

# **PLAN & AGREEMENT OF MERGER**

**By & Among**

**MILNER BROADCASTING ENTERPRISES, LLC**  
[a Delaware limited liability company]

**&**

**MILNER BROADCASTING COMPANY**  
[an Illinois corporation]

**Along With**

**MILNER TRUST B & KATHY GAGLIANO**  
[Owners]

**&**

**KARL L. FELBINGER**  
[Legal Representative]

**Dated: As of March 31, 2008**

## PLAN & AGREEMENT OF MERGER

PLAN & AGREEMENT OF MERGER (this "Agreement"), dated as of March 31, 2008, by and among: MILNER BROADCASTING ENTERPRISES, LLC, a Delaware limited liability company ("Enterprises"); MILNER BROADCASTING COMPANY, an Illinois corporation ("Company") (together with Enterprises hereinafter sometimes referred to as the "Constituent Entities"); and KARL L. FELBINGER, the legal representative of the Constituent Entities (the "Legal Representative"), consented to by the following parties ("Owners"): Trust B of the Lorin E. Milner Revocable Trust Agreement dated February 25, 1981, as last Amended and Restated on December 29, 1987 ("Milner Trust B"); and, Kathy Gagliano ("Kathy").

### **R-e-c-i-t-a-l-s:**

- (i) Enterprises was duly formed as a Delaware limited liability company on November 22, 2000, and - - pursuant to licensing from the Federal Communications Commission (the "FCC"), operates an FM Radio Station having the Call Letters WIVR;
- (ii) Company was duly incorporated as an Illinois corporation on December 2, 1994, and - - pursuant to licensing from the FCC, operates FM Radio Stations having the Call Letters WVLI and WFAV;
- (iii) Record ownership of Enterprises is vested: 99%: Milner Trust B & 1%: Company [subject to a profit & loss allocation of 90% - Milner Trust B & 10% - Kathy];
- (iv) Record ownership of Company is vested: 90%: Milner Trust B & 10%: Kathy;
- (v) Enterprises and Company hereby agree that it is in furtherance of and consistent with the respective long-term business strategies and best interests of the Constituent Entities and the Owners, that Company merge with and into Enterprises (the "Merger"), effective as of April 1, 2008, with Enterprises to be the survivor of said Merger; and,
- (vi) The purpose of this Agreement is to memorialize, in writing, the agreements of Enterprises and Company (and the Owners) in such regards.

**Wherefore,  
THE PARTIES HERETO ACCORDINGLY AGREE  
(as follows):**

## ARTICLE I THE MERGER

**Section 1.1 The Merger.** Upon the terms and subject to the conditions hereof, and in accordance with applicable Delaware, Illinois and Federal law, Company shall merge with and into Enterprises as of April 1, 2008, subject to (and adjusted as may be necessary to) obtain such FCC consents and/or approvals as may be required (the "Effective Date"). Thereafter, the separate corporate existence of Company shall be terminated and liquidated for tax purposes in due course (and Enterprises shall continue as the surviving entity of the Merger, succeeding to and assuming all the rights and obligations of Company and Enterprises in accordance with applicable law).

**Section 1.2 Closing.** The closing of the Merger (the "Closing"), and all actions specified in this Agreement to occur at or as of the Closing, shall take place at the offices of the Legal Representative, at 1340 Shermer Road, Suite 201, Northbrook, Illinois 60062 as of noon on the Effective Date.

**Section 1.3 Certificates/Filings/Authority of Constituent Entities' Legal Representative.** The Legal Representative is authorized to file any appropriate document(s), including a certificate of merger (the "Certificate of Merger"), with the Secretary of State of Delaware, and to make and deliver such other document(s) or filing(s) with the States of Delaware and/or Illinois, and the FCC, as may be appropriate, to effect the intentions of the parties as expressed herein.

**Section 1.4 Effects of the Merger.** The Merger shall have the effects set forth in this Agreement and as otherwise provided under applicable law.

### **Section 1.5 Operating Agreement/Officers & Directors/Board of Managers.**

The Operating Agreement of Enterprises, as in effect as of the Effective Date, shall be its Operating Agreement thereafter, until subsequently changed or amended as provided therein or by applicable law. Thereunder, Enterprises shall be governed by a Board of Managers, and Enterprise shall have Officers, as set forth below:

- Jacqueline A. Milner, Chairman-Board of Managers & Treasurer
- Timothy Milner, Member-Board of Managers & President
- Michael Milner, Member-Board of Managers & Vice-President/Secretary
- Kathy Gagliano, Member-Board of Managers & Vice President
- Karl L. Felbinger, Member-Board of Managers & Legal Representative

to serve in each case until the earlier of their respective death, resignation, or removal, or until their respective successors are duly elected and qualified, as the case may be.

## ARTICLE II EFFECT OF THE MERGER ON CAPITAL STOCK AND/OR ACCOUNTS

**Section 2.1 Effect on Capital Stock and/or Accounts.** As of the Effective Date, by virtue of the Merger (and without any further action on the part of the Constituent Entities or the

Owners): (a) each share of common stock of Company that is issued and outstanding immediately prior to the Effective Date shall be extinguished and shall automatically be canceled and retired, with each holder of a certificate that immediately prior to the Effective Date represented by any such shares to thereafter cease to have any rights with respect thereto; and (b) subject to the terms of the Operating Agreement, Enterprises shall thereafter be owned, as follows: Milner Trust B - 90% & Kathy - 10%.

**Section 2.2 Further Assurances/Good Faith Cooperation.** If at any time after the Effective Date Enterprises shall consider or be advised that any deeds, bills of sale, assignments, assurances, or any other acts, documents or things are necessary, desirable, or proper (a) to vest, perfect, or confirm, of record or otherwise, in Enterprises, its right, title, or interest in, to, or under any of the rights, privileges, powers, franchises, properties, or assets of either of the Constituent Entities, or (b) otherwise to carry out fully the purposes of this Agreement, then the Legal Representative [or Enterprises (and its proper Officers and Board of Managers or their designees)] is hereby empowered and authorized to execute and deliver, in the name and on behalf of either Constituent Entities, and/or Owners, any and all such deeds, bills of sale, assignments, and assurances, and to do, in the name and on behalf of either of the Constituent Entities, or Owners, any and all such other acts, documents and things as may be necessary, desirable, or proper to vest, perfect, or confirm Enterprise's right, title, or interest in, to, or under any of the rights, privileges, powers, franchises, properties, or assets of such Constituent Party and/or otherwise to carry out fully the purposes of this Agreement. Further, the Constituent Entities and Owners agree, in good faith and promptly, to execute and deliver any document(s) or statement(s) reasonably requested in such regards.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

Enterprises and the Corporation each hereby represent and warrant to the other party, and the Owners, as follows:

#### **Section 3.1 Organization, Standing & Power.**

Each of Enterprises and Company is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has the requisite power and authority to own or lease and to operate its properties and assets, to carry on its business as currently conducted, to enter into this Agreement, and to carry out and effect the terms hereof.

**Section 3.2 Books & Records/Availability.** The Constituent Entities hereto, and the Owners, acknowledge that they are fully familiar with the operations of Enterprises and Company and that each Enterprises and Company maintains books and records at its principal office, and with its Attorney/Legal Representative (Karl L. Felbinger, of Northbrook, Illinois) and its CPA (John W. Kaiser, Jr., Cray-Kaiser, Ltd., Oakbrook Terrace, Illinois), which books and records have been and are available to the Owners, upon reasonable notice during normal working hours.

**Section 3.3 Authorization of Legal Representative.** The Legal Representative has the requisite legal capacity and legal right to enter into the Agreement on behalf of each of the Constituent Entities and to fulfill the terms thereof contemplated thereby

#### **ARTICLE IV COVENANTS RELATING TO CONDUCT OF BUSINESS**

**Section 4.1 Conduct of Businesses Pending the Merger.** During the period from the date of this Agreement and continuing until the Effective Date, except as otherwise set forth in this Agreement, each of the Constituent Entities shall carry on its business in the ordinary course in all material respects, consistent with past practices and substantially as currently conducted (including controlling of programming, employee matters and financing of WIVR, WVLI and WFAV).

#### **ARTICLE V MISCELLANEOUS**

**Section 5.1 Interpretation.** This Agreement shall be liberally construed to effect the intention of the parties as set forth herein.

**Section 5.2 Governing Law/Submission to Jurisdiction.**

This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Illinois, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof. Each party hereto, and each Owner, hereby irrevocably (i) agrees that any action, suit, or proceeding arising out of or related to this Agreement or any of the transactions contemplated hereby, whether based in contract, tort, or any other legal theory, shall be brought only in the Circuit Court of Cook County, Illinois; (ii) consents and submits to the exclusive personal jurisdiction of such courts in any such action, suit, or proceeding; and (iii) waives, to the fullest extent permitted by law, any claim, defense, or objection to the laying of venue in such courts

**Section 5.3 Severability.** If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect as long as the economic and legal substance of the transactions contemplated hereby are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the fullest extent possible.

**Section 5.4 Entire Agreement/Integration.** This Agreement (including Enterprises Disclosure Schedule and the Parent Disclosure Schedule), the Confidentiality Agreement, and the Escrow Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and thereof.

IN WITNESS WHEREOF, the parties hereto, the Owners, and the Legal Representative have caused this Agreement and Plan of Merger to be executed as of the date first written above.

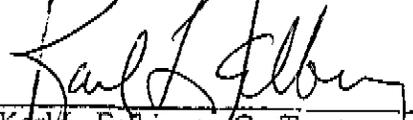
Constituent Entities:

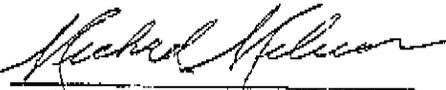
Owners:

Milner Broadcasting Enterprises, LLC

Milner Trust B

By:   
Timothy Milner, President

By:   
Karl L. Felbinger, Co-Trustee

Attest:   
Michael Milner, Secretary

By:   
Jacqueline A. Milner, Co-Trustee

  
Kathy Gagliano

MILNER BROADCASTING COMPANY

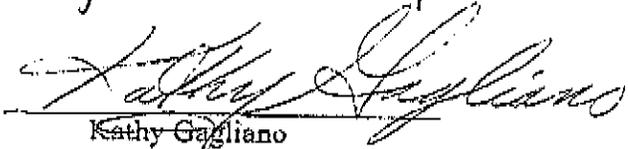
Milner Trust B

By:   
Timothy Milner

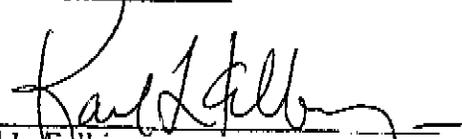
By:   
Jacqueline A. Milner, Co-Trustee

Attest:   
Michael Milner, Secretary

By:   
Karl L. Felbinger, Co-Trustee

  
Kathy Gagliano

Legal Representative:

  
Karl L. Felbinger