



## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made and entered into this 30<sup>th</sup> day of June, 2005, by and among D&E Communications of Ohio, an Ohio corporation ("D&E "Seller" ) and Beacon Broadcasting, an Ohio Corporation (Beacon "Buyer").

### **WITNESSETH:**

**WHEREAS**, D&E is the licensee of radio broadcast station WRTK(AM), Niles, Ohio (the "Station"), and holds the licenses issued by the Federal Communications Commission ("FCC" or "Commission") for the operation of the Station and contractual rights and intangible assets associated with the Station; and

**WHEREAS**, D&E owns certain real and personal tangible property used or held for use in the operation of the Station; and

**WHEREAS**, Sellers desire to sell and assign and Buyer desires to purchase and acquire the Station and substantially all of the assets associated with its operation; and

**WHEREAS**, the licenses issued by the FCC for the operation of the Station may not be assigned to Buyer without the prior consent of the Commission;

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and conditions contained herein, and the buyer having completed due diligence the parties do hereby agree as follows:

### **1. SALE AND ASSIGNMENT OF ASSETS**

Subject to the provisions of Paragraph 2 hereof, Sellers shall sell or assign and transfer to Buyer and Buyer shall purchase from Sellers the following assets ("Assets"), free and clear of liens, encumbrances, and other security interests except as specifically provided herein:

A. **Tangible Personalty**: All the fixed and tangible personal property owned by D&E and used in the operation of the Station, as listed in Exhibit A hereto, and any on site not listed, (excepting comrex communications unit) less any property consumed, depleted or otherwise disposed of in the ordinary course of business, and all tangible property acquired by Sellers in the ordinary course of business prior to the Closing Date (the "Tangible Personalty").

B. **Licenses and Authorizations**: All licenses and other authorizations as listed in Exhibit B hereto (including without limitation the right to the use of the Station's call sign) which are issued by the Commission and other governmental agencies and that are associated with the operation of the Station, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Licenses").

C. **Agreements and Contracts**: The rights of a Seller under (1) all agreements or contracts listed in Exhibit C hereto and which are in effect on the Closing Date, (2) any agreements or contracts for the broadcast of advertising over the Station for cash consideration upon terms and rates consistent with the Station's customary selling practices which are in effect on the Closing Date, and (3) all additional agreements or contracts material to the conduct of the business of the Station entered into by a Seller between the date hereof and the Closing Date as permitted by the terms of this Agreement (the "Contracts").

F. **Real Property**: The real property whereon the Station's transmitter site and studios are located, as more fully described in Exhibit D (the "Real Property"), together with the buildings and tower located thereon, and all equipment and appurtenances associated therewith (the "Fixtures") This property shall be purchased in as is condition

E. **Intangible Personal Property**: All good will and other intangible personal property owned by a Seller and used in connection with the operation of the Station (the "Intangible Property").

F. **Records**: Such of Sellers' files, logs, books of account, warranties, technical data, audience surveys, reports and, to the extent assignable, computer programs and software and all of Sellers' rights therein, and other records relating exclusively to the operation of the Station as Buyer may reasonably require (the "Records").

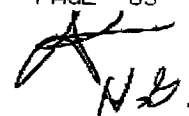
## 2. **ASSETS EXCLUDED**

It is understood and agreed that the Assets purchased pursuant to this Agreement shall not include any assets not specifically described in paragraph 1 hereto, including, but not limited to Sellers' cash, bank accounts, accounts or notes receivable, investments, and tax and corporate records, comrex communications system.

## 3. **CONSIDERATION AND OBLIGATIONS WITH RESPECT THERETO**

The consideration for the Assets which are being purchased from Seller by Buyer is Four Hundred Thousand Dollars (\$400,000), to be paid as follows:

A. Upon execution of this Agreement, Buyer shall pay to Sellers in such proportion and manner as Sellers may specify the sum of Fifty Thousand Dollars (\$50,000) (the "Deposit") to be applied to the Purchase Price upon consummation of this Agreement. It is expressly agreed that the Deposit is not refundable under any circumstances and is to be deemed fully earned by Sellers in consideration of their having taken the Station off the market and having afforded an opportunity to Buyer to negotiate purchase of the Station on the terms hereof.

Handwritten signature and initials, possibly "N.B.", in the top right corner.

B. At the Closing, Buyer shall pay to Sellers the additional sum of Three Hundred Fifty Thousand Dollars (\$350,000) (the "purchase price") in cash or such cash equivalent and in such proportion as Sellers may request.

4. **PRORATIONS AND ADJUSTMENTS**

All taxes, prepayments (to the extent Buyer obtains the asset for which such prepayment was made), deposits, utility charges, Contracts and income and operating expenses of the Station shall be prorated between Buyer and Seller as of 12:01 a.m. Cleveland time on the Closing Date. Insofar as feasible, prorations under this paragraph shall be determined and paid on the Closing Date, with a final accounting of prorated items, and the sum due from one party to another pursuant to this proration paid, within sixty (60) days after the Closing Date. All such prorations shall be paid to the Sellers in cash (if owed to Sellers) or subtracted from the next payment due under the Note (if owed to the Buyer).

5. **EXPENSES**

Each party shall bear its own legal, engineering and accounting fees and other costs and expenses with respect to the transaction. Recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Seller to Buyer, if any, will be paid by Buyer according to prevailing custom in the State of Ohio. The FCC fee for filing the application described in Paragraph 7 hereof shall be paid by Seller.

6. **ASSUMPTION OF CERTAIN LIABILITIES**

At the Closing Buyer shall assume all of the Contracts which by the terms thereof require the payment of money or the performance of other obligations after 12:01 a.m. Cleveland time on the Closing Date. Buyer specifically does not assume responsibility for any of Sellers' liens, taxes, debts, accounts payable or contracts other than the Contracts.

7. **FILING OF FCC APPLICATION**

Buyer and D&E agree to proceed no later than ten (10) days from the date hereof to file an application requesting FCC consent to the transactions herein set forth (the "Application"). Buyer and D&E agree to prosecute the Application, defend it against challenges and file any amendments or additional information requested by the FCC, all in good faith and with due diligence, such that it may be granted and become a Final Order as expeditiously as practicable. A "Final Order" shall mean a Commission grant that is no longer subject to reconsideration, review or appeal by the Commission or any court of competent jurisdiction.



## 8. REPRESENTATIONS AND WARRANTIES OF SELLER

Sellers make the following representations and warranties, all of which have been relied upon by Buyer in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. Organization: Each Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Ohio, and has full power and authority to enter into and perform this Agreement.

B. Authorization: The execution, delivery and performance of this Agreement has been duly authorized by each Seller, and constitutes a valid and binding agreement of each Seller, enforceable in accordance with its terms.

C. No Contravention: The execution, delivery and performance of this Agreement by each Seller will not violate any provision of its respective articles of incorporation or by-laws and will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which a Seller or any of its respective principals is a party or by which it or they or any of the Assets is bound or affected.

D. Insolvency Proceedings: No insolvency proceedings of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement of creditors, voluntary or involuntary, affecting a Seller or the Assets are pending or threatened.

E. Real Property: The Real Property is all of the real property required for the Station's studio operations and transmissions (a) in the manner in which it is presently operated and (b) as authorized by the Licenses. To the best of Sellers' knowledge, none of the Real Property is subject to any contract, option or commitment for sale or lease to any party other than Buyer which would impair its use with respect to the continued operation of the Station in its present manner. To the best of Sellers' knowledge, the Real Property is in material compliance with all applicable environmental laws and regulations and zoning, building and other laws and regulations of all governmental authorities having jurisdiction thereof. All utilities necessary for Seller's use of the Real Property are installed and in working order and are subject to valid easements. Sellers have received no notice that any condemnation proceedings have been instituted or threatened against the Real Property, all property shall be purchased in as is condition, and simultaneously with the closing of WRTK, Seller will transfer the Real Estate for the transmitter site for WLOA radio station. The Value of the transmitter site is (one Hundred Thousand dollars).

F. **Commission Licenses:** Exhibit B hereto contains a complete list of all the licenses, permits, and other authorizations issued by the Commission, together with any applications therefor pending before the Commission, needed for D&E's present operation of the Station. The Licenses are in full force and effect, have been issued for the full current term of broadcast station licenses in the State of Ohio, and are free and clear of any restrictions which limit the full operation of the Station as presently authorized or operated. Sellers have received no notice of any investigations, proceedings, or material complaints pending before or threatened by the Commission which might adversely affect the business or operations of the Station, other than proceedings intended to be generally applicable to substantial segments of the industry.

G. **Tangible Personality:** D&E has good and marketable title to each item of the assets listed on Exhibit A, free and clear of all mortgages, liens, charges or encumbrances. The assets listed in Exhibit A, together with the Fixtures, are all of the material tangible property used by D&E to operate the Station as it is presently being operated, and is purchased in as is condition.

H. **Waiver of Condition of Certain Assets.** Prior to execution of this Agreement, Buyer has examined the Real Property, Fixtures and Tangible Personality, is familiar with their present condition and is willing to purchase them in their present condition. Sellers make no representation or warranty concerning the quality or condition of any of the Real Property, Fixtures or Tangible Personality. **Notwithstanding anything else herein to the contrary, the Real Property, Fixtures and Tangible Personality is all being sold "as is-where is" with all faults and Seller disclaims all warranties of merchantability and fitness for a particular purpose.**

I. **Employee Relations:** In the conduct of the Station's affairs, Sellers have complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor including those relating to collective bargaining and other unfair labor practices, wages, hours, discrimination, and the withholding and payment of social security and similar taxes and are not liable for any arrears or penalties relating thereto which would have a material adverse effect on the operations of the Station or which could result in liability to the Buyer following the Closing. Sellers shall be solely responsible for, and hold Buyer harmless from, any and all employment compensation, personnel benefits, accrued benefits and bonuses up to 12:01 a.m. on the Closing Date with respect to the operation of the Station. No labor union is certified, or otherwise recognized, as the collective bargaining representative for any of the Station's employees; Sellers have no knowledge of any labor strike, union organizing efforts, equal employment opportunity or discrimination allegation or other employee or labor controversy or dispute pending which is reasonably likely to affect Buyer's operation of the Station after the Closing Date.



J. **Contracts:** Exhibit C includes all contracts, agreements and commitments which are necessary for D&E's operation of the Station, excluding agreements for the broadcast of advertising on the Station for cash consideration. All Contracts are valid, binding, and enforceable by Sellers in accordance with their terms. Except as set forth on Exhibit C, neither Sellers nor, to Sellers' knowledge, any other party to such Contracts is in material breach or default on any of the Contracts, there is no claim of breach or default by Sellers, Sellers have received no notice of breach or default from any other party thereto, and Sellers have no knowledge of any act or omission which has occurred or which has been threatened which is reasonably likely to result in any party to such Contracts being in breach or default thereof. Sellers will procure the written consent of all contracting parties to the assignment of those Contracts designated as "material" on Exhibit C prior to the Closing if such consent is required by the terms thereof.

K. **Intangible Property:** The Intangible Property includes all good will, trade marks, service marks, copyrights, trade names, intellectual property and other similar intangible property rights currently used to promote or identify the Station. Sellers have no knowledge of any infringement or unlawful or unauthorized use of the Intangible Property or that the Intangible Property may infringe the rights of any third party.

L. **Compliance with Laws; Litigation:** To the best of Sellers' knowledge, the Station has been operated in material compliance with all applicable federal, state and local laws. Sellers have filed all tax returns, FCC reports and other documents required to be filed by any governmental authority with respect to the Assets or the Station; WEC has maintained the Station's local public inspection file in material compliance with FCC requirements; and Sellers have not stored, disposed of nor used, nor have any knowledge that any other party has disposed of or used, any hazardous substance in a manner that is likely to result in liability for Buyer under any applicable law or regulation. There is no judgment outstanding and, to the best of Sellers' knowledge, no litigation, proceeding or investigation of any nature (other than that intended to affect substantial segments of the industry as a whole) pending or threatened which is likely to materially and adversely affect the continued operation of the Station or materially and adversely affect the enjoyment and use by Buyer of the Assets to be purchased hereunder.

## 9. **COVENANTS OF SELLER**

A. **Negative:** Between the Closing Date or earlier termination of this Agreement, Sellers will not do any of the following without the written consent of Buyer:

- (i) Create or assume any mortgage upon or pledge or subject to lien or encumbrance any of the Assets, whether now or hereafter acquired; or



(ii) Sell, assign, lease, convey, or otherwise transfer or dispose of any of the Assets, whether now owned or hereafter acquired other than in the ordinary course of business, unless, in the case of the Tangible Personalty, the same are replaced in the normal course of business by assets of at least equal quality and usefulness.

B. **Affirmative:** Pending the Closing Date, Sellers will:

(i) Perform all of the Contracts according to their terms;

(ii) Remove any and all violations of Commission Rules and Regulations which come to its attention or assume responsibility for the costs of removing same, including the payment of any fines that may be assessed for any such violation; and

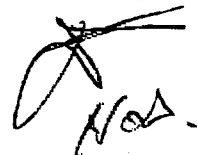
(iii) Use commercially reasonable efforts to operate the Station substantially in its customary and usual manner and to preserve its programming, advertisers and listeners.

10. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER**

Buyer makes the following representations, warranties and covenants, all of which have been relied upon by Sellers in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct as of the Closing:

A. **Organization:** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Ohio and has full power and authority to enter into and perform this Agreement.

B. **Authorization:** The execution and delivery of this Agreement has been duly authorized by the directors and shareholders of Buyer, and constitutes a valid and binding agreement of Buyer, enforceable in accordance with its terms.



C. **No Contravention**: The execution, delivery and performance of this Agreement by Buyer will not violate any provision of its articles of incorporation or bylaws nor will result in a breach of, or constitute a default under, the provisions of any agreement or other instrument to which Buyer or its principals is a party or by which it or its property is bound or affected.

D. **Qualification**: Buyer is fully qualified, legally, financially and otherwise, to become licensee of the Station and to timely consummate all of the transactions contemplated by this Agreement.

11. **CONTROL OF STATION**

Nothing contained in this Agreement shall be construed as giving Buyer any right to directly or indirectly supervise or direct the operation of the Station prior to the Closing. Such operation, including complete control and supervision of all programming, shall be the sole responsibility of D&E. Effective on the Closing Date and thereafter, Sellers shall have no control over, nor right to intervene or participate in, the operation of the Station.

12. **RISK OF LOSS - DAMAGE TO FACILITIES**

The risk of loss or damage to any of the Assets shall be upon Sellers prior to the Closing, and thereafter upon Buyer. In the event of such loss or damage prior to the Closing, the proceeds of, or any claim for any loss payable under, any insurance policy with respect thereto shall be used by Sellers to repair, replace, or restore such lost or damaged assets.

13. **CLOSING DATE AND PLACE**

The Closing Date shall be fixed by Buyer by giving at least five (5) days' written notice thereof to Sellers. Unless extended by mutual written consent of Buyer and Sellers, the Closing Date shall no less than five (5) nor more than ten (10) days after public notice of FCC grant of the Application, provided, however, that if a petition to deny is filed against the Application then, at the option of either Buyer or Sellers, the Closing may be deferred until not more than ten (10) days after such grant becomes a Final Order. The Closing shall take place at the Station studios or at such other location as the parties may mutually agree.

14. **CONDITIONS OF CLOSING - SELLERS' OBLIGATIONS**

The obligations of Buyer under this Agreement with respect to the Closing are, at Buyer's option, subject to compliance by Sellers with each of the following terms and conditions at or prior to the Closing Date:





A. **Operating Status of Station:** The Station shall be operating substantially in compliance with all parameters listed on its Licenses;

B. **Commission Consent:** The Commission shall have granted the Application and, if a petition to deny shall have been filed against the Application, such grant shall have become a Final Order;

C. **Consents:** Sellers shall have obtained required written consent to the assignment of the Contracts designated as material in Exhibit C and delivered such consents to Buyer along with true copies of all of the Contracts;

D. **Accuracy of Representations - Compliance with Covenants:**  
The representations and warranties of Sellers contained in Paragraph 8 hereof shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made on that date, except to the extent otherwise contemplated herein, and Sellers shall have materially complied with all the covenants contained in Paragraph 9. Sellers shall provide Buyer with the certificates of their respective Presidents so stating under oath.

E. **Instruments of Conveyance:** Sellers shall have delivered to Buyer the following instruments, all of which shall be in form customary in the State of Ohio and reasonably satisfactory to Buyer:

(i) Bills of sale and other instruments of assignment and transfer, covering all the Tangible Personalty and the Records;

(ii) Assignments and other appropriate instruments assigning the Licenses, the Contracts and the Intangible Property;

(iii) A Warranty Deed conveying fee simple title to the Real Property;

(iv) Such other documents as Buyer shall reasonably request and which are necessary to place Buyer in actual possession and operating control of Station and the Assets being transferred hereunder.

F. **Other Acts:** Sellers shall, within reason, have done any other acts which are necessary to effectuate the transactions contemplated herein.



16. **CONDITIONS OF CLOSING - BUYER'S OBLIGATIONS**

The obligations of Sellers under this Agreement with respect to the Closing are, at Sellers' option, subject to compliance by Buyer with each of the following terms and conditions at or prior to the Closing Date:

A. **Commission Consent**: The Commission shall have granted the Application and, if a petition to deny shall have been filed against the Application, such grant shall have become a Final Order.

B. **Assumption of Contracts**: Buyer shall have delivered to Sellers a document, in form and substance reasonably satisfactory to Sellers, whereby Buyer assumes those liabilities and obligations of Sellers under the Contracts to be assumed pursuant to Paragraph 6 hereof.

C. **Purchase Price**: Buyer shall have paid to Sellers the full purchase amount upon granting of approval from FCC Commission.

D. **Accuracy of Representations - Compliance with Covenants**: The representations and warranties of Buyer contained in Paragraph 10 hereof shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made on that date, except to the extent otherwise contemplated herein, and Buyer shall have materially complied with all the covenants contained in Paragraph 10. Buyer shall provide Sellers with the certificate of its President so stating under oath.

E. **Other Acts**: Buyer shall, within reason, have done any other acts which are necessary to effectuate the transactions contemplated herein.

17. **TERMINATION**

A. If the Commission has not granted the Application within two hundred seventy (270) days of acceptance for filing, either Buyer or Sellers may terminate this entire Agreement upon written notice to the other, provided that the party seeking to terminate has not failed to have prosecuted the Application diligently and in good faith or to have satisfied all Commission inquiries or responded to any oppositions related thereto and is not otherwise in material default hereunder.

B. Either party may terminate this Agreement if the other shall be in material breach hereof and if the said breach shall not have been cured within ten (10) days of written notice thereof by the party seeking to terminate, provided, however, that if any such breach is not reasonably susceptible of being cured within ten days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable.



# **18. REMEDIES**

If this Agreement is terminated due to no fault of either Buyer or Sellers, then neither party shall have any liability to the other (except as provided in paragraph 22). If the Agreement is terminated due to a material default of a Seller then, in addition to any other remedies to which it may be entitled, Buyer may seek a decree of specific performance, it being agreed by both Buyer and Sellers that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyer for the loss of an opportunity to acquire the Assets on the terms set forth herein. If this Agreement is terminated due to Buyer's material default hereunder, then Sellers shall be entitled to retain the Deposit as compensation therefor as and for liquidated damages, and not as a penalty, it being agreed that actual damages would be difficult to calculate and that the Deposit is a reasonable estimate of Sellers' damages.

# **19. INDEMNIFICATION**

Sellers shall indemnify, defend, and hold Buyer harmless against all claims, demands and legal actions and will reimburse Buyer for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the operation of the Station prior to the Closing or the material breach by Sellers of any of their representations, warranties or covenants set forth herein. Buyer shall indemnify, defend and hold Sellers harmless against all claims, demands and legal actions, and will reimburse Sellers for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the operation of the Station after the Closing or the material breach by Buyer of any of its representations, warranties or covenants set forth herein. Should any claims covered by the foregoing provisions be asserted against either party, the party being charged shall notify the other promptly and give it an opportunity to defend the same; the parties shall extend reasonable cooperation to each other in connection with such defense.



20. **NOTICES:**

All necessary notices, demands and requests shall be deemed duly given if mailed by registered or certified mail, postage prepaid, addressed as follows

Seller: D&E Communications of Ohio  
3691 Concord Drive  
Beachwood, Ohio 44122  
Attn: Dale Edwards, President

with a copy, which shall not constitute notice, to:

Dale Edwards  
3691 Concord Drive  
Beachwood, Ohio 44122

Buyer: Beacon Broadcasting Company  
P.O. Box 1798  
Warren, Ohio 44482  
Attn: Harold Glunt, President

with a copy, which shall not constitute notice, to:

Harold Glunt, President  
1550 West Park ave.  
Niles, Ohio 44446

21. **PRESERVATION OF BOOKS AND RECORDS**

For one (1) year after the Closing, (a) Buyer will preserve the books and records of Sellers delivered pursuant to Paragraph 1.F. hereof, and will allow Sellers reasonable access to them and (b) Sellers will preserve all other books and records relating to the Sellers and the Station (including all tax records) and will allow Buyer reasonable access to them.



22. **CONFIDENTIALITY**

Pending the Closing, Buyer and its employees, representatives and agents will maintain the confidentiality of the information and materials delivered to them or made available for their inspection pursuant to this Agreement (including the negotiation thereof and due diligence relating thereto), except where such information, schedules, and other documentation are required to be filed with the Commission in connection with the Application. If for any reason the transaction is not consummated and does not close, Buyer will cause its employees, representatives and agents to return to Sellers all such materials in their possession and continue to preserve the confidentiality of all such information.

23. **SURVIVAL**

The representations, warranties, covenants, and agreements contained herein and in any certificate or other instrument delivered pursuant hereto shall be deemed and construed to be continuous and shall survive the Closing hereunder for a period of Three months.

24. **BROKER/FINDER**

Buyer and Sellers hereby mutually represent that there are no finders, consultants or brokers involved in this transaction.

25. **ASSIGNMENT AND BENEFIT**

This Agreement is not assignable by either Buyer or Sellers without written consent of the other. This Agreement and all of the obligations set forth herein shall be binding upon the parties and their respective heirs, assigns and successors.

26. **CONSTRUCTION**

This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and to this end only the provisions of this Agreement are declared severable.

27. **COOPERATION**

Each party hereto agrees to perform such further acts and to execute and deliver such further documents as may be necessary or desirable to effectuate the purposes of this Agreement.

AS.  
[Signature]

28. **TIME OF ESSENCE**

Time is of the essence with respect to every provision of this Agreement.

29. **ENTIRE AGREEMENT**

This Agreement embodies the entire agreement among the parties and supersedes all prior agreements and understandings among the parties. No attempted change, termination or waiver of any of the provisions hereof shall be binding except by a written instrument signed by the party against which the same is sought to be enforced.

30. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

**EXECUTED** on the day first above written.

**ATTEST:**

**D&E COMMUNICATIONS of Ohio, INC.**

Ralph B. Glunt

By

[Signature]  
Dale Edwards, President

**ATTEST:**

**Beacon Broadcasting Company, INC.**

[Signature]

By

[Signature]  
Harold Glunt, President