
PURCHASE AND SALE AGREEMENT

by and between

VERMONT PUBLIC RADIO

And

**CUPID BROADCASTING, L.L.C
(BARRY P. LUNDERVILLE)**

Dated as of June 26, 2007

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “*Agreement*”) is made as of this 26th day of June, 2007, by and between **VERMONT PUBLIC RADIO**, a Vermont non-profit corporation (the “*Seller*”) and **CUPID BROADCASTING, LLC**, a Limited Liability Company to be formed under the laws of the State of New Hampshire, and to be under the control of Barry P. Lunderville, (the “*Buyer*”).

W I T N E S S E T H:

WHEREAS, the Seller is the holder of construction permits for FM Radio Translators: Station W253AY, Sugar Hill, New Hampshire, W232BN, Warren, Vermont, W289AW, Waitsfield, Vermont, (“*Translators*”) issued by the Federal Communications Commission (the “*FCC*”) to be later described; and

WHEREAS, Buyer and Seller have previously entered into a Letter of Intent concerning the assignment of the permit for the translator(s) to Seller; and

WHEREAS, the parties have agreed upon, and now wish to memorialize by execution of this Agreement, the terms and conditions under which Seller will assign, and Buyer will acquire the construction permit(s) for the Translator(s).

NOW, THEREFORE, in consideration of the mutual covenants, agreements and representations and warranties set forth herein, intending to be legally bound hereby, the parties agree as follows:

1. **Purchase and Sale of Acquired Assets**. Upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the representations, warranties, covenants and agreements made in this Agreement, the Seller hereby agrees to assign and deliver to the Buyer, and the Buyer, subject to the consent of the FCC, hereby agrees to purchase and take from the Seller at the Closing (as defined below):

1.1 **The Permits**. All permits and other authorizations issued by the FCC in connection with the conduct of the business and operations of the FM Translator(s), and any other licenses, permits and other authorizations issued by any governmental authority and used in the conduct of the business and operations of the FM Translator(s), and all pending applications therefore (the “*Permits*”).

1.2 **Personal Property**. No Personal Property is scheduled or included in this sale.

1.3 **Contracts**. No Contracts are included in this sale.

2. **Purchase Price.** \$20,000 (Twenty thousand dollars) .

It is agreed that the "***Down Payment***" for the said Permits shall be Four Thousand Dollars (\$4,000), payable as follows: Upon execution of this Agreement, and in concert with filing of the appropriate FCC assignment application(s) ("***Assignment Application(s)***"), Buyer shall deliver to Seller a portion of the Down Payment, totaling One Thousand Dollars (\$1,000). Upon FCC issuance of a Public Notice that the Assignment Application(s) have been "Accepted for Filing," Buyer shall deliver to Seller the balance of said Down Payment, totaling three Thousand Dollars (\$3,000). The remaining Sixteen Thousand Dollars (\$16,000) of the Purchase Price shall be paid to Seller in cash, by wire transfer, or in other forms of immediately available funds, at the Closing.

3. **Closing.**

3.1 **Closing Date.** The closing of the transactions contemplated by this Agreement (the "***Closing***") shall take place at such time and place mutually agreed upon by the parties on a date that is no later than fifteen (15) days following the date that the FCC's grant of the Assignment Application has become a Final Order (as defined below). The term "***Closing Date***" shall mean the date of the Closing. Exclusive possession of the Permits shall be delivered to the Buyer as of Closing.

3.2 **Final Order.** For purposes of this Agreement, a "***Final Order***" shall mean an action by the FCC: (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934 and the rules and regulations of the Commission, has expired. The Closing contemplated by this Agreement is expressly conditioned upon the grant by Final Order of the Assignment Application and compliance by the parties hereto with the conditions, if any, imposed by the FCC.

4. **Assumption of Obligations.** Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations, claim, duty, lien, encumbrance or commitments of Seller of any nature whatsoever except for Seller's obligations under the Permits. Without limiting the generality of the foregoing, Buyer shall not assume or be liable for any liability or obligation of Seller arising out of any contract of employment, collective bargaining agreement, insurance, pension, retirement, deferred compensation, incentive bonus or profit sharing or employee benefit plan or trust, or any litigation, proceeding or claim by any person or entity relating to the business or operations of the Translators prior to the Closing Date, whether or not such litigation, proceeding or claim is pending, threatened or asserted before, on or after the Closing Date.

5. **Third Party Consents.**

5.1 **FCC Consent.** The assignment of the Permits contemplated by this Agreement is subject to the FCC having granted by Final Order the Assignment Applications as described below.

(a) No later than fifteen (15) days after the execution of this Agreement, Seller shall file the Assignment Applications with the FCC for transfer of the Permits for the Translator(s). Seller and Buyer shall prosecute the Assignment Applications with all reasonable diligence and otherwise use their reasonable best efforts to obtain the grant by Final Order of the Assignment Applications as expeditiously as practicable. If the grant of the Assignment Applications imposes any condition on any party hereto, such party shall use reasonable efforts to comply with such condition; provided, however, that no party shall be required hereunder to comply with any condition that would have a material adverse effect as determined by the party affected in the exercise of its reasonable judgment. If reconsideration or judicial review is sought with respect to the FCC's grant of the Assignment Applications, the party affected shall oppose such efforts for reconsideration or judicial review vigorously; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to the terms of this Agreement.

(b) Subsequent to the filing of the Assignment Applications, Buyer may, with the consent of Seller, file an application (the "Modification Application") to make minor changes in the technical facilities of the Translator by proposing to change the Translator's transmitter location and authorized power, within allowable parameters. Seller shall be granted the right to assume any Lease entered into by Buyer, for the transmitter site proposed in the Modification Application. It is agreed that time is of the essence to construct the said facilities within the limited construction period.

6. **Representations, Warranties, and Covenants of the Seller.** The Seller hereby represents, warrants, and covenants to the Buyer as follows:

6.1 **Corporate Status.** Seller is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Vermont. Seller has all requisite corporate power and authority to own and assign the Permits and to carry on its business and the operation of the Translators as they may be conducted. Seller is duly qualified to do business and is in good standing in such other jurisdictions, if any, where the nature of the Permits would require such qualification.

6.2 **Authorization of Agreement.** Seller has full corporate power and authority to execute, deliver and perform this Agreement and all other agreements and instruments entered into or delivered in connection with the transactions contemplated hereby. The execution, delivery and performance of this Agreement has been, and all other agreements and instruments entered into or

delivered in connection with the transactions contemplated hereby have been, or prior to the Closing will have been, duly and validly authorized by all necessary corporate action of Seller.

6.3 **No Conflict.** The execution, delivery and performance of this Agreement do not violate: (a) any provision of the organizational documents of Seller; (b) any provision of, or result in any default under, any mortgage, lien, lease, contract, instrument, order or other judgment, or decision to which Seller is a party or by which the Permits are bound; or (c) any law applicable to Seller.

6.4 **Binding Agreement.** This Agreement constitutes, and all other agreements and instruments entered into or delivered in connection with the transactions contemplated hereby will constitute, the valid and binding obligations of Seller and are enforceable against Seller (or upon execution and delivery will be enforceable against Seller), in accordance with their respective terms.

6.5 **Governmental Authorizations.** Seller is the authorized legal holder of the Permits listed in Schedule 1.1 hereto, none of which is subject to any restrictions or conditions which would limit in any respect the full operation of the Translators. Seller has delivered to Buyer true and complete copies of the Permits, including any and all amendments and other modifications thereto. All Permits are validly existing authorizations for the operation of the facilities described therein. There are no applications or proceedings pending (including, without limitation, any action, proceeding, investigation or order to show cause, notice of violation, notice of apparent liability or complaint involving Seller or the Translators by or before the FCC) nor, to the knowledge of Seller are there any such applications, proceedings or complaints threatened: (i) with respect to any Permits (ii) which individually or in the aggregate may have an adverse effect on the business or operation of the Translators (other than rulemaking proceedings that apply to the radio broadcasting industry generally). All material reports, forms and statements required to be filed by Seller with the FCC with respect to the Permits have been filed and are substantially complete and accurate. To the best knowledge of Seller, there are no facts which would disqualify Seller as assignor of the Permits under the Communications Act of 1934, as amended, or the rules and regulations of the FCC. Seller has no reason to believe that any of the Permits will not be renewed in their ordinary course.

6.6 **No Undisclosed Liabilities.** There are no liabilities with respect to the Permits, other than: (a) the liabilities retained by Buyer under this Agreement, and (b) the liabilities and obligations incurred during the Interim Period (as defined in Section 8.1 below) in the ordinary course of business of the Seller.

6.7 **Legal Proceedings; Labor Dispute.** Other than as may be described in any Schedule attached hereto, there are no suits, actions, condemnation actions, claims, administrative, arbitral or other proceedings or governmental investigations (collectively, "*Litigation*") pending or threatened against or affecting the Translators, nor is Seller subject to any writ, judgment, award, decree or order of any court or governmental authority that would affect the Permits. There is no Litigation pending or threatened against or affecting the Seller that could adversely affect or prevent the consummation of the transactions contemplated hereby, nor is Seller subject to any order of any

court or governmental entity that could adversely affect or prevent consummation of the transactions contemplated hereby.

6.8 **Licensure and Compliance with Laws.** The Seller has complied and is complying with all laws applicable to the operation of the Permits. Seller has not received notice of, nor is Seller in default under or in breach or violation of, any statute, law, ordinance, decree, order, rule or regulation, or the provisions of any franchise, license or permit, including the Permits. The execution, delivery and performance of this Agreement by the Seller, and the consummation of the transactions contemplated hereby, will not result in any such default or violation or in the creation of any lien, charge or encumbrance upon any of the Permits. Seller has not been cited by any governmental body or agency for violation of any License, permit, rule, regulation or order within the last three (3) years. No person or party (including, without limitation, governmental agencies of any kind) has made any claim which is presently outstanding, nor is there any basis for any action or proceeding against the Seller arising out of any Federal, state or local statute, ordinance or regulation relating to discrimination in employment or employment practices or occupational safety and health standards.

6.9 **Payment of Taxes.**

(a) Seller has duly and timely filed all Federal, state, local or foreign income, franchise, sales, use, property, excise, payroll, FICA, withholding and other tax returns and forms required to be filed, and has timely paid in full or discharged or will pay in full or discharge as of the Closing all taxes, assessments, excises, interest, penalties, deficiencies and levies required to be paid and pertaining to the Permits to be transferred hereunder.

(b) Buyer shall be responsible for any Sales or Local tax or fee (if any) that may be assessed on this transaction by any local Governing Authority.

6.10 **Accuracy of Statements.** Neither this Agreement nor any Schedule, exhibit, statement, list, document, certificate or other information furnished or to be furnished by or on behalf of the Seller to the Buyer or any representative of the Buyer in connection with this Agreement or any of the transactions contemplated hereby contains or will contain any untrue statement of a material fact.

7. **Representations, Warranties and Covenants of the Buyer.** The Buyer hereby represents, warrants and covenants to the Seller as follows:

7.1 **Status; Legal Capacity.** The Buyer is a legal entity registered in the State of New Hampshire. The Buyer has the legal capacity to execute, deliver and perform this Agreement and all other agreements and instruments entered into or delivered in connection with the transactions contemplated hereby.

7.2 **Binding Agreement.** This Agreement constitutes, and all other agreements and instruments entered into or delivered in connection with the transactions contemplated hereby will constitute, the valid and binding obligations of the Buyer and are enforceable against the Buyer (or upon execution and delivery will be enforceable against the Buyer) in accordance with their respective terms.

7.3 **Consents.** To the best of Buyer's knowledge, no consent or approval of any third party or governmental body (other than the FCC) is required for the consummation by the Buyer of the transactions contemplated by this Agreement.

7.4 **Qualification.** To the best knowledge of Buyer, there are no facts which, under the Communications Act of 1934 as amended, or the existing rules and regulations of the FCC, would disqualify Buyer as an assignee of the Permits.

8. **Covenants of Seller.** The Seller covenants and agrees with the Buyer as follows:

8.1 **Interim Period Events.** During the period between the execution of the Agreement and the Closing (the "*Interim Period*"), Seller shall inform the Buyer of any change in Seller or the Permits and of any event that could result in a material adverse effect in Buyer's rights to acquire and operate the Translators. The Seller also shall inform the Buyer of any changes in its representations and warranties under this Agreement.

9. **Covenants of Buyer.** The Buyer covenants and agrees with the Seller as follows:

9.1 **Interim Period Events.** The Buyer shall inform the Seller of any changes in circumstances that could cause any of the Buyer's representations and warranties under the Agreement to be inaccurate or incomplete.

9.2 **Confidentiality.** The Buyer shall, and shall cause its officers, counsel and other authorized representatives and affiliated parties to, hold in strict confidence, and not disclose to any other party, and not use to the detriment of the Seller or in any way except in connection with the transactions contemplated hereby, without the prior written consent of the Seller, all non-public information obtained from the Seller that is clearly marked as "Confidential."

9.3 **No Control of Station.** Prior to the Closing Date, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Translators and such control, supervision and direction shall remain and shall be the sole responsibility of Seller.

9.4 **Governmental Consents and Governmental Licenses or Permits.** All governmental consents, licenses and permits necessary for consummation of the transactions contemplated by this Agreement (including the FCC's grant of the Assignment Applications by Final Order) shall have been obtained and delivered to the Buyer. Seller shall be the holder of the Permits, and there shall not have been any modifications which have a material adverse effect on the

Translators or the conduct of the business and operations of the Translators. No proceeding shall be pending which seeks or the effect of which reasonably could be to revoke, cancel, fail to renew, suspend or modify any of the Permits.

9.5 **Adverse Proceedings.** There shall be no action, lawsuit or proceeding filed and pending, or any claim or controversy asserted, that in the Buyer's reasonable estimation could have a material adverse effect on the Permits. There shall be no unsatisfied or outstanding order, writ, judgment, injunction or decree or any litigation or proceeding filed or threatened that seeks to restrain, prohibit or invalidate the transaction contemplated by this Agreement.

9.6 **No Material Adverse Change.** No material adverse change (legal, governmental, business or financial) shall have occurred with respect to the Permits after the date of this Agreement, and no event shall have occurred, which in the Buyer's estimation could adversely affect the Permits.

9.7 **Instruments of Conveyance and Transfer.** Seller shall have delivered to Buyer all instruments of conveyance and transfer reasonably satisfactory in form and substance to counsel to Buyer, effecting the sale, transfer, assignment and conveyance of the Permits to Buyer.

10. **Conditions Precedent to the Obligations of the Seller.** The obligations of the Seller under this Agreement are subject to the fulfillment, at the Closing on the Closing Date, of all of the conditions precedent set forth in this Section 10 and throughout this Agreement; provided, however, that any of such conditions (other than exercise of the) may be waived by Seller in writing at or prior to the Closing:

10.1 **Continued Truth of Representations and Warranties.** The representations and warranties of the Buyer contained in this Agreement shall be accurate and complete in all respects on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date, and the Buyer shall have performed and complied in all respects with all terms, conditions, covenants and agreements required by this Agreement to be performed or complied with by the Buyer on or prior to the Closing Date.

10.2 **Approvals and Consents.** All necessary consents, authorizations and approvals of third parties and of governmental agencies referenced under any applicable law, rule, order or regulation for the consummation of the transactions contemplated by this Agreement shall have been obtained, including the FCC Final Order.

10.3 **Delivery of Schedules and Other Materials.** The Buyer shall have delivered to the Seller all of the agreements, transfer and assumption documents and every other document required to be executed and delivered by Buyer pursuant to this Agreement.

11. **Termination.**

11.1 **Automatic Termination.** This Agreement shall automatically terminate if Closing does not occur on or before one year from the date on which the Agreement is fully executed. In such case, no party shall have any further rights or obligations hereunder.

11.2 **Termination by the Buyer.** Without prejudice to other rights and remedies available to it, the Buyer may, at its election, terminate this Agreement prior to Closing by giving notice thereof to the Seller, and any portion of the Down Payment which Buyer has paid shall be refunded upon the occurrence of any of the following events:

- (a) The FCC fails to grant the Assignment Application within 3 (three) months after the Assignment Application is filed;
- (b) The FCC determines that the Permit for the Translators cannot be assigned due to reasons either related to the Seller, or in any way beyond control of the Buyer (including any decision or ruling by the FCC, concerning prohibited assignment of Translators or a freeze in processing or authorizations of any kind related to Translators);
- (c) The Seller breaches any of its obligations under this Agreement, and such breach remains uncured for thirty (30) calendar days after Seller has received notice from the Buyer of such breach; or
- (d) Any representation or warranty made by Seller in this Agreement shall prove to have been incorrect, incomplete or misleading at the time it was made.

IF BUYER TERMINATES THIS AGREEMENT PURSUANT TO THE TERMS OF THIS SECTION 11.2, THEN ANY PORTION OF THE DOWN PAYMENT PAID BY BUYER PRIOR TO TERMINATION SHALL BE IMMEDIATELY RETURNED TO BUYER, AND BUYER MAY EXERCISE ANY AND ALL RIGHTS AND REMEDIES AVAILABLE TO BUYER UNDER APPLICABLE LAW OR IN EQUITY.

The termination of this Agreement shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.

11.3 **Termination by the Seller.** Without prejudice to other rights and remedies available to it, the Seller may, at its election, terminate this Agreement prior to Closing by giving notice thereof to the Buyer upon the occurrence of any of the following events:

- (a) The Buyer breaches any of its obligations under this Agreement, and such breach remains uncured for thirty (30) calendar days after the Buyer has received notice from the Seller of such breach; or

(b) any representation or warranty made by the Buyer in this Agreement shall prove to have been incorrect, incomplete or misleading at the time it was made.

IF SELLER TERMINATES THIS AGREEMENT PURSUANT TO THE TERMS OF THIS SECTION 11.3, THEN SELLER SHALL BE ENTITLED TO AN AMOUNT EQUAL TO ANY PORTION OF THE DOWN PAYMENT PAID PRIOR TO SELLER'S NOTICE OF TERMINATION. SELLER AND BUYER ACKNOWLEDGE AND AGREE THAT SUCH AN AMOUNT IS REASONABLE AS LIQUIDATED DAMAGES AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY IN LIEU OF ANY OTHER RELIEF, RIGHT OR REMEDY, AT LAW OR IN EQUITY, TO WHICH SELLER MIGHT OTHERWISE BE ENTITLED BY REASON OF BUYER'S DEFAULT.

12. **Indemnification.**

12.1 **Indemnification of Buyer.** Seller shall indemnify, defend and hold Buyer, its members, officers, affiliates, successors and assigns, harmless from and against any claim, liability, loss, damage, judgment or expense (including reasonable attorneys fees) of any kind or nature arising out of or attributable to: (i) any inaccuracy in any representation or breach or failure of any warranty, covenant or agreement of Seller contained herein, or (ii) any failure by Seller to perform or observe, or to have performed or observed, any agreement or condition to be performed or observed by Seller hereunder.

12.2 **Indemnification of Seller.** Buyer shall indemnify, defend and hold the Seller, its officers, shareholders, directors, affiliates, successors and assigns, harmless from and against any claim, liability, loss, damage, judgment or expense (including without limitation reasonable attorney's fees) of any kind or nature arising out of or attributable to (i) any inaccuracy in any representation or breach or failure of any warranty, covenant or agreement of the Buyer contained herein, or (ii) any failure by the Buyer to perform or observe, or to have performed or observed, any agreement or condition to be performed or observed under this Agreement, or (iii) any event, condition or occurrence which occurs following the Closing Date or related to operation of the Station following the Closing Date.

13. **Miscellaneous Provisions.**

13.1 **Survival of Representations, Warranties, and Covenants.** The representations, warranties, and covenants of the Buyer and the Seller contained in this Agreement shall survive and be enforceable for one (1) year after the Closing Date.

13.2 **Fees and Expenses.** Except as expressly set forth in this Agreement, each of the parties will bear its own expenses in connection with the negotiation and the consummation of the transactions contemplated by this Agreement; provided, however, that all transfer, sales or use taxes or similar charges resulting from the transfer of the Permits contemplated hereby shall be

borne by Seller, and the filing fees with respect to the Assignment Application will be borne by Buyer.

13.3 **Entire Agreement.** This Agreement and the schedules hereto embody the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

13.4 **Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

13.5 **Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request.

If to Buyer:

Mr. Barry P. Lunderville
195 Main Street,
Lancaster, New Hampshire 03584
Facsimile No.: (603) 788-3536

With a copy to:

Stephen Yelverton, Esq.
Yelverton Law Firm, P.L.L.C.
601 Pennsylvania Avenue NW
South Tower Suite 900 South
Washington, D.C. 20004
(202) 329-4200
Facsimile No.: (202) 318-4438

If to Seller:

Mark Vogelzang
President & General Manager
Vermont Public Radio
365 Troy Avenue
Colchester, VT 05446
Facsimile No.: (802) 655-2799

With Copy to:

John Crigler, Esq.
Garvey Schubert Barer
Fifth Floor, Flour Mill Building
1000 Potomac Street, NW
Washington, DC 20007
(202) 965-7880
Facsimile No.: (202) 965-1729

Any such notice, demand or request shall be deemed to have been duly delivered and received (a) on the date of personal delivery, or (b) on the date of transmission, if sent by facsimile (but only if a hard copy is also sent by overnight courier or United States Express Mail), or (c) on the date of receipt, if mailed by certified mail, postage prepaid and return receipt requested, or (d) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

13.6 **Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Seller may not assign its rights, interest or obligations under this Agreement without the prior written consent of Buyer. Upon notice to Seller, Buyer may assign its rights, interests and obligations under this Agreement to an entity of which Barry P. Lunderville owns a majority of the equity. Other than as set forth above, Buyer may not assign its rights, interest or obligations under this Agreement without the prior written consent of Seller.

13.7 **Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of New Hampshire, applicable to agreements made and to be performed in the State of New Hampshire, without regard to its principles of conflicts of law.

13.8 **Severability.** In the event that any of the provisions of this Agreement shall be held unenforceable, the remaining provisions shall be construed as if such unenforceable provisions were not contained herein. Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

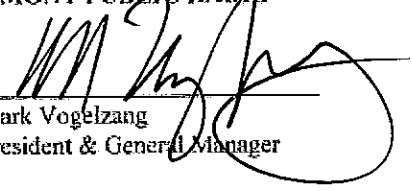
13.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed in original and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date herein first above-written.

SELLER:

VERMONT PUBLIC RADIO

By


Mark Vogelzang

President & General Manager

BUYER:

CUPID BROADCASTING, LLC

By 
Barry P. Lunderville