

**LOCAL MARKETING AGREEMENT**

This LOCAL MARKETING AGREEMENT, entered into as of the 28<sup>th</sup> day of June, 2004 (this "Agreement"), by and between COUNCIL TREE COMMUNICATIONS VI, LP, a Texas limited partnership ("Licensee"), and ZGS BROADCASTING HOLDINGS, INC., a Delaware corporation, and ZGS EL PASO, INC., a Delaware corporation (collectively, "Programmer").

**RECITALS:**

WHEREAS, Licensee owns and is authorized to operate analog television station KTYO(TV), Las Cruces, New Mexico (the "Analog Station"), holds a construction permit and is authorized to operate pursuant to Special Temporary Authority digital television station KTYO-DT, Las Cruces, New Mexico (the "DTV Permit" or "DTV Station"), and owns and is authorized to operate a television translator K48IK, licensed to El Paso, Texas (the "Translator") (the Analog Station, the DTV Station and the Translator are collectively referred to herein as the "Station"), all operating in the El Paso designated market area (the "DMA"), and in each case pursuant to licenses issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Licensee desires to obtain a regular source of programming for the Station;

WHEREAS, Programmer is experienced as an owner and operator of radio and television stations and desires to purchase time on the Station for the broadcast of programming on the Station and for the sale of advertising time included in that programming; and

WHEREAS, Programmer and Licensee have entered into an Asset Purchase Agreement of even date herewith (the "Purchase Agreement") providing for sale of the Station to Programmer upon FCC consent thereto;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Sale of Time. Subject to the provisions of this Agreement and the applicable rules, regulations and policies of the FCC (the "FCC Rules"), Licensee agrees to make the Station's broadcast transmission facilities available to Programmer for broadcast of Programmer's programs (the "Programs") on the Station originating either from Programmer's studio or from Licensee's studio. Programmer will have the right to broadcast on the Station up to twenty-four (24) hours of programming each day during the Term, as defined herein. Notwithstanding the foregoing, (a) Licensee reserves up to two (2) hours of the Station's time per week during the hours 7AM to 9AM each Sunday (the "Reserved Time") for its own use for public affairs programming and (b) Programmer shall continue to air the programming of the Telemundo Network Group LLC, a Delaware limited liability company ("Telemundo Network"), and shall continue to run the Shop-at-Home network programming, in each case consistent with the Station's current schedule, and shall not change any such programming without the prior written consent of Licensee, which may be given or withheld in its sole and absolute discretion. During the term of this Agreement, Licensee shall

maintain the right to receive and retain all payments made to Licensee by Telemundo Network in respect of programming that airs on the Station during the term of this Agreement ("Telemundo Payments"). Without the prior written consent of Licensee, which may be given or withheld in its sole and absolute discretion, Programmer shall not enter into any trade or barter agreement, "make good" obligation or agreement for brokered time on the Station, in each case that is not terminable by Licensee immediately upon a termination of this Agreement or the Purchase Agreement, without penalty to, or further obligation of, the Licensee or the Station.

2. Term. The term of this Agreement shall commence on July 1, 2004 (the "Effective Date") and, unless earlier terminated as provided in this Agreement, shall continue in full force and effect until the Closing (as defined therein) occurs under the Purchase Agreement or the Purchase Agreement is terminated (the "Initial Term"). This Agreement shall automatically expire upon the consummation of the transactions contemplated by the Purchase Agreement, or upon termination of the Purchase Agreement without a Closing.

3. Consideration. As consideration for the air time made available by Licensee hereunder during the Term, Programmer shall pay Licensee the monthly compensation in accordance with Schedule A hereto.

4. Licensee's Responsibility for Expenses. Licensee shall be solely responsible for payment of the direct and indirect operating costs not directly related to Programmer's use of the facilities of the Station, including but not limited to:

- (a) insurance costs relating to Licensee's owned assets and operations;
- (b) Licensee's own telephone, delivery and postal service;
- (c) income, gross receipts, sales, real property, personal property, excise and/or any other taxes of any nature whatsoever related to the ownership of Licensee's assets or Licensee's own programming efforts on the Station;
- (d) salaries, payroll taxes, insurance, benefits and related costs of Licensee's personnel employed by Licensee in the operation of the Station as required by FCC Rules;
- (e) the costs of Licensee's own programming;
- (f) lease payments, power and other utility bills and maintenance costs for the Station's studio, transmission, and tower facilities; and
- (g) costs and expenses (including legal costs and filing fees) incurred in connection with the Station's compliance with FCC rules and regulations.

Licensee shall make all necessary payments in a timely fashion from its own accounts.

5. Licensee's Authority.

(a) Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority and power over the operation of the Station during the Term. Licensee shall be responsible for all programming it furnishes for broadcast on the Station and for the payment of the salaries of all of its employees, all of whom shall report solely to and be accountable solely to the Licensee. Licensee will bear the responsibility for the Station's compliance with all applicable provisions of the FCC Rules and all other applicable laws. Without limiting the generality of the foregoing, Licensee will: (i) direct the day to day operations of the Station, (ii) pay all station operating expenses, including, without limitation, all studio and tower facilities rent, utilities, maintenance costs, insurance premiums, taxes, music license fees, (iii) be responsible for assuring that Station programs meet local needs and file all reports required by the FCC Rules; and (iv) retain control over the policies, finances, programming and operations of the Station.

(b) Licensee shall retain the right to interrupt or preempt Programmer's programming at any time if Licensee determines the programming is not in the public interest or violates this Agreement, or for the purpose of providing programming which Licensee in its sole discretion determines to be of greater national, regional or local importance; *provided, however*, that any revenues realized by Licensee as a result of such interruption or preemption shall promptly be remitted to Programmer (other than any Telemundo Payments). In the event Licensee shall interrupt or preempt Programmer's programming as described above, or if the Programs are not broadcast due to a failure of the Station's technical facilities (other than the DTV Station), Programmer may elect to reduce the monthly consideration due pursuant to Section 3 above on a prorated basis; provided, that if the revenue is remitted to Programmer pursuant to the proviso set forth in the first sentence of this subsection, no reduction shall be made to the monthly consideration due pursuant to Section 3 above. Nothing contained herein shall prevent or hinder Licensee from (i) rejecting or refusing Programs which Licensee believes to be contrary to the public interest, or (ii) substituting a program (or programs) which Licensee believes to be of greater local or national importance or which is (or are) designed to address the problems, needs and interests of the Station's community. Licensee also reserves the right to refuse to broadcast any Program which does not meet the requirements of the FCC Rules or the regulations and restrictions set forth in Section 7. Licensee further reserves the right to preempt any Program to broadcast programming Licensee deems will better serve the public interest and in the event of a local, state, or national emergency. Any revenue earned by Licensee during the period of any such preemptions (other than any Telemundo Payments) shall promptly be remitted to Programmer, provided, that if such revenue is remitted to Programmer, no reduction shall be made to the monthly consideration due pursuant to Section 3 above. Licensee reserves the right to delete any commercial announcements that do not comply with the requirements of the FCC's sponsorship identification policy set forth in 47 C.F.R. Sections 73.1212 and 73.4242, and as this policy may be changed from time to time by the FCC. Licensee shall not exercise its right to preempt or refuse Programs in a manner designed to economically injure the Programmer, and shall not reject programming for purposes of substituting other time brokered programming. Programmer and Licensee will immediately share with each other any notices and a copy of any letters of complaint it receives concerning any Program for review and inclusion in its public inspection file.

(c) Licensee has adopted a Broadcast Station Programming Policy Statement (the "Policy

*Statement*”), a copy of which appears as Attachment 5(c) hereto and which may be amended from time to time in order to comply with the rules and regulations of the FCC by Licensee upon written notice to Programmer. Programmer agrees and covenants to comply in all material respects with the Policy Statement, with all rules and regulations of the FCC, and with all changes subsequently made by Licensee (in good faith) or the FCC. Programmer shall furnish or cause to be furnished the artistic personnel and material for the programs as provided by this Agreement and all programs shall be prepared and presented in conformity in all material respects with the rules, regulations and policies of the FCC and with the Policy Statement. All advertising spots and promotional material or announcements shall comply in all material respects with all applicable federal, state and local regulations and policies and the Policy Statement. If Licensee determines that a program, commercial announcement or promotional material supplied by Programmer is for any reason, in Licensee’s reasonable discretion, unsatisfactory or unsuitable or contrary to the public interest, or does not comply with the Policy Statement, Licensee may, upon written notice to Programmer (to the extent time permits such notice), and without any liability or obligation to Programmer, suspend or cancel such program, commercial announcement or promotional material and substitute its own programming or, if Licensee requests, Programmer shall provide promptly suitable programming, commercial announcement or other announcement or promotional material.

6. Advertising and Programming Revenues; Program Rights.

(a) Programmer shall retain all revenues from the sale of advertising time on the Programs it broadcasts on the Station. The right to use Programmer’s Programs and to authorize their use in any manner and in any media whatsoever shall be, and remain, vested solely in Programmer.

(b) As of the Effective Date, Licensee will assign the accounts receivable generated by Seller at any time before the Effective Date (the “*Accounts Receivable*”) to Programmer for purposes of collection only. Programmer will use commercially reasonable efforts to collect the Accounts Receivable as Licensee’s agent (and, in any event, in at least the same manner and with the same diligence that Programmer uses to collect its own accounts receivable) until one hundred twenty (120) days following the Effective Date (the “*Collection Period*”); *provided* that Programmer shall not be obligated to institute litigation, employ any collection agency, legal counsel or other third party, or take any other extraordinary means of collection; and *further provided* that Programmer shall not compromise, settle or adjust any of the Accounts Receivable without receiving the written approval of Licensee. Within fifteen (15) days after the end of each calendar month, and at the end of the Collection Period, Programmer shall pay to Licensee all amounts collected within such monthly period or as of the end of the Collection Period by Programmer in respect of the Accounts Receivable. Licensee shall be solely responsible for the payment of all commissions earned with respect to such collections. All amounts received by Programmer from account debtors included among the Accounts Receivable shall be applied first to the Accounts Receivable, unless the account debtor specifically disputes an applicable receivable. If during the Collection Period an account debtor disputes an account included among the Accounts Receivable, Programmer may return that account to Licensee for collection, and Programmer shall have no further obligations concerning such account. At the end of the

Collection Period, any remaining Accounts Receivable shall be reassigned to Licensee and thereafter Programmer shall have no further obligation with respect to the Accounts Receivable.

7. Political Advertising. To the extent required by FCC Rules, Programmer will provide, make available to and shall sell time to political candidates from the time it purchases from Licensee in compliance with the Communications Act of 1934, as amended (the "Act"), and the FCC Rules, including that Licensee shall oversee and take ultimate responsibility with respect to the provision of equal opportunities, lowest unit charge, and reasonable access to political candidates, and compliance with the political broadcast rules of the FCC. Programmer shall cooperate with Licensee as Licensee complies with its political broadcast responsibilities, and shall supply such information promptly to Licensee as may be necessary to comply with the political time record keeping and lowest unit charge requirements of federal law

8. Licensee's Representations, Warranties and Covenants. Licensee represents, warrants and covenants to Programmer that:

(a) Qualification. Licensee is legally qualified, empowered and able to enter into and carry out this Agreement, and this Agreement constitutes the valid and binding obligation of Licensee, enforceable according to its terms.

(b) Employees. Licensee shall retain an employee who shall direct the day-to-day operation of the Station, and one additional employee.

(c) Main Studio. Licensee shall maintain a main studio, as that term is defined by the rules and regulations of the FCC. Licensee shall maintain an appropriate public inspection file at the main studio and shall, from time to time, place such documents in the file as may be required by present and future FCC rules and regulations.

(d) Emergency Broadcasting. Licensee shall maintain appropriate EAS, or any successor system's receiver, tone generators, and such other equipment as may be required to conform to FCC rules and regulations.

(e) Music Licenses. Licensee maintains, and shall continue to maintain, blanket licenses with the principal music licensing agencies, including, without limitation, ASCAP and BMI.

(f) Prompt Payment of Expenses. Licensee shall promptly pay when due any and all expenses or obligations of any kind and nature relating to the operation of the Station, except those for which Programmer is specifically responsible hereunder, and shall take all steps necessary to insure the continued uninterrupted use of that equipment and those facilities by Programmer.

9. Programmer's Representations, Warranties and Covenants. Programmer represents, warrants and covenants to Licensee that:

(a) Qualification. Programmer is legally qualified, empowered and able to enter

into and carry out this Agreement, and this Agreement constitutes the valid and binding obligation of Programmer, enforceable according to its terms.

(b) FCC Compliance. All of the programming, advertising and promotional material Programmer broadcasts on the Station shall be in accordance with the FCC Rules and the Act and the reasonable standards established by Licensee, including, without limitation, the Policy Statement, and shall not violate the rights of or duty to any third party. Programmer shall cooperate with Licensee so that Licensee may fulfill its FCC obligations.

(c) Correspondence. Programmer shall promptly forward to Licensee any mail which it may receive from any agency of government or any correspondence from members of the public or other information it may receive relating to the Station or to any of Programmer's programming broadcast on the Station.

10. Indemnification.

(a) By Programmer. Programmer shall indemnify and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages and expenses of every kind, nature and description (including reasonable attorney's fees) arising out of or resulting from (i) Programmer's broadcasts pursuant to this Agreement, (ii) any breach of its obligations under this Agreement by Programmer, (iii) Programmer's acts or omissions with respect to the Station's technical facilities other than in accordance with standards of industry practice, or (iv) Programmer's gross negligence or willful misconduct.

(b) By Licensee. Licensee shall indemnify and hold Programmer harmless from and against any and all claims, losses, costs, liabilities, damages and expenses of every kind, nature and description arising out of or resulting from programming originated by Licensee, or by any breach of its obligations under this Agreement by Licensee, or by Licensee's or its employee's gross negligence or willful misconduct.

(c) Notice. Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this Section 10 unless such claim for indemnification is asserted in writing delivered to the other party, and, where such claim, loss, cost, liability, damage or defense involves a legal action, the party against whom indemnification is sought has been given written notice as soon as practicable after the party entitled to indemnification becomes aware of such legal action; *provided*, that the failure to give timely notice under this subsection shall not preclude indemnification hereunder unless, and then only to the extent, such failure has materially prejudiced the ability of the party against whom indemnification is sought to defend the legal action.

(d) Survival. The obligation of Programmer and Licensee to indemnify and hold each other harmless as set forth in this Agreement shall survive any termination of this Agreement and shall continue until the expiration of all applicable statutes of limitations as to the parties hereto and to claims of third parties.

11. Termination.

(a) Grounds. This Agreement may be terminated as set forth below by either Licensee or Programmer by written notice to the other, if the party seeking to terminate is not then in material default or breach of this Agreement, upon the occurrence of any of the following:

(i) This Agreement is declared invalid or illegal in whole or material part by an order or decree of the FCC or any other administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review;

(ii) The other party is in material breach of its obligations hereunder and has failed to cure such breach within thirty (30) days of written notice from the non-breaching party; *provided*, that this provision shall not apply to a default by Programmer with respect to any monetary payment, as to which the provisions of Schedule A shall control;

(iii) The other party is in material breach of its obligations under the Purchase Agreement, giving effect to any cure period set forth therein, and the non-breaching party validly terminates the Purchase Agreement;

(iv) The mutual consent of both parties;

(v) The other party shall make a general assignment for the benefit of creditors, files or has filed against it a petition for bankruptcy, reorganization or an arrangement for the benefit of creditors, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which if filed against such party, has not been dismissed within sixty (60) days thereof; or

(vi) There has been a change in FCC Rules or case law precedent that would cause this Agreement or any provision thereof to be in violation thereof and such change is not the subject of an appeal or further administrative review.

(b) Programmer's Additional Termination Right. Programmer may terminate this Agreement if, for a period exceeding forty eight (48) consecutive hours (i) either of the Analog Station or the Translator does not broadcast a signal, or (ii) the Translator is unable to reach with a suitable signal any cable head-end for a cable television system currently carrying the Station that serves a material portion of the DMA, unless such condition is caused by an event of force majeure. If such condition is caused by an event of force majeure, Licensee shall use commercially reasonable efforts to restore the affected facility to its present operating condition. In any such event, Programmer shall be entitled to a pro rata reduction of the fee payable hereunder for each day that the conditions above are not satisfied.

(c) Effect of Termination. No termination pursuant to this Section 11 shall relieve any party of (i) any liability for a breach of this Agreement occurring prior to such termination or (ii) any obligation to make a payment hereunder with respect to any period prior to the termination.

12. Notices. All necessary notices, demands and requests permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered if given in accordance with Section 15.8 of the Purchase Agreement.

13. Modification And Waiver. No amendment or modification of any provision of this Agreement shall in any event be effective unless the same shall be in writing.

14. Construction. This Agreement shall be construed in accordance with the internal laws of the State of New York, without giving effect to its conflicts of laws provisions, and the obligations of the parties hereto are subject to all federal, state and local laws and regulations now or hereafter in force and to the FCC Rules. Jurisdiction and venue for any action arising from or in relation to this Agreement or any provision hereof shall be exclusively in a federal court sitting in Washington, D.C., and each party hereby submits to the jurisdiction of and venue in any such court as the agreed exclusive jurisdiction and venue for any such action.

15. Headings. The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

16. Counterpart Signature. This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart.

17. Entire Agreement. This Agreement, including Schedule A hereto, supersedes any and all prior or contemporaneous agreements between the parties (other than the Purchase Agreement) and contains all of the terms agreed upon with respect to the subject matter hereof.

18. No Partnership Or Joint Venture Created. Nothing in this Agreement shall be construed to make Licensee and Programmer partners or joint venturers or to afford any rights to any third party other than as expressly provided herein.

19. Assignment. Neither Programmer nor Licensee may assign this Agreement without the prior written approval of the other party, except that Programmer may assign its rights and obligations hereunder to a wholly owned subsidiary that also is Programmer's assignee of the Purchase Agreement; *provided*, that Programmer shall remain liable for performance of each of Programmer's or its assignee's obligations hereunder.

20. Certifications.

(a) Licensee's Certification. Licensee hereby certifies that it maintains ultimate control over the Station's facilities, including specifically control over the Station's finances, personnel and programming.

(b) Programmer's Certification. Programmer hereby certifies that it complies with the provisions of Section 73.3555 of the FCC's Rules with respect to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Local Marketing Agreement to be effective as of the date first above written.

**PROGRAMMER:**

ZGS BROADCASTING HOLDINGS, INC.

By: [Signature]  
Name: Richard Gordon  
Title: CEO

ZGS EL PASO, INC.

By: [Signature]  
Name: Richard Gordon  
Title: CEO

**LICENSEE:**

COUNCIL TREE COMMUNICATIONS VI, LP

By: CTC VI GEN-PAR, L.L.C., its general partner

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

IN WITNESS WHEREOF, the parties have executed this Local Marketing Agreement to be effective as of the date first above written.

**PROGRAMMER:**

ZGS BROADCASTING HOLDINGS, INC.

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

ZGS EL PASO, INC.

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

**LICENSEE:**

COUNCIL TREE COMMUNICATIONS VI, LP

By: CTC VI GEN-PAR, L.L.C., its general partner

By: *Michael Brendzel*  
Name: *Michael Brendzel*  
Title: *VP*

## Attachment 5(c)

### Broadcast Station Programming Policy Statement

I. No Plugola or Payola. Except for commercial messages aired in compliance with 47 C.F.R. §73.1212, Programmer shall not receive any consideration in money, goods, services, or otherwise, directly or indirectly (including to relatives) from any person or company for the presentation of any programming over the Station without reporting the same to Licensee's station managers. The commercial mention of any business activity or "plug" for any commercial, professional, or other related endeavor, except where contained in an actual commercial message of a sponsor, is prohibited.

II. No Lotteries. Announcements giving any information about lotteries or games prohibited by applicable federal or state law or regulation are prohibited.

III. Election Procedures. At least fifteen (15) days before the start of any primary or election campaign, Programmer will clear with Licensee's station managers the rates Programmer will charge for the time to be sold for use by qualified candidates for the public office and/or their supporters to make certain that the rates charged are in conformance with applicable law and the Station's policies.

IV. Required Announcements. Programmer shall broadcast (i) an announcement in a form satisfactory to Licensee at the beginning of each hour to identify the Station and (ii) any other announcements that may be required by law or regulation.

V. No Illegal Announcements. No announcements or promotion prohibited by applicable federal, state law or regulation shall be made over the Station. Any game, contest, or promotion relating to or to be presented over the Station must be fully stated and explained in advance to Licensee, which reserves the right in its sole discretion to reject any game, contest, or promotion.

VI. Licensee Discretion Paramount. In accordance with the Licensee's responsibility under the Communications Act of 1934, as amended, and the Rules and Regulations of the Federal Communications Commission, Licensee reserves the right to reject or terminate any advertising proposed to be presented or being presented over the Station which is in conflict with established policies of the Station or which in Licensee's or its station managers' reasonable judgment would be contrary to the public interest.

Licensee may waive any of the foregoing regulations in specific instances, if, in its opinion, the Station will remain in compliance with all applicable laws, rules, regulations and policies and broadcasting in the public interest is served. In any case where questions of policy or interpretation arise, Programmer should submit the same to Licensee for decision before making any commitments in connection therewith.