The obligations of Seller hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

**10.1 Payment of Purchase Price.** Buyer shall have paid to Seller or assumed Seller's debt as required by Section 2.4.

### **10.2 Representations, Warranties and Covenants.**

- (a) All representations and warranties of Buyer shall be true and complete on and as of the Closing Date as if made on and as of the date.
- (b) All the terms, covenants and conditions to be complied with or performed by Buyer on or prior to the Closing Date shall have been complied with or performed.
- (c) Seller shall have received appropriate resolutions from the Buyer, executed by its Shareholders and directors, to the effect that the representations and warranties of Buyer contained in this Agreement are true and complete on and as of the Closing Date as if made on and as of that date, and that Buyer has complied with or performed all terms, covenants and conditions to be complied with or performed by it on prior to the Closing Date.

**10.3 Governmental Approvals.** The FCC Approval all other required governmental consents, approvals and waivers shall have been obtained and shall no longer be subject to review or reconsideration of any kind, provided, however, that absent a material adverse effect on Seller, Buyer may elect to close this transaction prior to the time such consents, approvals and waivers become uncontestable.

**10.4 Adverse Proceedings.** No suit, action, claim or governmental proceeding shall have been instituted or threatened against, and nor order, decree or judgment of any court, party hereto which would render it unlawful, as of the Closing, to effect the transactions contemplated by this Agreement in accordance with its terms.

**10.5 Deliveries of Buyer.** Buyer shall have delivered to Seller the following documents on or before the Closing Date: (a) the executed Assignment and Assumption Agreement; (b) Payment of Purchase Price.

## **11. FEES AND EXPENSES**

Buyer and Seller each shall bear its own legal fees and other costs and expenses with respect to this transaction, including the preparation and prosecution of Commission applications. The costs of filing fees imposed by the Commission shall be borne equally by Buyer and Seller. All costs of transferring the Stations Assets in accordance with this Agreement, including recordation, transfer and documentary taxes and fees, and any excise, use or other taxes, shall be paid by the parties in accordance with the local custom in Abilene, Texas.

## **12. RISK OF LOSS: DAMAGE TO FACILITIES**

**12.1 Loss.** The risk of loss or damage to any of the Stations Assets shall be upon the Seller prior to the Closing and thereafter upon the Buyer. Seller shall maintain all of its insurance policies through the Closing Date.

**12.2 Damage.** In the event of damage to or destruction prior to the Closing Date of any of the Stations Assets, which are material to the continued operation of a Stations, Seller shall repair or replace such assets as soon as possible after the loss or damage, and shall use best efforts to restore Transmissions as authorized in the licenses. Except as provided below, the Close Date shall be extended, with FCC consent, if necessary, for a period not exceeding ninety (90) days to accomplish such repair or replacement. In the event repair or replacement is not accomplished within the extended period and seller has not accomplished repair or replacement at its sole expense without liability upon written notice to Seller or (ii) elect to reduce the Purchase Price by the amount of any insurance proceeds received by Seller and close. The foregoing notwithstanding, if substantially all the fixed and tangible assets used in the operation of the Stations are destroyed or if damage to or destruction of their towers causes the Stations to cease transmissions in accordance with the terms of its license are not restored within fifteen (15) days, then Buyer may terminate this Agreement without further obligation upon written notice to Seller and shall receive its escrow deposit plus accrued interest. At its option, Buyer may elect to go forward with the Closing and complete restoration of the damaged facilities after Closing. In that event, Buyer shall be entitled to all insurance proceeds received in connection with claims made by Seller. To the extent the insurance proceeds are not sufficient to cover reasonable cost and expense of returning the damaged facilities to their pre-existing condition, buyer shall be entitled to deduct such additional costs and expenses from the Purchase Price to be paid hereunder.

## **13. INDEMNIFICATION**

**13.1 Seller's Indemnities.** Seller shall indemnify, defend and hold harmless Buyer and Buyer's directors, officers, employees, agents and shareholders from and

against any and all loss, cost, liability damage and expense (including legal and other expenses incident thereto) of every kind, nature or description, arising out of (a) the material breach of any representation or warranty of Seller set forth in this Agreement (including the exhibits or schedules hereto) or in any certificate or agreement delivered to Buyer pursuant hereto; (b) the material breach of any of its covenants or other agreements contained in or arising out of this Agreement of the transactions contemplated hereby; or (c) the conduct of the business and operation of the Stations and the Stations Assets prior to the Closing.

**13.2 Buyer's Indemnities.** Buyer shall indemnify, defend and hold harmless Seller and Seller's partners, employees, and agents from and against any and all loss, cost, liability, damage and expense (including legal and other expenses incidental thereto) of every kind, nature or description, arising out of (a) the material breach of any representation or warranty of Buyer set forth in this Agreement (including the exhibits or schedules hereto) or in any certificate or agreement delivered to Seller pursuant hereto; (b) the material breach of any of its covenants or other agreements contained or in arising out of this Agreement or the transactions contemplated hereby; or (c) the conduct of the business and operation of the Stations and Stations Assets following the Closing.

**13.3 Notice of Claim.** Buyer and Seller, upon discovery of the breach of any of the representations, warranties and covenants of the other under this Agreement, shall give to the other prompt written notice of the discovery of such breach. If any action, suit or proceeding shall be commenced against, or any claim or demand to be asserted against, Buyer or Seller, as the case may be, in respect of which such party proposes to seek indemnification from the other under this Section 14, then such party (hereinafter the "Indemnifying Party") to that effect in writing with reasonable promptness and in any event, if such claim arises out of a claim by a person or entity other than the Claimant, then within fifteen (15) days after written notice of such claim was given to the Claimant.

**13.4 Assumption and Defense of Third Party Action.** If any claim hereunder arises out of a claim against the Claimant by a third party, the Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall fully cooperate with the Indemnifying Party subject to reimbursement for actual out of pocket expenses incurred as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If claim requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible. If the indemnifying Party does not elect to assume control or otherwise participate in the defense of any third party claim, it shall be bound by the results obtained by the Claimant with respect to such claim.

**13.5 Limitation.** No party shall be entitled to indemnification hereunder with respect to the breach of any representation, warrant or covenant contained herein unless such claim for indemnification is asserted in writing to the party from whom indemnification is sought within one (1) year after the Closing Date or within one (1) year after Buyer becomes aware of any such breach in the exercise of reasonable due diligence, including without limitation, breaches concerning Hazardous Materials, provided,

however, that the foregoing limitation shall not apply where such claim for indemnification is based upon a claim against such party by a third party.

#### **14. RIGHTS OF BUYER AND SELLER IN EVENT OF BREACH**

**14.1 Remedies.** In the event of a breach of this Agreement, the following rights and remedies shall apply:

- (a) **Buyer's Breach.** If Buyer breaches the Agreement of any of its representations, warranties and covenants, Seller shall retain the hard assets and the monies paid toward the Down Payment. Seller shall retain the right to pursue any remedies at law or in equity, including a suit for damages or for specific performance.
- (b) **Seller's Breach.** If Seller breaches the Agreement or any of its representations, warranties and covenants, Buyer shall retain the right to pursue any remedies at law or in equity, including a suit for damages or for specific performance.

**14.2 Specific Performance.** The parties recognize that if either party should refuse to perform under the provisions of this Agreement, monetary damages alone will not be adequate. Each party shall therefore be entitled to obtain specific performance of the terms of this Agreement. In the event of any action to enforce this Agreement, each party hereby waives the defense that there is an adequate remedy at law. In the event of a default by either party which results in the filing of a lawsuit for damages, specific performance or other remedy, the prevailing party shall be entitled to reimbursement by the other party of reasonable legal fees and expenses incurred by such party.

#### **15. TERMINATION RIGHTS**

This Agreement may be terminated by mutual agreement of the parties if there shall be in effect on the Closing date any judgment, decree or order that would prevent or make unlawful the Closing of this Agreement.

#### **16. MISCELLANEOUS**

**16.1 Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except as provided herein, none of the parties hereto may voluntarily or involuntarily assign their interest under this Agreement without the prior written consent of the other parties, provided that such consent shall not be unreasonably withheld.

**16.2 Entire Agreement.** This Agreement and the exhibits and schedules hereto embody the entire agreement and understanding of the parties and supersede any and all prior agreement, arrangements and understandings relating to matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement will be effective unless evidenced by an instrument in writing signed by all the parties.

**16.3 Headings.** The headings are for convenience only and will not control or affect the meaning or construction of provisions of this Agreement.

**16.4 Governing Law.** This Agreement shall be governed by the laws of the State of Texas.

**16.5 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 on the date of personal delivery or on the date of receipt if sent by a private air express service or mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses, or to such other address as any party may request, in the case of Seller, by notifying Buyer and in the case of Buyer, by notifying Seller:

To Buyer:      Abilene Radio Corporation  
                    1749 North Second Street  
                    Abilene, Texas 79601


To Seller: Adrian L. Mynatt, Jr.  
                    Dynamic Broadcasting Co.  
                    3428 Bethel Road  
                    Weatherford, Texas 76087

**16.6 Counterparts.** This Agreement may be executed one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

**16.7 Severability.** If any of the terms of this Agreement should be found to be unenforceable, the remainder of the Agreement shall continue and stand as permitted by law.

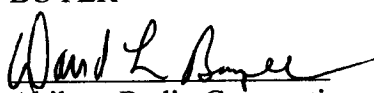
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

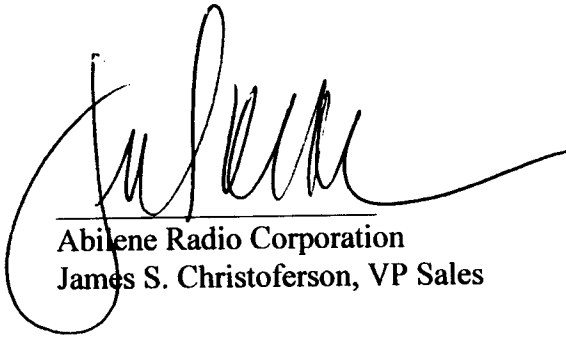
SELLER

  
Adrian Lloyd Mynatt, Jr. dba  
Dynamic Broadcasting Company

Adrian Lloyd Mynatt

BUYER

  
Abilene Radio Corporation  
David L. Boyll, President

A large, stylized handwritten signature in black ink, appearing to read 'J. Christoferson', with a long horizontal flourish extending to the right.

Abilene Radio Corporation  
James S. Christoferson, VP Sales

A handwritten signature in black ink, appearing to read 'Charlotte Caldwell', with a large, looped initial 'C'.

Abilene Radio Corporation  
Charlotte G. Caldwell, Treasurer

Exhibit No. 1  
FCC Form 314  
Section I, Paragraph 6  
Adrian Lloyd Mynatt, dba  
Dynamic Broadcasting Co

**OTHER MEDIA INTERESTS OF ASSIGNOR**

Dynamic Broadcasting has no other broadcast interests.

Exhibit No. 2  
FCC Form 314  
Section IV  
David L. Boyll  
Abilene Radio Corporation

### **PROGRAM SERVICE STATEMENT**

Abilene Radio Corporation will offer programming over stations KWKC (AM) and KZQQ (AM) which will be responsive to the needs and issues of concern to the Abilene, Texas community and surrounding areas. Certain portions of the programming will be devoted to news, public affairs and policies governing political broadcasting, issues and program lists and other content related issues. The applicant does not anticipate any major departures from the current public interest programming being offered by existing ownership.