

ORIGINAL

FACILITIES MODIFICATION AGREEMENT

This Agreement is made and entered into this 26th day of August 2004, between First Broadcasting Investment Partners, LLC ("FBIP") and Educational Community Radio, Inc. ("Licensee"), licensee of Station WOBO (FM), Batavia, Ohio.

RECITALS

A. FBIP desires to relocate one or more radio stations to provide service to an increased population (the "FBIP Project").

B. Licensee agrees to accommodate the FBIP Project by consenting to and then implementing according to the terms hereunder the following changes relating to Station WOBO: (i) change of transmitter site location to a location within the area to locate attached hereto as Exhibit A (collectively, the "WOBO Change").

C. The FBIP Project, including the WOBO Change, would serve the public interest by providing better service to the public.

NOW THEREFORE, in consideration of the foregoing and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, FBIP and Licensee, intending to be legally bound, hereby agree as follows:

1. Rule Making Order. FBIP has filed a rule making proposal or counterproposal for changes in the FM Table of Allotments to effectuate the FBIP Project, which will include the WOBO Change as well as changes to other stations (the "Rule Making Proposal"), with the FCC. FBIP reserves the right to abandon or dismiss the Rule Making Proposal once filed. FBIP's obligations to Licensee hereunder are conditioned upon (a) the grant by the FCC of the Rule Making Proposal that (i) enables FBIP to effectuate the FBIP Project through the filing of one or more construction permit applications, (ii) requires the WOBO Change, and (iii) is not subject to conditions or changes, unless such conditions or changes are accepted by FBIP at its sole discretion (the "Rule Making Order"); and (b) the Rule Making Order's becoming final (that is, no longer subject to further administrative or judicial review under applicable law), unless finality is waived by FBIP at its sole discretion. However, notwithstanding this provision, if FBIP is denied its application or abandons the project, FBIP shall fulfill its obligations to Licensee as provided in Section 3 with regards to Initial Underwriting Payment, Second Underwriting Payment and delivery of equipment on Schedule 1.

2. Licensee Obligations. At the request of FBIP, Licensee shall execute for submission to the FCC its written consent to the WOBO Change substantially in the form attached hereto. Licensee further agrees that (a) it shall file with the FCC a construction permit application for the WOBO Change which specifies facilities that are consistent with the Rule Making Order (the "WOBO Permit Application") no later than five (5) business days after the later of (i) the effective date of the Rule Making Order and (ii) the day the Rule Making Order has become final (unless finality is waived by FBIP at its sole discretion); (b) it shall initiate operations pursuant to the WOBO Change Permit as soon

as construction has been completed pursuant to the WOBO Change Permit; and (c) it shall file with the FCC a license to cover application (the "WOBO License Application") within ten (10) days of initiation of operations under the WOBO Change Permit. Once the FCC issues the construction permit associated with the WOBO Change (the "WOBO Change Permit"), Licensee shall diligently undertake construction and initiation of operations thereunder, subject to FBIP's obligations identified in Section 3 below, provided that Licensee intends to initiate operations pursuant to the WOBO Change Permit concurrently with the completion of the other station changes to be made pursuant to the Rule Making Order. Licensee shall use its best efforts towards the prompt grant and finality of both the Rule Making Order and the WOBO Change Permit, and will provide all information reasonably requested by the FCC regarding same.

3. FBIP Obligations. FBIP agrees to prepare all necessary FCC filings required for the WOBO Change and to pay for all reasonable and necessary expenses related to the WOBO Change, including the purchase of a new tower associated with the WOBO change, the purchase or leasing real estate (at market rates, and if a lease there shall be a prepaid lease agreement for a term of not less than twenty (20) years with Licensee agreeing to assume the cost of renewal. The lease, including renewal options, shall include the terms of renewal and method of calculating any increase of rent) related to same; engineering fees (both FBIP's and Licensee's), FCC filing fees, and necessary equipment purchases and installation of equipment to implement the WOBO Change, subject to Licensee's reasonable approval and consistent with industry standards. In the event that a tower is constructed by FBIP for Licensee pursuant to this Agreement, FBIP shall transfer any title and interest it may have in such tower, and land if purchased, to Licensee. FBIP agrees that the change of the transmitter site location for Station WOBO shall be built to the maximum Class B non-commercial facility specifications, including maximum tower height and power or the equivalent, and in accordance with the specifications set forth on Exhibit B. The parties further agree that FBIP will locate the new tower site within an 8 mile radius of the current WOBO tower site, as depicted in the area to locate map attached as Exhibit A. The new site shall be located on a hard surface U.S., State, or County highway and the tower site shall not be located more than 1000 feet from the highway.

Further, FBIP agrees to pay to Licensee an underwriting payment as reimbursement, pursuant to the provisions hereof, for implementation of the WOBO Change according to the terms hereunder the following amounts [REDACTED] is to be delivered by FBIP to Licensee upon execution of this Agreement ("Initial Underwriting Payment"). An additional [REDACTED] underwriting payment, is to be delivered by FBIP to Licensee on the date that is fifteen (15) months from the date of execution of this Agreement ("Second Underwriting Payment") in the event that the Rule Making Order has not been granted by the FCC. Further, [REDACTED] shall be delivered by FBIP upon execution of this Agreement into escrow with a mutually agreeable escrow agent, such amount to be used to purchase equipment for the WOBO Change ("Escrow Deposit"). In the event that the Rule Making Order is granted and the WOBO Change implemented, then FBIP shall be entitled to the Escrow Deposit to pay for costs associated with the WOBO Change; in the event that the WOBO Change is not

implemented, for any reason other than Licensee's failure to perform, FBIP will deliver all the equipment in Schedule I and FBIP will get the escrow deposit back at time the equipment is delivered. A final payment shall be made by FBIP into escrow, after the WOBO Change Permit has been issued and ten (10) days prior to Licensee's commencement of broadcasting from its new facility.

[REDACTED]

The Final Payment shall be delivered by the escrow agent as an endowment to a foundation established by Licensee for the support of WOBO's mission of providing programming to the community of license within ten (10) business days after the initiation of operations under the WOBO Change Permit and under such circumstances the parties shall execute a release of the escrowed funds directing escrow agent to transfer such funds to such foundation; provided that if Licensee does not commence operations under such permit, the Final Payment shall be returned to FBIP. The Initial Underwriting Payment and Second Underwriting Payment made by FBIP to Licensee shall be non-refundable; however, any such payments made shall be applied against the Final Payment. Prior to the Final Payment being deposited into escrow, Licensee shall establish a foundation to receive the Final Payment with the requirement that the Final Payment shall be used to improve broadcast facilities and fulfill its mission as an educational and community radio station.

4. Exclusivity, Term and Termination. FBIP and Licensee agree that FBIP will have the sole and exclusive right to require the filing for the WOBO Change for a period of twenty-four (24) months from the date of this Agreement. This Agreement may be terminated: (a) if within the time period provided above, FBIP has not exercised its right to require the filing for the WOBO Change; (b) if within forty-eight (48) months of the date of this Agreement, the Rulemaking Order has not become final (that is, no longer subject to further administrative or judicial review under applicable law). In the event of termination, all parties shall be relieved of their further duties and obligations hereunder except as otherwise provided in Section 3 of this Agreement.

5. No Objection or Interference; Cooperation. Each party agrees that it will interpose no objection to the filings (including, without limitation, the Rule Making Proposal and applications for construction permits and licenses) of the other party to change class, equipment, and/or antenna location consistent with the FBIP Project and the WOBO Change (provided that the WOBO Change is solely a change in transmitter site location as identified above and that the WOBO Change will not require a change in channel). Each party shall cooperate with the requests of the other party to coordinate the submission of applications or related filings with the FCC. Notwithstanding the foregoing, if permitted by the FCC and it does not interfere with, damage or diminish in any way the FBIP Project, Rule Making Proposal, and/or WOBO Change, Licensee may file a contingent application to increase WOBO's power at its existing location; provided that Licensee expressly agrees that such application shall be expressly contingent upon the Rule Making Proposal and/or WOBO Change not being granted, and Licensee shall not proceed with such application unless and until the Rule Making Proposal and WOBO

Change is denied by the FCC and such denial is final and/or this Agreement is terminated pursuant to its terms.

6. Confidentiality. Except to the extent required by law, neither Licensee nor FBIP shall disclose the existence of this Agreement or make known any of its terms or the transactions contemplated herein, to any person other than its attorneys, engineers, and representatives to whom disclosure is necessary to effectuate the purposes of this Agreement and who are similarly bound to hold the existence of this Agreement and its terms in confidence. Notwithstanding the foregoing, nothing contained herein shall preclude Licensee from communications related solely to the WOBO Change with Licensee's trustees and staff. Information related solely to the WOBO Change may be communicated to WOBO's listeners only once the WOBO Permit Application has been filed with the FCC. The foregoing confidentiality obligations shall remain in place during the term of this Agreement and for two (2) years after termination.

7. Assignment. FBIP shall be entitled to assign its interest in this Agreement to any person or entity, provided that FBIP shall remain liable for its obligations hereunder. Licensee agrees that it will not assign or transfer its license for Station WOBO unless it causes the assignee or transferee thereof to assume Licensee's obligations under this Agreement in a manner reasonably satisfactory to FBIP. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto.

8. Miscellaneous. If any term or provision of this Agreement is determined to be void, unenforceable or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for either party. This Agreement sets forth the entire understanding of the parties hereto at the time of execution and delivery hereof with respect to the subject matter hereof and may not be amended except by written amendment signed by both parties. All prior agreements between the parties with respect to the subject matter hereof shall be of no further force or effect. If either party breaches its obligations under this Agreement, the other party shall have the right to seek injunctive relief and/or specific performance. The breaching party agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy. This Agreement shall be governed by and construed according to the laws of the State of Texas, specifically excluding its choice-of-laws provisions.

9. Alternative Dispute Resolution. If the parties are unable to resolve any dispute arising under or relating to this Agreement, they hereby agree to submit such dispute for arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration that takes place hereunder shall be in Cincinnati, Ohio, and shall take place before an impartial third-party arbitrator agreed to by the parties; provided that if such agreement cannot be reached between the parties within three (3) business days from a party's request for arbitration, then the arbitrator shall be promptly appointed by the AAA. The parties hereby agree that any such arbitration shall be final and binding upon each of

them, and that any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The undersigned each represents and warrants that it has the requisite authority to bind its respective party to the terms and obligations of this Agreement. This agreement may be signed in counterparts with the same effect as if the signature on each counterpart were on the same instrument.

Unless previously accepted, this offer will expire at 5 p.m. Central Standard Time on Tuesday, August 31, 2004.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

FIRST BROADCASTING
INVESTMENT PARTNERS, LLC

By: 

Name: Hal A. Rose
Its: Senior Vice President Transactions

EDUCATIONAL COMMUNITY
RADIO, INC.

By: 

Name: Don Littman
Its: Executive Secretary

**Station WOBO
Batavia, Ohio**

Educational Community Radio, Inc. ("Licensee"), licensee of Station WOBO, Batavia, Ohio, hereby agrees to have Station WOBO's transmitter site relocated. Licensee will file an application consistent with the Rules of the Federal Communications Commission if the changes are approved. Licensee understands that this statement may be used in a filing with the Federal Communications Commission and hereby authorizes its use for that purpose.


I verify that this statement is true and accurate to the best of my knowledge, information and belief and is made in good faith.

INC.

EDUCATIONAL COMMUNITY RADIO,

By:

Its:


EXECUTIVE SECRETARY