

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is made and entered into this [_____] day of June, 2003, by and between Birmingham Broadcasting (WVTM-TV) LLC, a Delaware limited liability company (the “Purchaser”), and [Birmingham Broadcasting, Inc.], a [Delaware corporation] (the “Seller”). Certain capitalized terms used in this Agreement are defined on Exhibit A hereto.

RECITALS

WHEREAS, Seller owns and operates television station WVTM and its associated auxiliary facilities (the “Station”), licensed by the Federal Communications Commission (the “FCC”) to broadcast on analog channel 13 and digital channel 52 in Birmingham, Alabama, and assigned to the Birmingham Designated Market Area; and

WHEREAS, subject to all necessary consents of the FCC, Seller wishes to sell and Purchaser wishes to purchase certain of the assets of Seller used in the business of the Station (the “Business”), and in connection therewith Purchaser is willing to assume certain specified obligations of Seller relating to the Business, as hereinafter set forth, all on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual representations, warranties, covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. THE TRANSACTION

1.1 Purchased Assets.

(a) Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase from Seller, all of Seller’s right, title and interest in, to and under the assets, properties, goodwill and rights of Seller used in the conduct of the Business of every nature, kind and description, tangible and intangible, wherever located, whether or not carried on the books of Seller listed on Schedule 1.1 (other than the Excluded Assets) (collectively, the “Purchased Assets”).

1.2 Excluded Assets.

The assets of Seller listed on Schedule 1.2 (the “Excluded Assets”) shall not be included in the Purchased Assets.

1.3 Liabilities.

Subject to the terms and conditions of this Agreement, at the Closing, Seller shall assign, and Purchaser shall assume and agree to pay, satisfy and perform and discharge as due and when

due, and after the Closing will hold Seller harmless from and against, the following (the “Assumed Liabilities”):

- (a) Any Liability under the contracts or leases assumed by Purchaser (the “Assumed Contracts”); and
- (b) Any Liability arising out of any programming contracts.

The Assumed Liabilities will not include, and except as otherwise provided in this Agreement, Buyer will not assume or otherwise become responsible for, any liability or obligation of Seller that is not described in clause (a), (b) or (c) above (collectively, the “Excluded Liabilities”).

1.4 Non-Assignable Assets.

For six (6) months following the Closing, Seller shall cooperate with Purchaser in any reasonable arrangement designed to provide Purchaser with all of the benefits of any of the Assumed Contracts or other Purchased Assets (other than Governmental Approvals) are not assignable or transferable (each, a “Non-Assignable Asset”) as if the appropriate consents to assignment had been obtained, including by granting subleases and establishing arrangements whereby Purchaser shall undertake the work necessary to perform under the Assumed Contracts.

ARTICLE 2. CONSIDERATION FOR TRANSFER AND CLOSING

2.1 Purchase Price and Payment.

Subject to the terms of this Agreement, as full consideration for the sale, assignment, transfer and delivery of the Purchased Assets and the execution and delivery of the Transaction Agreements by Seller to Purchaser, Purchaser shall [deliver to Seller at the Closing \$60,000,000] [assume all of Seller’s obligations under a [\$ _____] intercompany loan from [General Electric Company (“GE”)] to Seller] (the “Purchase Price”) and [deliver] an executed Assignment and Assumption (as defined below).

2.2 Closing; Time and Place.

The closing of the purchase and sale provided for in this Agreement (the “Closing”) shall occur via facsimile or overnight mail on the fifth (5th) business day after the day on which the Purchaser and Seller have confirmed that all of the conditions to closing set forth in Article 5 are satisfied or waived (other than receipt of the consent of the FCC (the “FCC Consent”)) and conditions that are intended to be satisfied at the Closing), or at such other date, time, place or manner as the parties may agree following receipt of the FCC Consent (the “Closing Date”).

2.3 Deliveries by Seller.

At the Closing, Seller shall (i) take all steps necessary to place Purchaser in actual possession and operating control of the Purchased Assets and (ii) deliver the following items, duly executed by Seller as applicable, all of which shall be in a form and substance reasonably acceptable to Purchaser and Purchaser’s counsel:

- (a) General Assignment and Bill of Sale. General Assignment and Bill of Sale covering all of the applicable Purchased Assets, in the form attached hereto as Exhibit A (the “General Assignment and Bill of Sale”);
- (b) Assignment and Assumption Agreement. Assignment and Assumption Agreement, covering all of the Assumed Liabilities, in the form attached hereto as Exhibit B (the “Assignment and Assumption”);
- (c) Assignments of Leases. Assignments of all real property leases and personal property leases under which the Seller is a lessee;
- (d) Use Agreement. A Use Agreement covering the temporary use of Seller’s earth station and weather radar license, in the form attached hereto as Exhibit C (the “Use Agreement”);
- (e) Lease Agreements. Lease Agreements with the Seller pursuant to which the Purchaser will lease the tower and studio (the “Lease Agreements”);
- (f) Assumed Contracts. Originals (to the extent in Sellers’ possession, and otherwise legible copies) of all Assumed Contracts; and
- (g) Books and Records. The books and records of the Seller relevant to the Business or the Station.

2.4 Deliveries by Purchaser.

At the Closing, Purchaser shall deliver the following items, duly executed by Purchaser as applicable, all of which shall be in a form and substance reasonably acceptable to Seller and Seller’s counsel:

- (a) Wire Transfer. A wire transfer to [SELLER’S BANK] for credit to Seller’s account, in the amount of the Purchase Price, as adjusted;] and
- (b) Executed Documents. Copies of the Assignment and Assumption, Use Agreement and Lease Agreements executed by Purchaser.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants (without limiting any other representations or warranties made by Seller in this Agreement or any other agreement executed in connection herewith (a “Transaction Agreement”) to Purchaser as follows:

3.1 Organization, Good Standing, Qualification.

Seller (a) is a [corporation] duly organized, validly existing and in good standing under the laws of [Delaware]; (b) is duly qualified to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required for the conduct of its business; and (c) has full power and authority required to own, lease and operate its assets and to carry on

its business (including the Business) as now being conducted, except where the failure to have such power and authority would not have a material adverse effect on Seller.

3.2 Charter Documents.

Seller is not in violation of any of the provisions of any charter, bylaw or other constituent document (“Organizational Documents”) by which it is governed, and to the actual knowledge of Seller, no condition or circumstance exists that likely would (with or without notice or lapse of time) constitute or result directly or indirectly in such a violation.

3.3 Authority; Binding Nature of Agreements.

Seller has all requisite power and authority to execute and deliver this Agreement and all other Transaction Agreements to which it is a party and to carry out the provisions of this Agreement and the other Transaction Agreements. The execution, delivery and performance by Seller of this Agreement and the other Transaction Agreements have been approved by all requisite action on the part of Seller. This Agreement has been duly and validly executed and delivered by Seller. Each of this Agreement and the other Transaction Agreements constitutes, or upon execution and delivery, will constitute, the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles related to or limiting creditors’ rights generally and by general principles of equity.

3.4 No Conflicts; Required Consents.

The execution, delivery and performance of this Agreement or any other Transaction Agreement by Seller do not and will not (with or without notice or lapse of time):

(a) conflict with, violate or result in any breach of (i) any of the provisions of Seller’s Organizational Documents; (ii) any of the terms or requirements of any Governmental Approval held by Seller;

(b) give any governmental authority (other than the FCC) or other Person the right to (i) approve or challenge the Transaction; (ii) exercise any remedy or obtain any relief under any applicable laws or any order to which Seller, or any of the Purchased Assets or Assumed Liabilities, is subject; (iii) declare a default of, exercise any remedy under, accelerate the performance of, cancel, terminate, modify or receive any payment under any Assumed Contract; or (iv) revoke, suspend or modify any approval of any governmental authority; or

(c) require Seller to obtain any consent or approval or make or deliver any filing or notice to a governmental authority other than the FCC.

3.5 Assumed Contracts.

To the actual knowledge of Seller, each Assumed Contract is currently valid and in full force and effect, and is enforceable by Seller in accordance with its terms.

3.6 Title; Sufficiency; Condition of Assets.

(a) To the actual knowledge of Seller, Seller has title to, is the owner of, and has the power and right to sell, assign and deliver the Purchased Assets.

(b) Schedule 1.1 sets forth a list of all leased real property (including the street address of each property and the name of the lessor). Seller has delivered to Purchaser copies of each lease.

(c) Seller has delivered to Purchaser copies of each lease of personal property by Seller.

3.7 FCC Authorizations; Governmental Approvals.

(a) Schedule 1.1 contains a list and summary description of all television broadcast licenses, construction permits, special temporary authorizations and other authorizations issued to Seller by the FCC for the operation of the Station, including any other governmental approvals issued to any Seller by the FCC authorizing any activity ancillary or incidental to the ownership or operation of the Station and all antenna structure registrations required by the FCC (collectively, the “FCC Authorizations”). **[Note: need to review about earth station and weather radar licenses – these transfer post-closing but may be on this schedule.]**

(b) Seller has made available to Purchaser copies of all of the FCC Authorizations including all renewals thereof and all amendments thereto. Subject only to the receipt of the FCC Consent, all FCC Authorizations are freely assignable to Purchaser.

3.8 Compliance with Laws.

Seller is, in all material respects in compliance, with applicable laws, including the provisions of the Communications Act of 1934 (as amended, the “Communications Act”), and to the actual knowledge of Seller, no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) constitute, or result directly or indirectly in, a default under, a breach or violation of, or a failure comply with, any material provision of applicable law. Seller has not received any notice from any third party regarding any actual, alleged or potential violation of any material provision of applicable law.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants as of the date hereof to Seller as follows:

4.1 Organization and Good Standing; Qualification.

Purchaser (a) is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, (b) is duly qualified to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required for the conduct of its business.

4.2 Authority; Binding Nature of Agreements.

Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and all other Transaction Agreements to which it is a party and to carry out the provisions of this Agreement and the other Transaction Agreements. The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Agreements have been approved by all requisite action on the part of Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser. Each of this Agreement and the other Transaction Agreements constitutes, or upon execution and delivery, will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles related to or limiting creditors' rights generally and by general principles of equity.

4.3 No Conflicts; Required Consents.

The execution, delivery and performance of this Agreement or any other Transaction Agreement by Purchaser do not and will not (with or without notice or lapse of time):

(a) conflict with, violate or result in any breach of (i) any of the provisions of Purchaser's Organizational Documents; (ii) any of the terms or requirements of any governmental approval held by Purchaser;

(b) give any Governmental Authority (other than the FCC) or other Person the right to (i) approve or challenge the Transaction; (ii) exercise any remedy or obtain any relief under applicable law or any order to which Purchaser or any of its assets is subject; (iii) declare a default of, exercise any remedy under, accelerate the performance of, cancel, terminate or adversely modify any contract to which Purchaser is a party; or (iv) revoke, suspend or modify any approval of any governmental authority; or

(c) require Purchaser to obtain any consent or approval or make or deliver any filing or notice to a Governmental Authority (other than the FCC).

4.4 FCC Qualification.

Purchaser is legally qualified under the Communications Act to acquire the FCC Authorizations and to own and operate the Station.

ARTICLE 5. [I EMPLOYEES

5.1 Transferred Employees.

Purchaser shall offer employment, to be effective as of the Closing Date and contingent upon the Closing, on terms to be determined by Purchaser, to all employees of Seller (collectively, the "Transferred Employees"). Seller shall use commercially reasonable efforts to assist Purchaser in employing Transferred Employees.

5.2 Employee Benefit Arrangements.

In order to secure an orderly and effective transition of the employee benefit arrangements for Transferred Employees and their respective beneficiaries and dependents, Seller and Purchaser shall cooperate, both before and after the Closing Date, to (i) exchange information related to the Transferred Employees, including employment records, benefits information, and financial statements and (ii) take any other actions with respect to the Transferred Employees and their respective beneficiaries and dependents.

5.3 Post-Closing Employee Benefits.

(a) After the Closing, Purchaser shall arrange for each Transferred Employee to receive benefits under Purchaser's benefit plans that are, in the aggregate and taking into account benefits provided pursuant to the provisions of applicable law, no less favorable in substance than those provided to other similarly situated (as to seniority, job description, salary and location) employees of Purchaser and its subsidiaries from time to time (the "Purchaser Plans").

(b) Each Transferred Employee shall, to the extent permitted by applicable law, receive credit for purposes of determining eligibility to participate and vesting under Purchaser Plans for years of service with Seller prior to the Closing Date. Subject to the approval of any insurance carrier and to the extent permitted by applicable law, Purchaser shall cause any and all pre-existing condition (or actively-at-work or similar) limitations, eligibility waiting periods and evidence of insurability requirements under any group health plans to be waived with respect to the Transferred Employees and their eligible dependents and shall provide them with credit for any co-payments, deductibles, and offsets (or similar payments) arising prior to the Closing Date for purposes of satisfying any applicable deductible, out-of-pocket, or similar requirements under any Purchaser Plans in which they are eligible to participate after the Closing Date. Notwithstanding the foregoing, none of the provisions contained herein shall operate to duplicate any employee benefit provided to any Transferred Employee or the funding of any such benefit.

(c) Subject to Section 5.3(a), nothing in Section 5.1 or this Section 5.3 shall be construed to entitle any Transferred Employee to continue his or her employment with Purchaser for any period of time, nor to interfere with the rights of Purchaser or Seller to discharge or discipline any Transferred Employee, to change the terms of any Transferred Employee's employment, or to amend or terminate any employee benefit plans at any time.

5.4 Compliance with Law and Other Obligations.

Prior to the Closing, Seller and Purchaser shall take all actions necessary to comply with applicable law in connection with employment of the Transferred Employees, including any Legal Requirements.

5.5 No Benefit to Seller Employees Intended.

This Article 5 is not intended to, and does not, create any rights or obligations to or for the benefit of anyone other than Purchaser and Seller.]]

ARTICLE 6. CONDITIONS TO CLOSING

6.1 Conditions to Purchaser's Obligation to Close.

The obligations of Purchaser to consummate the Transaction shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Purchaser in writing (except for the requirement to obtain the FCC Consent):

(a) Representations, Warranties and Covenants. (i) Each of the representations and warranties of Seller in this Agreement shall have been true and correct in all material respects as of the date of this Agreement and shall be true and correct in all material respects as of the Closing Date; and (ii) Seller shall have performed, in all material respects, all covenants and obligations in this Agreement required to be performed by Seller as of the Closing Date;

(b) Documents. Seller shall have delivered to Purchaser all of the documents and agreements set forth in Section 3.2;

(c) FCC Consent. The FCC shall have granted the FCC Consent consenting to the assignment to Purchaser of the FCC Authorizations;

6.2 Conditions to Seller's Obligation to Close.

The obligations of Seller to consummate the Transaction shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Seller in writing (except for the requirement to obtain the FCC Consent):

(a) Representations, Warranties and Covenants. (i) All of the representations and warranties of Purchaser in this Agreement shall have been true and correct in all material respects as of the date of this Agreement and shall be true and correct in all material respects as of the Closing Date; and (ii) Purchaser shall have performed, in all material respects, all covenants and obligations in this Agreement required to be performed by Purchaser as of the Closing Date;

(b) Documents. Purchaser shall have delivered to Seller all of the documents and agreements set forth in Section 3.3;

(c) FCC Consent. The FCC shall have granted the FCC Consent consenting to the assignment to Purchaser of the FCC Authorizations; and

6.3 Conditions to Obligations of Each Party to Close.

The respective obligations of each party to this Agreement to consummate the Transaction shall be subject to the satisfaction, on or prior to the Closing Date, of the following conditions: (i) there shall not be in effect any order issued by any governmental authority preventing the consummation of the Transaction, seeking any damages as a result of the Transaction, or otherwise affecting the right or ability of Purchaser to own, operate or control the Business, the Purchased Assets or the Assumed Liabilities, nor shall any proceeding be pending

that seeks any of the foregoing; and (ii) no applicable law shall prohibit Seller from selling or Purchaser from owning, operating or controlling the Business, the Purchased Assets or the Assumed Liabilities or that makes this Agreement or the consummation of the Transaction illegal.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Entire Agreement.

This Agreement and the documents and agreements contemplated in this Agreement constitute the entire agreement between and among the parties with regard to the subject matter hereof. This Agreement supersedes all previous agreements between or among the parties. There are now no agreements, representations, or warranties between or among the parties other than those set forth in the Transaction Agreements.

7.2 Amendment, Waivers and Consents.

This Agreement shall not be changed or modified, in whole or in part, except by supplemental agreement signed by the parties. Any party may waive compliance by any other party with any of the covenants or conditions of this Agreement, but no waiver shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Any consent under this Agreement shall be in writing and shall be effective only to the extent specifically set forth in such writing.

7.3 Successors and Assigns.

This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

7.4 Governing Law.

The rights and obligations of the parties shall be governed by, and this Agreement shall be construed and enforced in accordance with, the laws of the State of New York, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction.

7.5 Severability.

If any term or provision of this Agreement, as applied to either party or to any circumstance, is declared by a court of competent jurisdiction to be illegal, unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction.

7.6 Exhibits.

All Exhibits and Schedules attached hereto shall be deemed to be a part of this Agreement and are fully incorporated in this Agreement by this reference.

7.7 Notices.

Any notice required or permitted to be given hereunder shall be sufficient if in writing and (a) delivered in person or by express delivery or courier service, (b) sent by confirmed facsimile, or (c) deposited in the mail registered or certified first class, postage prepaid and return receipt requested to such address or facsimile of the party set forth below or to such other place or places as such party from time to time may designate in writing in compliance with the terms hereof. Each notice shall be deemed given when so delivered personally, or sent by facsimile transmission, or, if sent by express delivery or courier service one (1) business day after being sent, or if mailed, five (5) business days after the date of deposit in the mail. A notice of change of address or facsimile number shall be effective only when done in accordance with this Section 7.7.

To Seller at: [Birmingham Broadcasting, Inc.]
c/o National Broadcasting Company, Inc.
30 Rockefeller Plaza
New York, NY 10112
Attn: Bruce Campbell
Telephone: (212)
Telecopy: (212)

With copies to: National Broadcasting Company, Inc.
Law Department
30 Rockefeller Plaza
New York, NY 10112
Attn: Vice President, Corporate & Transactions Law
Telephone: (212)
Telecopy: (212)

To Purchaser at: Birmingham Broadcasting (WVTM-TV) LLC
[_____]
Attn: [_____]
Telephone: [_____]
Telecopy: [_____]

With copies to: [_____]

7.8 Rights of Parties.

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

7.9 Counterparts.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by their respective Representatives thereunto duly authorized all as of the date first written above.

“Seller”

Birmingham Broadcasting, Inc.

By: _____

Name: _____

Title: _____

“Purchaser”

Birmingham Broadcasting (WVTM-TV) LLC

By: _____

Name: _____

Title: _____