

To assist the FCC staff's review of this application, this amendment discusses the Local Marketing Agreement ("LMA") entered into by Lewis Broadcasting Corporation (the "Licensee") and SagamoreHill Broadcasting of Georgia, LLC (the "Broker") with respect to station WLTZ-TV, Columbus, GA (Fac. ID No. 37179) (the "Station"). Under the terms of the LMA and the contemporaneously executed Asset Purchase Agreement (the "APA"), the Licensee retains ultimate control over the policies relating to the Station's programming, personnel, and finances.¹ Indeed, the LMA and the APA expressly provide that the Licensee retains full authority, power, and control over the policies, programming, and operations of the Station, as well as over all persons working at the Station.² Accordingly, the Licensee's delegation of certain day-to-day operations to the Broker is permissible and in full accord with applicable Commission precedent.³

The Licensee retains ultimate control over the station's programming. In particular, the Licensee is responsible for determining issues of local concern to address with Station programming and works with the Broker to select programming responsive to those concerns.⁴ The LMA permits the Licensee to (a) reject or refuse programs which the Licensee believes to be contrary to the public interest; (b) substitute programs which the Licensee believes to be of greater local or national importance or which are designed to address the problems, needs and interests of the local communities; (c) refuse to broadcast any program containing matter which violates any right of any third party, which constitutes a personal attack, or which does not meet the requirements of the rules, regulations, and policies of the FCC; (4) preempt any program in the event of a local, state, or national emergency; and (5) delete any commercial announcements that do not comply with the requirements of the FCC's sponsorship identification policy.⁵ The Licensee contracts for all programming acquired for the Station and is solely responsible

¹ See generally APA, LMA.

² See APA ¶ 5.3; LMA ¶ 6; *WGPR, Inc., Licensee, and CBS, Inc., Broker, for Assignment of License of WGPR-TV, Detroit, Michigan*, 10 FCC Rcd 8140, 8141 (1995) ("WPGR").

³ See, e.g., *WGPR*, 10 FCC Rcd at 8141-42; *Roy R. Russo, Esquire*, 5 FCC Rcd 7586, 7587 (MMB 1990); *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981); *Cosmopolitan Broadcasting Corporation*, 59 FCC 2d 558, recon. denied, 61 FCC 2d 257 (1976); *The Alabama Educational Television Commission*, 33 FCC 2d 495, 508 (1972). The Commission has stated that the same tripartite, fact-based test for control applies, regardless of whether the period in question occurs during the executory phase of a sales agreement to which the broker is the proposed assignee of the station in question, or during some other period of a station's license term. See *WGPR*, 10 FCC Rcd at 8146; *Joseph F. Bryant*, 6 FCC Rcd 6121 (VSD, MMB 1991).

⁴ See LMA ¶ 8(a); *WGPR* 10 FCC Rcd at 8141.

⁵ See LMA ¶ 6; *WGPR* 10 FCC Rcd at 8142.

for payments under the relevant contracts.⁶ And, the Broker may not change the basic programming format of the Station or the Station's network affiliation.⁷

Licensee retains ultimate control over personnel as well. The Licensee is required to employ a Station manager, who reports only to the Licensee, to direct the day-to-day operations of the Station, as well as a second station employee, who will report to and be solely accountable to the Station manager.⁸ Neither of these individuals will have an employment, consulting, or other relationship with the Broker.⁹ The presence of these individuals will ensure that the Licensee satisfies FCC staffing requirements with respect to the Station's main studio¹⁰ as well as other FCC requirements relating to broadcast Licensees.¹¹

Finally, Licensee retains control over the station's finances. In addition to contracting for all of the Station's acquired programming and making payments under those contracts,¹² the APA and the LMA require the Licensee to pay for its employees at the Station, maintenance of all studio and transmitter equipment and all other operating costs required to be paid to maintain the station's broadcast operations in accordance with FCC rules and policies and applicable law, and all utilities supplied to its main studio and transmitter sites.¹³ The Licensee also receives a substantial fee from the Broker and, as a result, maintains an ongoing interest in the economic condition of the Station.

In short, nothing in the LMA reduces the Licensee's ultimate control over the programming, personnel, and finances of the Station. FCC staff should therefore find that the LMA is permissible under FCC rules, precedent, and policy.

⁶ See LMA ¶ 2; *WPGR* 10 FCC Rcd at 8142.

⁷ See LMA ¶ 2.

⁸ See LMA ¶ 6; *WGPR* 10 FCC Rcd at 8141, 8143.

⁹ See LMA ¶ 6; *WGPR* 10 FCC Rcd at 8141, 8143.

¹⁰ See *WPGR* 10 FCC Rcd at 8143 and n. 8; *Jones Eastern of the Outer Banks, Inc. (Clarification)*, 7 FCC Rcd 6800 (1992).

¹¹ See, e.g., APA ¶ 4.1(a) (Licensee must ensure that station operates in accordance with FCC rules and regulations, as well as other applicable laws, regulations, rules, and orders); LMA ¶¶ 6, 8, 12 (Licensee must place required items in the station's public file, identify issues of local concern to address with station programming, ensure that the station complies with political broadcasting requirements, cooperate with the Broker to ensure that required EAS transmissions are made, maintain the operating power of the Station, and repair and maintain the Station's towers and transmitter sites and equipment).

¹² See LMA ¶ 2.

¹³ See *id.* ¶ 9; *WPGR* 10 FCC Rcd at 8145.