

**ASSET PURCHASE AGREEMENT**

by and between

**VON BROADCASTING, INC., SELLER**

and

**GARY YORK, BUYER**

for the sale and purchase of  
Station WIFM-FM, Elkin, North Carolina

Dated: November 7, 2003

LIST OF EXHIBITS AND SCHEDULE

SCHEDULE 2.1 -- FCC Licenses  
SCHEDULE 2.2 -- Tangible Property  
SCHEDULE 2.3 -- Leases  
SCHEDULE 2.4 -- Contracts  
SCHEDULE 6.11 -- Insurance

EXHIBIT A - Non-Competition Agreement

**ASSET PURCHASE AGREEMENT**

**This Agreement**, made and entered into as of this 7<sup>th</sup> day of November 2003, by and between **VON BROADCASTING, INC.** ("Seller"), and **GARY YORK** ("Buyer")

**WITNESSETH THAT:**

WHEREAS, Seller is the licensee of Radio Station WIFM-FM, Facility ID 20411, Elkin, North Carolina (the "Station") and the owner of the classified paper *What's in It for Me* (the "Paper");

WHEREAS, Buyer desires to purchase all of the assets used or useful in and for the operation of the Station and the Paper, and to acquire the license and other authorizations issued by the Federal Communications Commission (the "FCC") for the operation of the Station;

WHEREAS, Seller desires to sell the Station's assets and transfer the Station license and other authorizations to Buyer;

WHEREAS, the Buyer is desirous of obtaining the benefits of a non-competition agreement with the Seller and the Seller is willing to enter into such an agreement;

WHEREAS, the license renewal application for the Station is pending at the FCC and this transaction is conditioned upon the grant of such license renewal application for a full eight year term; and

WHEREAS, the authorizations issued by the FCC may not be assigned to Buyer without the FCC's prior consent.

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

**1. RULES OF CONSTRUCTION**

**1.1. Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

? "Assignment Application" means the application on FCC Form 314 that Seller and Buyer shall join in and

file with the FCC requesting its consent to the assignment of the FCC Licenses from Seller to Buyer.

- ? "Closing" means the consummation of the Transaction.
- ? "Closing Date" means the date on which the Closing takes place, as determined pursuant to Section 11 hereof.
- ? "Deposit" means the Five Thousand Dollars (\$5,000.00) that Buyer has delivered to Seller as earnest money with respect to the Transaction provided for herein.
- ? "Escrow Agent" means David Tillotson, Esq. who shall serve in such capacity without compensation or other remuneration.
- ? "Escrow Deposit" means the sum of One Hundred Thousand Dollars (\$100,00.00) that Buyer has deposited with Escrow Agent as security for the performance of Buyer's obligations hereunder which shall be deposited into an interest bearing account and held pursuant to the terms of the Escrow Agreement.
- ? "Escrow Agreement" means the Escrow Agreement between Buyer, Seller and Escrow Agent dated as of the date hereof.
- ? "Final Order" means any FCC action that, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay.
- ? "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- ? "Knowledge" when used in connection with any representation or warranty by a person or entity means the actual knowledge of such person or entity

at the time the representation is made without any requirement or expectation that such person or entity has made any investigation or inquiry regarding the matter at issue.

- ? "License Renewal" means the grant by the FCC of the pending license renewal application for the Station.
- ? "Transaction" means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of Seller and Buyer set forth herein.

**1.2. Other Definitions.** Other capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

**1.3. Number and Gender.** Whenever the context so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

**1.4. Headings and Cross-References.** The headings of the Sections and Paragraphs hereof have been included for convenience of reference only, and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to Sections or Paragraphs herein shall mean the Sections or Paragraphs of this Agreement unless otherwise stated or clearly required by the context. All references to Exhibits and Schedules herein shall mean the Exhibits and Schedules to this Agreement which have been separately initialed for identification by Seller and Buyer. Words such as "herein" and "hereof" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise stated or clearly required by the context.

**1.5. Computation of Time.** Whenever any time period provided for in this Agreement is measured in "business days" there shall be excluded from such time period each day that is a Saturday, Sunday, recognized federal legal holiday, or other day on which the FCC's offices are closed and are not reopened prior to 5:30 p.m. Washington, D.C. time. In all other cases all days shall be counted as business days.

**2. ASSETS TO BE CONVEYED.** On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Buyer, the following assets of Seller that are used for the operation of the Station and the Paper (the "Purchased Assets") free and clear of all liens and encumbrances whatsoever except for statutory liens for taxes not yet due:

**2.1. Licenses.** The licenses, permits and other authorizations issued by the FCC for the operation of the Station listed in Schedule 2.1 hereof (the "FCC Licenses"), and all other transferrable licenses, permits and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station as presently operated by Seller.

**2.2. Tangible Property.** All tangible personal property and fixtures owned by Seller used or useful in the operation of the Station and the Paper, including, without limitation, the property listed in Schedule 2.2 hereof, together with replacements thereof and improvements and additions thereto made between the date hereof and the Closing Date (the "Tangible Property").

**2.3. Leases.** The real property leases listed in Schedule 2.3 hereof (the "Leases").

**2.4. Contracts.** All contracts for the sale of advertising time on the Station which are in effect on the Closing Date, were entered into in the normal course of business and are cancelable on thirty (30) day's notice and the other contracts and agreements listed in Schedule 2.4 hereto (the "Contracts");

**2.5. Intangible Property.** All Seller's right, title and interest in and to the call signs, slogans, logos, trademarks, copyrights, and similar materials and rights and the goodwill and other intangible assets used in or arising from the business of the Station (the "Intangible Property").

**2.6 Business Records.** All business records of Seller (including without limitation logs, public file materials, and engineering records) relating to or used in the operation of the Station.

**3. EXCLUDED ASSETS.** The following assets are expressly excluded from the Purchased Assets being conveyed hereunder and shall be retained by Seller:

(a) the Seller's cash, cash equivalents and accounts receivable;

(b) any claims that Seller may have under any insurance policies or contracts and any other claims that Seller may have against third parties; and

(c) Seller's internal books and records which do not relate to the ownership or operation of the Station.

**4. PURCHASE PRICE AND METHOD OF PAYMENT.**

**4.1. Purchase Price; Method of Payment.** The purchase price for the Purchased Assets is One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00) (the "Purchase Price"). The Purchase Price shall be paid to Seller on the Closing Date as follows:

(a) the Deposit shall be credited payment against the Purchase Price;

(b) Buyer and Seller shall jointly instruct the Escrow Agent to deliver the Escrow Deposit to Seller by wire transfer of funds; and

(b) Buyer shall deliver to Seller the cash sum of One Million Forty-Five Thousand Dollars (\$1,045,000.00) by wire transfer;

**4.2. Allocation of Purchase Price.** The Purchase Price shall be allocated as follows:

Tangible Assets	\$250,000
FCC License	\$500,000
Intangible Assets and Goodwill	\$390,000
Non-Competition Agreement	\$ 10,000

Seller and Buyer shall use such allocation for all purposes related to the valuation of the Purchased Assets, including, without limitation, in connection with any federal, state, county or local tax returns and, unless required to do so in accordance with a "determination" as defined in Section 1313(a)(1) of the Internal Revenue Code, neither Seller nor Buyer shall take any position in any tax return, tax proceeding, tax audit or otherwise that is inconsistent with such allocation.

**5. PRORATIONS.** Seller shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of, the operation of the Station until 11:59 p.m. on the Closing Date and Buyer shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of, the operation of the Station after 11:59 p.m. on the Closing Date. All overlapping items of income or expense customarily subject to prorations in broadcast station transactions shall be prorated, or reimbursed, as the case may be, as of 11:59 p.m. on the Closing Date (the "Prorations"). In the event that the exact amount of any personal property taxes or the Annual FCC Regulatory Fee which are to be prorated is not known on the Closing Date, such taxes or fee shall be prorated on the basis of the most recent tax or fee assessment and such proration shall be final. To the extent practical, the Prorations shall be made on the Closing Date and any net amount due as a result of the Prorations shall be added to, or subtracted from, the Purchase Price. Within 30 days after the Closing Date, Buyer's accountant and Seller's accountant shall agree to any final Prorations that are necessary to carry out the parties' intentions as reflected in this Section and any final amount due Seller, or Buyer, shall be paid promptly by check from the party owning the final amount made payable to the party to whom the payment is due.

**6. SELLER'S LIABILITIES.** Buyer does not and shall not assume or be deemed to assume, pursuant to this Agreement or otherwise, any liabilities, obligations, or commitments of Seller of any nature whatsoever except for obligations under the Contracts and Leases to be assumed by Buyer hereunder. To the extent that the contracts for sale of advertising time include advertising for which trade and barter is to be received or has been received, Buyer shall assume liabilities for such advertising time only to the extent that such advertising time to be broadcast or published subsequent to

the Closing Date does not exceed a value of One Thousand Dollars (\$1000.00) at present Station or Paper rate card rates.

**7. SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

Seller hereby makes the following representations, warranties, and covenants:

**7.1 Existence and Power.** Seller is a corporation validly existing and in good standing under the laws of the State of North Carolina and has the full power to enter into, deliver and perform this Agreement.

**7.2. Binding Agreement.** The execution, delivery, and performance of this Agreement by Seller has been duly authorized by its stockholders and board of directors. This Agreement has been duly executed and delivered to Buyer by Seller and constitutes a legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms.

**7.3. No Violation.** The execution and performance of this Agreement by Seller will not violate Seller's articles of incorporation or any material order, rule, judgment or decree to which Seller or its principals or employees is subject, or breach any contract, agreement or other commitment to which Seller or its principals or employees is a party or is bound.

**7.4. Conveyance of Assets.** At Closing, Seller shall convey to Buyer good and marketable title to all the Purchased Assets, free and clear of all liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions and encumbrances or other defects of title except for the lien of any personal property taxes that will not become due until after the Closing Date.

**7.5. Governmental Authorizations.** Except for the FCC Licenses, Seller is unaware of any material licenses, permits, or authorizations from any Governmental Authority which are required to operate the Station. The FCC Licenses are all the FCC authorizations held by Seller with respect to the Station, and are all the FCC authorizations used in or necessary for the lawful operation of the Station. The FCC Licenses are in full force and effect, are subject to no unusual or materially adverse conditions or restrictions, and

are unimpaired by any acts or omissions of Seller or Seller's employees or agents.

**7.6 Leases and Contracts.** Seller will utilize its reasonable best efforts to ensure that the Leases and Contracts listed in Schedules 2.3 and 2.4 the stated duration of which extends beyond the Closing Date, will, at Closing, be in full force and effect, unimpaired by any acts or omissions of Seller or Seller's employees or agents and constitute all contracts and leases necessary for the operation of the Station as it is currently operated by Seller. If any Lease or Contract requires the consent of any third party in order for Seller to assign such lease or contract to Buyer, Seller will use its reasonable best efforts to obtain such consent prior to Closing, provided, however, for each Lease or Contract designated as a Material Contract pursuant to Section 10.2(d) hereof, Seller shall obtain and deliver to Buyer at Closing any required consents of third parties along with an estoppel certificate attesting to the due performance of the parties thereto under such Lease or Contract. As of the date of this Agreement, the Seller knows of no reason why any third party whose consent is required for an assignment of a Lease or Contract will not consent to such an assignment.

**7.7. Condition of Tangible Property.** The Tangible Property together with all improvements and additions thereto and replacements thereof, is now and on the Closing Date will be in good operating condition, ordinary wear and tear excepted. Between the date hereof and the Closing Date the Tangible Property will be maintained in accordance with generally accepted standards in the broadcast industry and in material compliance with all applicable rules and regulations of the FCC and all applicable laws, regulations and ordinances issued by any Governmental Authority. On the Closing Date the Station's facilities will be operating in material compliance with the terms and conditions of the FCC Licenses and all conditions of the construction permits underlying such licenses, which are expressly or by operation of the FCC's rules or policies, carried forward in the licenses. On the Closing Date, the quantity, quality and type of supplies, tubes and spare parts on hand at the Station will be consistent with Seller's past practice. If within sixty (60) days after the Closing Date, Buyer gives Seller written notice of any defects in the Station's technical facilities which existed on the Closing Date and which constituted a material breach of Seller's representations set forth in the this

paragraph, Buyer shall have the right to require Seller to make such repairs and/or adjustments as may be necessary to bring the Station's technical facilities into substantial compliance with such representations or, in the alternative, to make whatever repairs and/or adjustments or to replace any equipment at Seller's expense as may be necessary to correct such defects; provided, however, that Seller will be given reasonable opportunity, within thirty (30) days of the day of the mailing of written notice from Buyer to Seller, to effect such repairs, replacements or adjustments at Seller's cost.

**7.8. Real Property Leases.** The Leases give Seller the right to use and occupy all of the real estate ("Leased Real Property") currently used or currently necessary for the lawful operation of the Station as presently operated by Seller. Under the Leases, Seller has, and after Closing Buyer will have, all legal and practical access to the Leased Real Property. To Seller's knowledge, none of the buildings, structures or improvements that are constructed on the Leased Real Property (including without limitation all guy wires and guy anchors) encroaches upon adjoining real estate, and, to Seller's Knowledge, all such buildings, structures and improvements are constructed in conformity with all "set-back" lines, easements and other restrictions or rights of record, and all applicable building or safety codes and zoning ordinances. There are not pending or, to Seller's Knowledge, threatened condemnation or eminent domain proceedings that may have a material adverse effect on Buyer's use of the Leased Real Property for the operation of the Station after Closing. Seller has no knowledge of any structural or other material defects in the towers, buildings, structures and other improvements located on the Leased Real Property.

**7.9. Utilities.** All utilities that are necessary for Seller's present operation of the Station, including without limitation, electric power, water, sewer, and telephone services, have been connected to the Leased Real Property and, to Seller's Knowledge, are in good working order. To Seller's Knowledge, none of those utility lines cross the lands of others except where appropriate easements or licenses have been obtained.

**7.10. Litigation.** Except for proceedings affecting radio broadcasters generally, there is no complaint, investigation, or proceeding pending or, to Seller's Knowledge, threatened before or by the FCC, any other

Governmental Authority, or any other person or entity relating to the business or operations of the Station. There is no other litigation, action, suit, investigation or proceeding pending or, to the best of Seller's Knowledge, threatened that may give rise to any claim against any of the Purchased Assets or adversely affect Seller's ability to consummate the Transaction as provided herein. Seller is not aware of any facts that could reasonably result in any such proceedings.

**7.11. Insurance.** Schedule 6.11 lists all insurance policies held by Seller with respect to the Station. Such insurance policies shall be kept in full force and effect until the Closing Date.

**7.12. Compliance with Law.** (a) Seller has, in its conduct of the Station's business, complied in all respects material to this transaction with all applicable statutes, regulations and orders relating to the employment of labor, including those concerning wages, hours, equal employment opportunity, collective bargaining, pension and welfare benefit plans, and the payment of Social Security and similar taxes, and Seller is not liable for any arrears of wages or any tax penalties due to any failure to comply with any of the foregoing.

(b) On or before the Closing Date, Seller will pay and discharge all taxes, assessments, excises and other levies relating to the Purchased Assets, including all FCC Regulatory Fees which, if due and not paid, would interfere with Buyer's full enjoyment and use of the Purchased Assets after Closing except for such taxes, assessments, and other levies as will not be due until after the Closing Date. In the event subsequent to Closing there exists any taxes, assessments, excises or other levies relating to the Purchased Assets, including FCC Regulatory Fees, arising and owed prior to Closing for which the Buyer is required to expend resources or employ counsel with respect thereto, the limitations on indemnification set forth in Section 12.4 with respect to such taxes, assessments, excises or other levies relating to the Purchased Assets, including FCC Regulatory Fees, shall not apply.

**7.13. Environmental Matters.** No hazardous or toxic waste, substance or material, as those or similar terms are defined in or for purposes of applicable federal, state and local environmental laws, and including without limitation

any asbestos or asbestos-related products, oils or petroleum-derived compounds, CFCs, or PCBs (collectively "Hazardous Substances") are contained in structures or equipment used or useful in the operation of the Station which is located on or about Leased Real Property unless, in the case of equipment containing CFCs and PCBs, such CFCs and PCBs are properly contained and labeled. No "underground storage tank" (as that term is defined in regulations promulgated by the federal Environmental Protection Agency) is used in the operation of the Station or to Seller's Knowledge is located on the Leased Real Property. To Seller's Knowledge: (i) the Leased Real Property has not previously been used for the manufacture, refining, treatment, storage, or disposal of any Hazardous Substances; (ii) none of the soil, ground water, or surface water of the Leased Real Property is contaminated by any Hazardous Substances and there is no reasonable potential for such contamination from neighboring real estate; (iii) no Hazardous Substances are being emitted, discharged or released from the Leased Real Property, directly or indirectly, into the environment; (iv) neither Seller nor the owner or any former owner or operator of the Leased Real Property is liable for cleanup or response costs with respect to the emission, discharge, or release of any Hazardous Substances due to its ownership, occupation, use or operation of such premises. The present operation of the Station complies with all applicable federal, state and local laws relating to electrical transformers and human exposure to radio frequency radiation and, to Seller's Knowledge, complies in all material respects with all other applicable federal, state and local environmental laws.

**7.14. Insolvency Proceedings.** No insolvency proceedings of any character, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Purchased Assets are pending or threatened. Seller has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any insolvency proceedings. Upon consummation of the transactions provided for herein, Seller (i) will have sufficient capital to carry on its business and transactions, (ii) will be able to pay its debts as they mature or become due, and (iii) will own assets the fair market value of which will be greater than the sum of all liabilities of Seller not specifically assumed by Buyer pursuant to the terms of this Agreement.

**8. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Buyer hereby makes the following representations, warranties and covenants:

**8.1. Existence and Power.** Buyer is an individual with the full legal power and capacity to enter into and perform this Agreement.

**8.2. Binding Agreement.** This Agreement has been duly executed and delivered to Seller by Buyer and constitutes a legal, valid, and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

**8.3. No Violation.** The execution and performance of this Agreement by Buyer will not violate any material order, rule, judgment or decree to which Buyer is subject, or breach any contract, agreement or other commitment to which Buyer is a party or by which Buyer is legally bound.

**8.4. Licensee Qualifications.** Buyer is legally, financially, and otherwise qualified under the Communications Act of 1934, as amended, and the rules and regulations of the FCC to be the licensee of the Station.

**8.5. Litigation.** There is no action, suit, investigation or other proceeding pending or to Buyer's Knowledge threatened that may adversely affect Buyer's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Buyer is not aware of any facts that could reasonably result in any such proceeding.

**9. PRE-CLOSING RIGHTS AND OBLIGATIONS.** The parties covenant and agree as follows with respect to the period prior to Closing:

**9.1. Application for FCC Consent.** Within five (5) business days after the execution of this Agreement, Seller and Buyer shall join in and file the Assignment Application, and they shall diligently take all steps necessary or desirable and proper expeditiously to prosecute the Assignment Application and to obtain the FCC's determination that grant of the Assignment Application will serve the public interest, convenience and necessity.

**9.2. Access.** Between the date hereof and the Closing Date, Seller shall give Buyer and representatives of Buyer reasonable access during normal business hours to the Purchased Assets and to the books and records of Seller relating to the business of the Station. No inspection or investigation made by or on behalf of Buyer or Buyer's failure to make any inspection or investigation shall affect Seller's representations, warranties, and covenants hereunder or be deemed to constitute a waiver of any of those representations, warranties, and covenants.

**9.3. Administrative Violations.** If Seller receives any finding, order, complaint, citation or notice prior to Closing which states that any aspect of the Station's operations violates any rule, regulation or order of the FCC or of any other Governmental Authority which affects the Purchased Assets (an "Administrative Violation"), including without limitation any rule, regulation or order concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall use its best efforts to remove or correct the Administrative Violation and shall be solely responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed.

**9.4. Risk of Loss.** The risk of loss or damage to the Purchased Assets shall be upon Seller at all times prior to Closing. In the event of material loss or damage, Seller shall promptly notify Buyer thereof and use its best efforts to repair, replace or restore the lost or damaged property to its former condition as soon as possible. In the event that any loss, damage or destruction to the Station's assets has not been repaired, restored and/or replaced prior to the Closing Date, the Closing shall nevertheless take place and Seller shall assign its rights to receive any insurance proceeds with respect to the damaged, lost, or destroyed assets to Buyer and, to the extent that the insurance proceeds so assigned are insufficient to cover all of the costs of repairing and/or replacing the assets that were damaged, lost or destroyed, the Purchase Price shall be adjusted to cover such shortfall.

**9.5. Operations Prior to Closing.** Between the date of this Agreement and the Closing Date:

(a) Seller shall operate the Station in the normal and usual manner and conduct the Station's business in the ordinary course and in material compliance with all applicable laws, regulations and orders of the FCC and other governmental authorities. To the extent consistent with such operations, Seller shall use its reasonable best efforts to: (i) maintain the present character and entertainment format of the Station and the quality of its programs; (ii) maintain the goodwill of the Station's advertisers, suppliers, and employees; (iii) maintain the advertising sales and sales force of the Station in a manner that is consistent with Seller's past performance and practice; (iv) maintain its collection of accounts receivable in accord with Seller's past practices, neither accelerating any collection efforts nor writing off or otherwise forgiving accounts or portions of accounts contrary to Seller's past practices; (v) maintain all of the Purchased Assets in a manner consistent with Seller's past practices; (vi) maintain its books and records in accordance with past practices; and (vii) comply in all material respects with all laws, rules and regulations of all Governmental Authorities.

(b) Seller shall not: (i) sell or otherwise dispose of any of the Purchased Assets except in the ordinary course of business and only if any material property disposed of is replaced by property of like or better kind, quality, and utility prior to Closing; (ii) increase the compensation payable or to become payable to any employee of the Station other than in the ordinary course of business consistent with Seller's past practices; (iii) enter into any contract, lease, or agreement that will impose any material obligation on Buyer after Closing except for contracts for the sale of advertising time entered into in the ordinary course of business which may be cancelled on thirty (30) days' notice; (iv) enter into or extend any agreement for the sale of advertising time for trade or barter of services or merchandise (v) change the Station's current call sign, sales pricing or promotional practices; (vi) cause or permit any of the FCC Licenses to be revoked, suspended or materially modified; or (vii) make any material changes in the entertainment programming of the Station except for changes agreed to in writing by Buyer.

**9.6. Control of Station.** This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise

or direct the operations of the Station. Such operations shall be the sole responsibility of Seller.

**10. CONDITIONS PRECEDENT.**

**10.1. Mutual Conditions.** The obligation of both Buyer and Seller to consummate the Transaction is subject to the satisfaction of each of the following conditions:

**(a) Approval of Assignment Application.** The FCC shall have granted the Assignment Application and such grant shall be in full force and effect on the Closing Date.

**(b) Absence of Litigation.** As of the Closing Date, no action, suit or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction shall be pending before any court, the FCC, or any other Governmental Authority; provided, however, that this Paragraph may not be invoked by a party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of, such party.

**10.2. Conditions to Buyer's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Buyer to consummate the Transaction is subject, at Buyer's option, to the satisfaction of each of the following conditions:

**(a) Representations and Warranties.** The representations and warranties of Seller to Buyer shall be true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made.

**(b) Final Order.** The FCC's action granting the Assignment Application shall have become a Final Order.

**(c) Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been duly complied with and performed in all material respects.

**(d) Third-Party Consents.** Insofar as any of the Leases or Contracts is denoted by an asterisk on Schedule 2.3 or 2.4 hereto as being material to this transaction ("Material Contract"), Seller shall obtain (i) an estoppel

certificate from the lessor or contractor attesting to the due performance without default by the parties thereto under such Material Contract, and (ii) except for Material Contracts which may be assigned to and assumed by Buyer without consent of the contracting party, Seller shall have obtained written consent to the assignment to, and assumption by, Buyer of Seller's rights and obligations under such Material Contract.

**(e) Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer all of the closing documents specified in Paragraph 11.2.1, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably acceptable to Buyer.

**(f) UCC Searches.** Seller shall deliver to Buyer Uniform Commercial Code ("UCC") searches dated not more than fifteen (15) business days prior to the Closing Date performed in North Carolina and in each county in which Seller has places of business or any of the Purchased Assets are located, which searches shall have been conducted under Seller's name the, the Station's call letters, and the name of the Paper.

**(g) License Renewal Grant.** The License Renewal application for the Station shall have been granted for a full license term of eight (8) years without any condition not routinely imposed upon the grant of such renewals and such grant shall be a Final Order.

**10.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Seller to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

**(a) Representations and Warranties.** The representations and warranties of Buyer to Seller shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as if then made.

**(b) Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Buyer on or before the Closing Date shall have been duly complied with and performed in all material respects.

**(c) Payment.** Buyer shall be ready, willing and able to deliver to Seller the Purchase Price.

**(d) Closing Documents.** Buyer shall have delivered to Seller all the closing documents specified in Paragraph 11.2.2, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably satisfactory to Seller.

## **11. CLOSING.**

**11.1. Closing Date and Method.** Unless Seller and Buyer agree otherwise: (i) the Closing Date shall be the first (1st) business day after the date on which all of the closing conditions (except for the deliveries that Buyer or Seller is required to make on the Closing Date) have been satisfied or waived and (ii) the Closing shall be accomplished on the Closing Date by (x) an exchange of the closing documents required by this Agreement and such other closing documents as the parties may reasonably require, in person, by mail or air courier and (y) Buyer's delivery of the Purchase Price, as adjusted, to Seller by wire transfer.

**11.2. Performance at Closing.** The following documents shall be delivered at Closing:

**11.2.1. By Seller.** Seller shall deliver or cause to be delivered to Buyer:

(a) A certificate executed by Seller's President attesting to Seller's compliance with the matters set forth in Section 10.2 (a).

(b) Assignments in form and substance reasonably satisfactory to Buyer transferring to Buyer all of the interests of Seller in and to the FCC Licenses and all other transferable licenses, permits, and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station.

(c) Bills of sale in form and substance reasonably satisfactory to Buyer conveying to Buyer all of the Tangible and Intangible Property of the Station.

(d) One or more assignments assigning to Buyer all of the Contracts and Leases along with the consents and estoppel certificates required by Section 10.2(d) hereof.

(e) If, and only if, required by a third party lender or institution providing financing to the Buyer for this transaction, a letter from counsel for Seller setting forth such opinions as required by such third party lender or institution.

(f) A non-competition agreement in the form of Exhibit A (the "Non-Competition Agreement") in which the Seller covenants for a time period of five (5) years from the Closing Date not to compete, directly or indirectly, with the Buyer or its assigns in the ownership or operation of: (i) a radio broadcast station with a transmitter site located within thirty-five (35) miles of the center of Elkin, North Carolina; or (ii) a newspaper published, or with general circulation, within 50 miles of the center of Elkin, North Carolina, and not to hire or otherwise employ any of the Station's or the Paper's employees as of the date of this Agreement or as of the Closing Date in any business or enterprise now or hereafter owned or operated by the Seller.

**11.2.2. By Buyer.** Buyer shall deliver to Seller or Seller's designee(s):

(a) A certificate executed by Buyer attesting to Buyer's compliance with the matters set forth in Section 10.3 (a).

(b) The Purchase Price.

(c) Such assumption agreements and other instruments and documents as are required to evidence Buyer's assumption of and obligation to pay, perform, and discharge Seller's obligations under the Contracts and Leases.

**12. INDEMNIFICATION.** The parties agree as follows with respect to the period subsequent to Closing:

**12.1. Buyer's Right to Indemnification.** For a period of one (1) year following the Closing, and subject to the limitation in Section 12.4 hereof, Seller undertakes and agrees to indemnify and hold Buyer harmless against (i) any breach, misrepresentation, or violation of any of Seller's

representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Seller not assumed by Buyer; and (iii) any claims by third parties against Buyer attributable to Seller's ownership or operation of the Purchased Assets prior to Closing and not otherwise assumed by Buyer under this Agreement. This indemnity is intended by Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising within said one (1) year period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.2 Seller's Right to Indemnification.** For a period of one (1) year following the Closing, and subject to the limitation in Section 12.4 hereof, Buyer undertakes and agrees to indemnify and hold Seller harmless against (i) any breach, misrepresentation, or violation of any of Buyer's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Buyer; and (iii) any claims by third parties against Seller attributable to Buyer's operation of the Station after Closing. This indemnity is intended by Buyer to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising during said one (1) year period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.3 Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(1) The party claiming indemnification (the "Claimant") shall give written notice to the party from which indemnification is sought (the "Indemnitor") promptly after the Claimant learns of any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless; provided, however, that the Claimant's failure to give the Indemnitor prompt notice shall not bar the Claimant's right to indemnification unless such failure has materially prejudiced the Indemnitor's ability to investigate or defend against the claim or proceeding.

(2) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have thirty (30) days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purpose of this investigation, the Claimant agrees to make available to the Indemnitor and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension hereof), the Claimant may seek appropriate legal remedies.

(3) With respect to any third-party claims as to which the Claimant is entitled to indemnification, the Indemnitor shall have the right to employ counsel reasonably acceptable to the Claimant to defend against any such claim or proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor. The parties will fully cooperate in any such action, and shall make available to each other any books or records useful for the defense of any such claim or proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such claim or proceeding within twenty (20) days after receiving notice thereof from the Claimant (or such shorter time specified in the notice as the circumstances of the matter may dictate) the Claimant shall be free to engage counsel of its choice and defend against or settle the matter, all at the expense of the Indemnitor.

**12.4. Limitation on Obligation to Indemnify.** Neither party shall have an obligation to indemnify the other party pursuant to the provisions of Sections 12.1 or 12.2 hereof unless the aggregate amount of the party's claims for indemnification, including any costs and reasonable attorney's fees, exceeds Five Thousand Dollars (\$5,000.00).

**12.5 Indemnification Not Sole Remedy.** The right to indemnification hereunder shall not be the exclusive remedy of either party in connection with any breach by the other party of its representations, warranties, or covenants, nor shall such indemnification be deemed to prejudice or operate as a waiver of any remedy to which either party may otherwise be entitled as a result of any such breach by the other party.

### **13. DEFAULT AND REMEDIES.**

**13.1. Opportunity to Cure.** If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured within ten (10) days after delivery of that notice, then the party giving such notice may exercise the remedies available to such party pursuant to this Section, subject to the right of the other party to contest such action through appropriate proceedings. If a notice of default is given ten (10) days or less prior to the Closing Date, the Closing Date shall be automatically extended to first business day following the last day of the "cure" period.

**13.2. Seller's Remedies.** Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach of this Agreement, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, Seller shall be entitled receive the Escrow Deposit as liquidated damages in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Transaction.

**13.3. Buyer's Remedies.** Seller agrees that the Purchased Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right, if Buyer is not in material default in its obligations hereunder, specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. If Seller is in material breach of its obligations hereunder and Buyer elects to terminate this Agreement rather than exercise its right to specific performance, and if Buyer is not in material default in its obligations hereunder, Buyer shall be entitled to recover from Seller (in addition to a return of its Escrow Deposit with interest), an amount equal to the Escrow Deposit

as liquidated damages in lieu of any other remedies to which Buyer might otherwise be entitled due to Seller's breach.

#### **14. TERMINATION.**

**14.1. Failure to Obtain FCC Consent.** This Agreement may be terminated at the option of either party upon written notice to the other if the Closing has not occurred within twelve (12) months after the date on which the FCC releases a public notice that the Assignment Application has been accepted for filing; provided, however, that a party may not terminate this Agreement if such party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has caused or materially contributed to (i) any failure of such party to furnish, file or make available to the FCC information within its control; (ii) the willful furnishing by such party of incorrect, inaccurate or incomplete information to the FCC; or (iii) any other action taken by such party for the purpose of delaying the FCC's decision or determination respecting the Assignment Application. In the event of a termination under this Section 14.1, provided that Buyer is not in default hereunder, Seller and Buyer shall instruct the Escrow Agent to return the Escrow Deposit and all accrued interest to Buyer.

**14.2. Termination Due to Breach.** This Agreement may be terminated by either party due to a material breach of this Agreement by the nonbreaching party giving written notice to the breaching party of such termination. In such event, the nonbreaching party shall be entitled to the remedies specified in Sections 13.2 and 13.3 hereof. In the event of a termination under this Section 14.2, provided that Buyer is not in default hereunder, Seller and Buyer shall instruct the Escrow Agent to return the Escrow Deposit and all accrued interest to Buyer.

**15. PURCHASE OF ACCOUNTS RECEIVABLE.** On the Closing Date, Buyer shall purchase Seller's cash accounts receivable for an amount equal to seventy-five percent (75%) of the total amount of the cash accounts receivable that are less than ninety (90) days old. The purchase price for the accounts receivable shall be paid to Seller on the Closing Date in immediately available funds. Seller's non-cash accounts receivable for services or merchandise shall be assigned to the Buyer on the Closing Date for no additional consideration.

**16. ENFORCEMENT OF REMEDIES; DISPUTES.** Except for the right of Buyer to seek specific performance of this Agreement which shall be pursued in an appropriate court and the right of either party to enforce the provisions of or any determination made pursuant to this section, the parties agree to resolve any disputes arising out of or in connection with this Agreement as provided in this section.

**16.1.1. Appointment of Dispute Panel.** If any dispute is not resolved in the time permitted by this Agreement or, if no time is specified, within five (5) days of the date either party gives the other notice that it intends to invoke the provisions of this section, each party will immediately name one arbitrator who shall be a person with one of the following qualifications (a) substantial experience in radio ownership or management, (b) an accountant with experience in radio broadcasting, or (c) a radio broadcasting consultant, and, within five (5) days of their appointment, the two arbitrators so selected shall select a third arbitrator with similar qualifications (the "Dispute Panel").

**16.2. Decision Process.** Each party may submit such materials as it may elect to the Dispute Panel provided that a copy of such material is delivered by hand or overnight courier to the other party. Neither party will contact any member of the Dispute Panel to discuss the dispute unless the other party is present in person or by conference telephone call or the other party consents. The Dispute Panel will request and review such information as its members deem necessary to resolve the dispute. The Dispute Panel and each party will treat all information received by it as confidential and will destroy such information when the dispute is resolved. The Dispute Panel will resolve the matters presented to it so as to give each Party the benefit of its bargain by applying the provisions of this Agreement and, to the extent the Agreement is not dispositive, the customs and practices which, in the view of Dispute Panel, are common to transactions of this nature. The Dispute Panel will render its decision as soon as possible, but in any event, within thirty (30) days of the appointment of the third expert. The decision will be in writing and signed by each member of the dispute panel. The decision may include an award of damages as permitted by this agreement. Any third party may rely upon an original copy of the written decision

or a copy of the decision certified by any member of the Dispute Panel as evidence of the decision.

**16.3. Binding Effect.** The decision of a majority of the members of the Dispute Panel will be binding and final with respect to both parties and may be enforced by seeking preliminary and permanent injunctive relief or entry of a judgment by a court of competent jurisdiction.

**16.4. Costs and Fees.** Each party will bear the costs and fees of the expert appointed by it plus half of the costs and expenses of the third expert. If the Dispute Panel determines by majority decision that the position of a party lacks substantial merit or was taken primarily to delay or otherwise impair the business efforts of the other party, then that party will pay the costs and fees of all the members of the panel plus the other party's reasonable attorney's fees.

## **17. GENERAL PROVISIONS.**

**17.1. Brokerage.** Each party represents to the other that it has not employed any broker or finder in connection with the Transaction and agrees to indemnify the other party and hold it harmless against any claim from any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Seller or Buyer, as the case may be.

**17.2. Expenses.** The FCC filing fee for the Assignment Application shall be paid equally by Buyer and Seller and any sales, use or transfer taxes applicable to this Transaction shall be paid by the party who customarily pays such taxes in transactions completed in North Carolina. Except as otherwise provided herein, all other expenses incurred in connection with this Agreement or the Transaction shall be paid by the party incurring those expenses whether or not the Transaction is consummated.

**17.3. Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be deemed effective if made in writing and delivered to recipient's address or facsimile number (with an original to follow to recipient's address if sent via facsimile) set forth under its name below by any of the following means: (a) hand delivery, (b) registered or certified mail, postage pre-paid, (c) Federal Express, express mail or like courier

service; or (d) facsimile with confirmation of receipt. Notice made in accordance with this section shall be deemed delivered upon receipt.

To Seller: Von Broadcasting, Inc.  
733 Algonquin Drive  
Boone, NC 28607  
Fax: 828-262-1754  
Atth: Dan Hill, President

With a copy that shall not constitute notice to:

David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911  
Fax: (202) 965-2018

To Buyer: Gary York  
P.O. Box 48  
Mount Airy, NC 27030  
Fax: 336-789-7067

With copies that shall not constitute notice to:

Thomas M. Faw, Esq.  
Faw, Folger & Johnson  
BB&T Building  
541 N. Main Street  
P.O. Drawer 512  
Mount Airy, NC 27030  
Fax: 336-786-2620

and

John F. Garziglia, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, N.W. 7<sup>th</sup> Floor  
Washington, DC 20005  
Fax: 202-261-0055

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

**17.4. Assignment.** Buyer may assign its rights and obligations to a corporation or other legal entity controlled by Buyer without Seller's consent provided that such assignment will not delay the processing of the Assignment Application and/or grant of the FCC consent to the assignment of the Station's license to Buyer. Except as provided in the previous sentence, neither party may assign its rights and obligations hereunder without the written consent of the other party which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assignees.

**17.5. Exclusive Dealings.** For so long as this Agreement remains in effect, neither Seller nor any person acting on Seller's behalf shall solicit, initiate, or accept any offer from, or conduct any negotiations with, any person concerning the acquisition of the Station or the Purchased Assets, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

**17.6. Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

**17.7. Indulgences.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of a party at any time to require performance by another party of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by the other party shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by a party for the performance of any obligation or act by the other party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**17.8. Survival of Representations and Warranties.** The several representations, warranties, and covenants of the parties contained herein shall survive the Closing for a period of one (1) year ; provided, however, that those specific matters as to which claims for indemnification have

been duly made before the expiration of such one-year period shall survive until those claims have been resolved.

**17.9. Prior Negotiations.** This Agreement supersedes in all respects all prior and contemporaneous oral and written negotiations, understandings and agreements between the parties with respect to the subject matter hereof. All of said prior and contemporaneous negotiations, understandings and agreements are merged herein and superseded hereby.

**17.10. Schedules and Exhibits.** The Schedules and Exhibits attached hereto or referred to herein are a material part of this Agreement, as if set forth in full herein.

**17.11. Entire Agreement; Amendment.** This Agreement and the Exhibits and Schedules to this Agreement set forth the entire understanding between the parties in connection with the Transaction, and there are no terms, conditions, warranties or representations other than those contained, referred to or provided for herein and therein. Neither this Agreement nor any term or provision hereof may be waived, altered or amended in any manner except by an instrument in writing signed by the party against whom the enforcement of any such change is sought.

**17.12. Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provisions of this Agreement shall be interpreted or construed against the party whose counsel drafted the provision.

**17.13. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina without regard to the choice of law rules utilized in that jurisdiction. Any action brought under or related to this Agreement shall be brought in the state courts of North Carolina in the county in which the main studio of the Station is located.

**17.14. Severability.** If any term of this Agreement is illegal or unenforceable at law or in equity, the validity,

legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

**17.15. Waiver of Jury Trial; Attorney's Fees.** If any lawsuit is filed to resolve an issue as to the interpretation or enforcement of this agreement, each party irrevocably waives trial by jury and the right thereto in any and all litigation in any court with respect to, in connection with, or arising out of this Agreement. Should any party default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit or any action or proceeding, the prevailing party in such lawsuit, action or proceeding shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

**17.16. Bulk Sales Laws.** Seller believes that bulk sales laws that may be in effect do not apply to this transaction, but in the event any such bulk sales law does apply to this transaction, then any loss, liability, obligation or cost suffered by Buyer as the result of the failure of Seller to comply with the provisions of any bulk sales law applicable to the transfer of the Purchased Assets shall be borne by Seller.

**7.17. Confidentiality.** Subject to the requirements of applicable law, Buyer and Seller shall each keep confidential all information obtained by it with respect to the other party hereto in connection with this Agreement and the negotiations preceding this Agreement, and will use such information solely in connection with the transactions contemplated by this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to each other party hereto, without retaining a copy thereof, any schedules, documents or other written information obtained from such other party in connection with this Agreement and the transactions contemplated hereby. Notwithstanding the foregoing, no party will be required to keep confidential or return any information which: (a) is known or available through other lawful sources or not known to the disclosing party to be bound by a confidentiality agreement with the disclosing party; (b) is or

becomes publicly known through no fault of the receiving party or its agents; (c) is required to be disclosed pursuant to an order request of a judicial or governmental authority (provided the disclosing party is given reasonable prior notice of the order or request and the purpose of disclosure); or (d) is developed by the receiving party independently of the disclosure by the disclosing party.

**17.18. Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument. Each fully executed set of counterparts shall be deemed to be an original, and all of the signed counterparts together shall be deemed to be one and the same instrument.

**[THE FOLLOWING PAGE IS THE SIGNATURE PAGE]**

IN WITNESS WHEREOF, and to evidence their assent to the foregoing, Seller and Buyer have executed this Asset Purchase Agreement as of the date first written above.

**SELLER**

VON BROADCASTING, INC.

By: \_\_\_\_\_  
Dan Hill, President

**BUYER**

GARY YORK

\_\_\_\_\_

SCHEDULE 2.1

FCC Licenses

FM Broadcast License for Station WIFM, Facility ID 20411

Remote Pick Up KR5366

Studio Transmitter Link WLO760

## SCHEDULE 2.3

### Real Estate Leases

1. Lease Agreement dated January 9, 1999, by and between Jeffrey and Margie Smith as Landlord and Von Broadcasting, Inc. for studio and office space in a building located at 815 North Bridge Street, Elkin, North Carolina.\* Consent to assign **required**.
2. Lease Agreement dated February 1, 2002, by and between Electronic Service Center of Wilkes, Inc. and Von Broadcasting, Inc. for non exclusive use of tower space and space for a transmitter building.\* Consent to assign **not** required.

## SCHEDULE 2.4

### Contracts

1. Equipment Lease Agreement dated November 12, 1997, by and between Wells Fargo Leasing and Von Broadcasting, Inc. for laser printer, hard disk and ethernet. Consent to assign **required**.
2. CBSI Program License and Service Agreement dated July 11, 2000, by and between Custom Business Systems International and Von Broadcasting, Inc. Consent to assign **required**
3. Agreement between Capital Networks, Inc. and Von Broadcasting, Inc. executed in June, 2002, for broadcast of North Carolina State University Football and Basketball play by play and Coaches Show.
4. Agreement between Radio Computing Services, Inc. and Von Broadcasting, Inc. executed in January, 2002 for computer software products.

## SCHEDULE 6.11

### **Insurance**

Cincinnati Insurance Company -- Hazard and General Liability, coverages and limits as follows:

Business personal property at the studio site: \$47,000

General liability: \$500,000 per incident

Transmitter site bldg: \$10,000

Personal property in transmitter bldg: \$20,000

Tower and antenna: \$26,566

Aggregate coverage limit \$1 million

Benchmark Insurance Company -- Worker's Compensation and Employer's Liability with liability limits of \$100,000 per injury by accident, \$100,000 per injury by disease and \$500,000 policy limit for injuries by disease.

Blue Cross/Blue Shield of North Carolina Group Coverage

COVENANT NOT TO COMPETE

THIS COVENANT NOT TO COMPETE is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between **VON BROADCASTING, INC.** ("Seller"), **Dan Hill** (the "Individual Covenantor") and **GARY YORK** ("Buyer")

W I T N E S S E T H:

WHEREAS, Seller is the licensee of Radio Station WIFM, Facility ID 20411, Elkin, North Carolina (the "Station") and the owner of the classified paper *What's in It for Me* (the "Paper") and the Individual Covenantor is the controlling stockholder of Seller.

WHEREAS, Simultaneously herewith, Buyer is purchasing from Seller substantially all of the assets, property and rights, tangible and intangible, of Seller used or useful in the business or operation of the Stations, including all licenses, permits and authorizations issued by the Federal Communications Commission (the "FCC") for the operation of the Station (the "Assets"), on the terms and subject to the conditions set forth in an Asset Purchase Agreement dated as of the 7<sup>th</sup> day of November, 2003, (the "Purchase Agreement").

WHEREAS, it is a condition precedent to the Buyer's obligation to Close under the Purchase Agreement that Seller and the Individual Covenantor enter into this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties agree as follows:

1. Seller and the Individual Covenantor each agree that from the date hereof until [5<sup>th</sup> anniversary of Closing], neither Seller nor the Individual Covenantor will, directly or indirectly, whether as owner, licensee, principal, agent, employee, proprietor, partner, lender, or shareholder, director or officer of a corporation, or in any other capacity, (a) solicit for employment (except by non-specific general advertising in newspapers or trade publications), employ or assist in employing, or otherwise associate as an active participant in business with, any person who, at the time of such solicitation, employment, assistance or association, is an employee, officer or agent of the Station or the Paper or (b) induce any employee, officer or agent of the Station or the Paper to terminate his or her employment or other relationship with the Station or the Paper.

2. Seller and the Individual Covenantor further agree that from the date hereof until [5<sup>th</sup> anniversary of Closing], neither Seller nor the Individual Covenantor will, directly or indirectly, whether as owner licensee, principal, agent, employee, proprietor, partner, lender, or shareholder, director or officer of a corporation, or in any other capacity, other than as employee or contractor of Buyer, engage in (a) the commercial AM or FM broadcast business at any radio broadcasting station whose transmitter site is located within thirty-five (35) miles of the center of Elkin, NC (the "Radio Market Area"), (b) the ownership or operation of any newspaper published or with general circulation in a community the center of which is located within fifty (50) miles of the center of Elkin, NC (the

"Newspaper Market Area"), or (c) any commercial enterprise which offers for sale advertising time, including an advertising agency, whose primary business is located within either the Radio or the Newspaper Market Area.

3. The parties to this Agreement acknowledge that the injury to the Buyer resulting from any violation by Seller or the Individual Covenantor of their covenants herein will be irreparable and of such a character that it cannot be compensated by money damages, that the remedy at law for any such violation will be inadequate, and that the damages resulting from any such violation are not readily susceptible to being measured in monetary terms. Accordingly, Buyer may, in addition to pursuing its other remedies, obtain a temporary restraining order and preliminary and permanent injunctive relief from any court having jurisdiction of the matter restraining any such violation and any threatened or further violation; and no bond or other security shall be required in connection with any such restraining order or injunctive relief. Nothing in this Paragraph 3 shall be deemed to limit Buyer's other or additional remedies, at law or in equity or otherwise, for any violation by Seller or the Individual Covenantor of any of the provisions of this Agreement which may be pursued or availed of by the Buyer.

4. Seller and the Individual Covenantor have carefully considered the nature and extent of the restrictions upon them and the rights and remedies conferred upon the Buyer under this Agreement, and Seller and the Individual Covenantor hereby acknowledge and agree that such restrictions, rights and remedies are reasonable in time and territory, are designed to eliminate competition which otherwise would be unfair to the Buyer following the Buyer's purchase of the Stations, do not stifle the inherent skill and experience of Seller or the Individual Covenantor, would not operate as a bar to the Individual Covenantor's sole means of support, are fully required to protect the legitimate interests of the Buyer as the purchaser of the Stations and do not confer a benefit upon the Buyer disproportionate to the detriment to Seller and the Individual Covenantor.

5. In the event that Seller or the Individual Covenantor violate any provision of this Agreement as to which there is a specific time period during which such parties are prohibited from taking certain actions or from engaging in certain activities as set forth in this Agreement, then, in such event, such violation shall toll the running of such time period from the date such violation commences until such violation shall cease.

6. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered in the manner, and to the addresses for the parties, specified in Section 17.3 of the Purchase Agreement.

7. If any court determines that the covenants not to compete contained in this Agreement are unenforceable because of the duration or geographic scope of such provisions, such court shall have the power to reduce the duration or scope of such provisions, as the case may be, in their reduced form, such provisions shall then be enforceable.

8. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior arrangements, agreements and understandings relative to the subject matter

hereof. No amendment, waiver of compliance with any provision or condition hereof, or consent provided for herein will be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any such change is sought.

9. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

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

**VON BROADCASTING, INC.**

By: \_\_\_\_\_  
Dan Hill, President

\_\_\_\_\_  
Dan Hill, Individually

**GARY YORK**

\_\_\_\_\_