

## ASSET EXCHANGE AGREEMENT

THIS ASSET EXCHANGE AGREEMENT (this "**Agreement**"), dated as of July 8, 2004, by and between SEA-COMM, INC. ("**Sea-Comm**"), a North Carolina corporation, and OCEAN BROADCASTING II, LLC ("**Ocean**"), a North Carolina limited liability company.

### BACKGROUND STATEMENT

Sea-Comm is the licensee of radio broadcast stations WKXB (FM), serving the Burgaw, North Carolina market, and WSFM (FM), serving the Southport, North Carolina market (collectively, the "**Sea-Comm Stations**"), pursuant to certain authorizations held by Sea-Comm and issued by the Federal Communications Commission (the "**FCC**"), and Sea-Comm owns or leases all other assets used in connection with the operation of the Sea-Comm Stations. Ocean is the licensee of radio broadcast station WUIN (FM), serving the Carolina Beach, North Carolina market (the "**Ocean Station**"), pursuant to certain authorizations held by Ocean and issued by the FCC, and Ocean owns or leases all other assets used in connection with the operation of the Ocean Station. Sea-Comm desires to exchange all of the Sea-Comm Exchanged Assets (as hereinafter defined) for the Ocean Exchanged Assets (as hereinafter defined), plus cash as set forth in Section 2.3(a) hereof, and Ocean desires to exchange all of the Ocean Exchanged Assets (as hereinafter defined) for the Sea-Comm Exchanged Assets (as hereinafter defined), minus the cash as set forth in Section 2.3(a) hereof, and the parties also desire to make such exchange as a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and upon the terms and subject to the conditions set forth in this Agreement. In addition, concurrently with the execution and delivery of this Agreement, Ocean and Sea-Comm have entered into a Local Marketing Agreement dated as of the date hereof involving the Ocean Station (the "**Ocean Station LMA**") and a Local Marketing Agreement dated as of the date hereof involving the Sea-Comm Stations (the "**Sea-Comm Stations LMA**").

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, representations, and warranties herein contained, and upon the terms and subject to the conditions hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

### **ARTICLE I DEFINITIONS**

"**Agreement**" means this Agreement.

"**Allocation Schedule**" has the meaning set forth in Section 2.5 hereof.

"**Authorizations**" means, collectively, the Sea-Comm Commission Authorizations, the Ocean Commission Authorizations, the Sea-Comm Other Authorizations, and the Ocean Other Authorizations.

**"Closing"** has the meaning set forth in Section 8.1(a) hereof.

**"Closing Date"** means the date of the Closing.

**"Closing Documents"** means all instruments, documents, and agreements to be delivered at the Closing in accordance with the terms of this Agreement.

**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**"Code"** has the meaning set forth in the Background Statement of this Agreement.

**"Communications Act"** means the Communications Act of 1934, as amended.

**"Environmental Requirement"** means any federal, state, local, or foreign laws, regulations, or other legal requirement relating to pollution or protection of human health or the environment (including, without limitation, any ambient air, surface water, ground water, wetlands, land surface, subsurface strata, natural resources, and indoor and outdoor workplace), including laws and regulations relating to emissions, discharges, releases, or threatened releases of any Hazardous Substance, or the importation, manufacture, processing, formulation, testing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"ERISA Affiliate"** means with respect to a Person, any other Person that is required to be aggregated with such Person under Section 4.14(b) or (c) of the Code at any time prior to the Closing Date.

**"ERISA Plan"** has the meaning set forth in Section 4.15(a) hereof.

**"Escrow Agent"** has the meaning set forth in Section 2.3(b) hereof.

**"Escrow Agreement"** has the meaning set forth in Section 2.3(b) hereof.

**"Exchange Price"** has the meaning set forth in Section 2.3(a) hereof.

**"FCC"** has the meaning set forth in the Background Statement of this Agreement.

**"Final Order"** means an action of the FCC which is not reversed, stayed, enjoined, or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing, or notice of appeal, or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal, or for review by the FCC, and for any reconsideration, stay, or setting aside by the FCC on its own motion or initiative, has expired.

**"FMLA"** has the meaning set forth in Section 4.15(b) hereof.

**"Hazardous Substance"** has the meaning set forth in Section 4.13(a) hereof.

**"Indemnified Party"** has the meaning set forth in Section 11.3 hereof.

**"Indemnifying Party"** has the meaning set forth in Section 11.3 hereof.

**"Knowledge"** means: (i) with respect to Sea-Comm, the actual knowledge of N. Eric Jorgensen or M. E. "Paul" Knight; and (ii) with respect to Ocean, the actual knowledge of Macon B. Moye, Thomas B. Henson, or Chuck Sullivan.

**"Letter of Credit"** has the meaning set forth in Section 2.3(b) hereof.

**"Liens"** means any liens, pledges, claims, charges, mortgages, security interests, easements, title defects, or encumbrances of every kind and description whatsoever.

**"Losses"** has the meaning set forth in Section 11.1(a) hereof.

**"NextMedia"** has the meaning set forth in Section 7.1(i).

**"NextMedia Assignment and Assumption Agreement"** means that certain Assignment and Assumption Agreement dated as of the date hereof, by and among Sea-Comm, Ocean and NextMedia.

**"Ocean Advertising Contracts"** means all orders and agreements for the sale of advertising time on or pertaining to the Ocean Station for cash, and all trade, barter, and similar agreements for the sale of advertising time on or pertaining to the Ocean Station other than for cash, entered into prior to the commencement of the term of the Ocean Station LMA, each in the ordinary course of business, in each case to which Ocean or the Ocean Station is a party. Ocean Advertising Contracts shall not include any orders or agreements for the sale of advertising time on or pertaining to any radio stations now or hereafter owned by Ocean that are not the Ocean Station, to the extent that such orders or agreements relate principally or exclusively to the sale of advertising time on or pertaining to such stations that are not the Ocean Station.

**"Ocean Assignment"** has the meaning set forth in Section 3.1(b) hereof.

**"Ocean Assignment and Assumption Agreement"** has the meaning set forth in Section 2.6(b) hereof.

**"Ocean Assignment Application"** has the meaning set forth in Section 3.2(a)(ii) hereof.

**"Ocean Assumed Contracts"** has the meaning set forth in Section 2.6(b) hereof.

**"Ocean Bill of Sale"** has the meaning set forth in Section 8.3(a) hereof.

**"Ocean Commission Authorizations"** means all licenses, permits, approvals, construction permits, and authorizations issued or granted by the FCC for the operation of, or used principally in connection with the operation of, the Ocean Station, and any and all auxiliary and/or supportive transmitting and/or receiving facilities, boosters, and repeaters utilized by the Ocean Station, including, without limitation, all of those listed in Schedule 5.6(b)(i) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto. Ocean Commission Authorizations shall not include any licenses, permits, approvals, construction permits, and authorizations issued or granted by the FCC for the operation of, or used in connection with the operation of, any radio stations now or hereafter owned by Ocean that are not the Ocean Station.

**"Ocean Consents"** has the meaning set forth in Section 7.2(e) hereof.

**"Ocean Contracts"** means all current and executory contracts, agreements, orders, commitments, arrangements, and understandings, written or oral, to which Ocean or any affiliate or predecessor of Ocean, in connection with the operation of the Ocean Station, is a party, including, without limitation, all leases, program licenses, contracts to broadcast product or programs on the Ocean Station, and confidentiality agreements, Ocean Advertising Contracts, Ocean Real Property Leases, and Ocean Personal Property Leases, excluding, however, the Ocean Excluded Contracts. In the event that any Ocean Contracts, as defined herein, pertain (in addition to the Ocean Station) to any other radio station now or hereafter owned by Ocean that is not the Ocean Station, Ocean shall be responsible for obtaining the consents of the other parties to such Ocean Contracts to an appropriate modification of such Ocean Contracts in order to permit Ocean's rights and obligations under such Ocean Contracts that relate exclusively to the Ocean Station to be divisible from Ocean's rights and obligations under such Ocean Contracts that relate to such other radio stations that are not the Ocean Station, and only those rights and obligations that relate to the Ocean Station shall be deemed to be Ocean Contracts, while any other rights and obligations shall be deemed to be Ocean Excluded Contracts.

**"Ocean Documentation"** means all documentation, records, and software, whether in electronic or print form, in the possession or under the control of Ocean evidencing, representing, or containing or relating to any Ocean Programs used in the operation of the Ocean Station, including, without limitation, any manuals, functional and design specifications, user and programmer instructions, coding, testing notes, error reports and logs, patches and patch instructions, itemizations of development tools, and all other similar writings. In the event that any item or items constituting Ocean Documentation, as defined herein, shall be shared in its or their use as between the Ocean Station and any other radio station of Ocean now or hereafter owned by Ocean, Ocean shall make an appropriate segregation of such item or items, such that only those items that are used principally or exclusively in connection with the Ocean Station shall constitute Ocean Documentation, and all such other items shall constitute Ocean Excluded Assets.

**"Ocean Documents"** has the meaning set forth in Section 5.2 hereof.

**"Ocean Environmental Complaint"** means any complaint, order, citation, or other communication, whether from a governmental authority, citizens group, employee, or otherwise, with regard to Ocean Environmental Liabilities or any environmental, health, or safety matter affecting any of the Ocean Real Property or the operation of the Ocean Station.

**"Ocean Environmental Liabilities"** means the presence of any Hazardous Substance, including, without limitation, gasoline, oil and other petroleum products, explosives, radioactive materials, and related and similar material or any other material or substance defined as toxic or polluting by any federal, state, or local law, ordinance, rule or regulation, including asbestos, on, at, or under any of the Ocean Real Property, involving, without limitation, the use, management, handling, transport, treatment, storage, spill, escape, leakage, emission, release, discharge, remediation, or clean up of any such Hazardous Substance on, onto, from, or beneath any of the Ocean Real Property, in each case, which requires correction or remediation action under or pursuant to environmental laws, rules, ordinances, or regulations, on or prior to the Closing Date, the failure to obtain any license or permit required in connection with any such Hazardous Substance or discharge on, about, or from, or used in connection with, the Ocean Station or any of the Ocean Real Property, or the retention, disposal, treatment, or use thereof, and/or arising out of any noncompliance with any Environmental Requirement, and/or any Ocean Environmental Complaint made by a governmental authority on or prior to the Closing Date.

**"Ocean Exchanged Assets"** has the meaning set forth in Section 2.1(ii) hereof.

**"Ocean Excluded Assets"** has the meaning set forth in Section 2.2(ii) hereof.

**"Ocean Excluded Contracts"** means all Ocean Contracts listed on Schedule 1.1(c)(ii) hereto and all other Ocean Contracts other than the Ocean Assumed Contracts.

**"Ocean Excluded Liabilities"** has the meaning set forth in Section 2.6(b) hereof.

**"Ocean Excluded Receivables"** has the meaning set forth in Section 2.2(ii)(g) hereof.

**"Ocean FCC Logs"** has the meaning set forth in Section 2.1(ii)(j) hereof.

**"Ocean Financial Statements"** has the meaning set forth in Section 5.4 hereof.

**"Ocean Indemnification Cap"** means the maximum amount of Ocean's obligation to indemnify Sea-Comm, pursuant to Article XI hereof, which in no event shall exceed One Hundred Thousand United States Dollars (\$100,000.00).

**"Ocean Indemnification Threshold"** means the aggregate amount of all indemnification claims by Sea-Comm against Ocean, below which Ocean shall not be

obliged to indemnify Sea-Comm, pursuant to Article XI hereunder, and shall be the sum of Two Thousand Seven Hundred United States Dollars (\$2,700.00), less the aggregate amount required to be paid by Sea-Comm following the Closing under the Ocean Contracts (other than the Ocean Advertising Contracts) not listed on Schedule 5.9(a) hereto (even if such Ocean Contracts, other than the Ocean Advertising Contracts, involve aggregate payments within the limits of Section 5.9(a)(ii)(A) hereof.

**"Ocean Initial Order"** has the meaning set forth in Section 3.1(b) hereof.

**"Ocean Insurance Proceeds"** means all insurance proceeds and rights thereto derived from loss, damage, or destruction of or to any Ocean Tangible Personal Property or Ocean Real Property, to the extent not used prior to the Closing to repair or replace the lost, damaged, or destroyed items.

**"Ocean Intangibles"** means the call letters of the Ocean Station, and all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, applications for any of the foregoing, telephone numbers and listings, trade secrets, confidential or proprietary information, and other intangible property used, or held for use, principally by or for the Ocean Station and/or Ocean principally in connection with the business or operation of the Ocean Station, and any and all universal resource locators ("URLs"), web sites, and domain names of, or maintained principally by, or for, the Ocean Station, including without limitation the URL [www.carolinapenguin.com](http://www.carolinapenguin.com), and any web site or home page of, or maintained principally by, or for, the Ocean Station, and all property and assets (tangible or intangible) used or necessary to create and publish any such web site or home page (collectively, the "Ocean Site"), and all goodwill associated with any of the above.

**"Ocean Lien Release Instruments"** has the meaning set forth in Section 6.10(b) hereof.

**"Ocean Material Adverse Effect"** means a material adverse effect on the Ocean Exchanged Assets or the business, operations, financial condition, or results of operation of the Ocean Station, taken as a whole, occurring (a) between the date of the most recent Ocean Financial Statements and the date of the commencement of the term of the Ocean Station LMA, or (b) between the date of the commencement of the term of the Ocean Station LMA and the Closing Date and not attributable to the acts or failure to act (provided, however, that such failure to act shall be in derogation of a specific duty on the part of Sea-Comm to act, as expressly set forth in the Ocean Station LMA, or shall constitute negligence or willful misconduct) on the part of Sea-Comm, its employees, representatives, or agents pursuant to or in connection with the Ocean Station LMA.

**"Ocean Material Contracts"** means all Ocean Contracts set forth on Schedule 1.1(a)(ii) hereto.

**"Ocean Notice"** has the meaning set forth in Section 6.13.

**"Ocean Other Authorizations"** means all licenses, permits, variances, franchises, certifications, approvals, construction permits, and authorizations issued or granted by any administrative body or licensing authority or governmental or regulatory agency, other than the Ocean Commission Authorizations, used principally in connection with the operation of the Ocean Station and/or the ownership and/or use of the Ocean Exchanged Assets, including, without limitation, all of those listed in Schedule 5.6(b)(ii) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto.

**"Ocean Permitted Liens"** means, with respect to the Ocean Exchanged Assets, (i) those Liens for Ocean Taxes (as hereinafter defined), assessments, levies, or other governmental charges not yet due and payable or being contested in good faith; (ii) mechanics', warehousemens', workmens', landlords', and other statutory liens (or other liens arising by operation of law) incurred in the ordinary course of business for amounts not past due or being contested in good faith (provided, however, that in the event that any such liens are being contested in good faith, they shall either have been removed by the Closing Date, or Ocean shall otherwise have concluded arrangements, reasonably satisfactory to Sea-Comm, on or before the Closing Date, for the discharge of the same); and (iii) those Liens listed in Schedule 1.1(b)(ii) hereto.

**"Ocean Personal Property Leases"** has the meaning set forth in Section 5.8(c) hereof.

**"Ocean Programs"** means those computer systems (including management information and order systems, hardware, software, servers, computers, printers, scanners, monitors, peripheral and accessory devices, and the related media, manuals, documentation, and user guides) of, or used by, or in the operation of, the Ocean Station, those related claims, credits, and rights of recovery and set-off with respect thereto, and such right, title, and interest (including by reason of license or lease) of Ocean or the Ocean Station in or to the software, computer program, or software product owned, used, developed, or being developed by, or for, the Ocean Station, whether for internal use or for sale or license to others, and such software, computer program, or software product licensed by Ocean for use by the Ocean Station, and such proprietary rights of Ocean or the Ocean Station, whether or not patented or copyrighted, associated therewith, as are specifically set forth in Schedule 2.1(ii)(h) hereof, it being understood and agreed that any other item otherwise falling within the definition of Ocean Programs herein but not appearing on Schedule 2.1(ii)(h) hereto shall not be deemed to be Ocean Programs but shall be deemed to be Ocean Excluded Assets.

**"Ocean Real Property"** means the land, the buildings, the improvements, the fixtures, and the transmitting towers (to the extent they constitute fixtures or other interests in real property and not Ocean Tangible Personal Property), and such other real property owned by Ocean, and such leaseholds and other interests in real property and in the buildings and improvements thereon and appurtenances thereto, including, without limitation, easements, variances, air rights, and the like, and such security deposits with respect to the foregoing, used, or held for use by, or for, the Ocean Station and/or Ocean

in connection with the operation of the Ocean Station, as are specifically set forth in Schedule 2.1(ii)(d) hereto, it being understood and agreed that any other item otherwise falling within the definition of Ocean Real Property herein but not appearing on Schedule 2.1(ii)(d) hereto shall not be deemed to be Ocean Real Property but shall be deemed to be Ocean Excluded Assets.

**"Ocean Real Property Leases"** has the meaning set forth in Section 5.8(b) hereof.

**"Ocean Station"** has the meaning set forth in the Background Statement of this Agreement.

**"Ocean Station Benefit Plans"** has the meaning set forth in Section 5.15(a) hereof.

**"Ocean Station LMA"** means the Local Marketing Agreement entered into as of April 5, 2004 by and between Sea-Comm, as the time broker, and Ocean, as the holder of the Ocean Commission Authorizations, in the form of Exhibit A hereto.

**"Ocean Tangible Personal Property"** means the fixed and tangible personal property used, or held for use by, or for, the Ocean Station and/or Ocean in connection with the business or operation of the Ocean Station, including those physical assets and equipment, leasehold improvements, machinery, vehicles, furniture, fixtures, transmitters, antennae, office materials and supplies, spare parts, and music libraries that are specifically set forth in Schedule 5.8(c) hereto (it being understood and agreed that any other item otherwise falling within the definition of Ocean Tangible Personal Property herein but not appearing on Schedule 5.8(c) hereto shall not be deemed to be Ocean Tangible Personal Property but shall be deemed to be Ocean Excluded Assets), together with such replacements thereof, additions and alterations thereto, and substitutions therefor, that shall be required to be made between the date hereof and the Closing Date pursuant to this Agreement or pursuant to the Ocean Station LMA.

**"Ocean Taxes" or "Ocean Tax"** has the meaning set forth in Section 5.17 hereof.

**"Person"** means any individual, corporation, partnership, limited liability company, joint venture, firm, association, joint stock company, trust, estate, unincorporated organization, or other entity.

**"Sea-Comm Advertising Contracts"** means all orders and agreements for the sale of advertising time on or pertaining to the Sea-Comm Stations for cash, and all trade, barter, and similar agreements for the sale of advertising time on or pertaining to the Sea-Comm Stations other than for cash, entered into prior to the commencement of the term of the Sea-Comm Stations LMA, each in the ordinary course of business, in each case to which Sea-Comm or either of the Sea-Comm Stations is a party. Sea-Comm Advertising Contracts shall not include any orders or agreements for the sale of advertising time on or pertaining to any radio stations now or hereafter owned by Sea-Comm that are not Sea-



Comm Stations, to the extent that such orders or agreements relate principally or exclusively to the sale of advertising time on or pertaining to such stations that are not Sea-Comm Stations.

**"Sea-Comm Assignment"** has the meaning set forth in Section 3.1(a) hereof.

**"Sea-Comm Assignment and Assumption Agreement"** has the meaning set forth in Section 2.6(a) hereof.

**"Sea-Comm Assignment Application"** has the meaning set forth in Section 3.2(a)(i) hereof.

**"Sea-Comm Assumed Contracts"** has the meaning set forth in Section 2.6(a) hereof.

**"Sea-Comm Bill of Sale"** has the meaning set forth in Section 8.2(a) hereof.

**"Sea-Comm Commission Authorizations"** means all licenses, permits, approvals, construction permits, and authorizations issued or granted by the FCC for the operation of, or used principally in connection with the operation of, the Sea-Comm Stations, and any and all auxiliary and/or supportive transmitting and/or receiving facilities, boosters, and repeaters utilized by the Sea-Comm Stations, including, without limitation, all of those listed in Schedule 4.6(b)(i) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto. Sea-Comm Commission Authorizations shall not include any licenses, permits, approvals, construction permits, and authorizations issued or granted by the FCC for the operation of, or used in connection with the operation of, any radio stations now or hereafter owned by Sea-Comm that are not the Sea-Comm Stations.

**"Sea-Comm Consents"** has the meaning set forth in Section 7.1(e) hereof.

**"Sea-Comm Contracts"** means all current and executory contracts, agreements, orders, commitments, arrangements, and understandings, written or oral, to which Sea-Comm or any affiliate or predecessor of Sea-Comm, in connection with the operation of any of the Sea-Comm Stations, is a party, including, without limitation, all leases, program licenses, contracts to broadcast programs on the Sea-Comm Stations, and confidentiality agreements, Sea-Comm Advertising Contracts, Sea-Comm Real Property Leases, and Sea-Comm Personal Property Leases, excluding, however, the Sea-Comm Excluded Contracts. In the event that any of the Sea-Comm Contracts, as defined herein, pertain (in addition to the Sea-Comm Stations) to any other radio station now or hereafter owned by Sea-Comm that is not one of the Sea-Comm Stations, Sea-Comm shall be responsible for obtaining the consent of the other party to such Sea-Comm Contract to an appropriate modification of such Sea-Comm Contract in order to permit Sea-Comm's rights and obligations under such Sea-Comm Contract that relate exclusively to the Sea-Comm Stations to be divisible from Sea-Comm's rights and obligations under such Sea-Comm Contract that relate to such other radio stations that are not one of the Sea-Comm

Stations, and only those rights and obligations that relate to the Sea-Comm Stations shall be deemed to be Sea-Comm Contracts, while any other rights and obligations shall be deemed to be Sea-Comm Excluded Contracts.

**"Sea-Comm Documentation"** means all documentation, records, and software, whether in electronic or print form, in the possession or under the control of Sea-Comm evidencing, representing, or containing or relating to any Sea-Comm Programs used in the operation of the Sea-Comm Stations, including, without limitation, any manuals, functional and design specifications, user and programmer instructions, coding, testing notes, error reports and logs, patches and patch instructions, itemizations of development tools, and all other similar writings. In the event that any item or items constituting Sea-Comm Documentation, as defined herein, shall be shared in its or their use as between the Sea-Comm Stations and any other radio station of Sea-Comm now or hereafter owned by Sea-Comm, Sea-Comm shall make an appropriate segregation of such item or items, such that only those items that are used principally or exclusively in connection with the Sea-Comm Stations shall constitute Sea-Comm Documentation, and all such other items shall constitute Sea-Comm Excluded Assets.

**"Sea-Comm Documents"** has the meaning set forth in Section 4.2 hereof.

**"Sea-Comm Environmental Audit"** has the meaning set forth in Section 6.13 hereof.

**"Sea-Comm Environmental Complaint"** means any complaint, order, citation, or other communication, whether from a governmental authority, citizens group, employee, or otherwise, with regard to Sea-Comm Environmental Liabilities or any environmental, health, or safety matter affecting any of the Sea-Comm Real Property or the operation of the Sea-Comm Stations.

**"Sea-Comm Environmental Liabilities"** means the presence of any Hazardous Substance, including, without limitation, gasoline, oil and other petroleum products, explosives, radioactive materials, and related and similar material or any other material or substance defined as toxic or polluting by any federal, state, or local law, ordinance, rule or regulation, including asbestos, on, at, or under any of the Sea-Comm Real Property, involving, without limitation, the use, management, handling, transport, treatment, storage, spill, escape, leakage, emission, release, discharge, remediation, or clean up of any such Hazardous Substance on, onto, from, or beneath any of the Sea-Comm Real Property, in each case, which requires correction or remediation action under or pursuant to environmental laws, rules, ordinances, or regulations, on or prior to the Closing Date, the failure to obtain any license or permit required in connection with any such Hazardous Substance or discharge on, about, or from, or used in connection with, any such Sea-Comm Station or any of the Sea-Comm Real Property, or the retention, disposal, treatment, or use thereof, and/or arising out of any noncompliance with any Environmental Requirement, and/or any Sea-Comm Environmental Complaint made by a governmental authority on or prior to the Closing Date.

**"Sea-Comm Exchanged Assets"** has the meaning set forth in Section 2.1(i) hereof.

**"Sea-Comm Excluded Assets"** has the meaning set forth in Section 2.2(i) hereof.

**"Sea-Comm Excluded Contracts"** means all Sea-Comm Contracts listed on Schedule 1.1(c)(i) hereto and all other Sea-Comm Contracts other than the Sea-Comm Assumed Contracts.

**"Sea-Comm Excluded Liabilities"** has the meaning set forth in Section 2.6(a) hereof.

**"Sea-Comm Excluded Receivables"** has the meaning set forth in Section 2.2(i)(g) hereof.

**"Sea-Comm FCC Logs"** has the meaning set forth in Section 2.1(i)(i) hereof.

**"Sea-Comm Financial Statements"** has the meaning set forth in Section 4.4 hereof.

**"Sea-Comm Indemnification Cap"** means the maximum amount of Sea-Comm's obligation to indemnify Ocean, pursuant to Article XI hereof, which in no event shall exceed One Million One Hundred Two Thousand Five Hundred United States Dollars (\$1,102,500.00.).

**"Sea-Comm Indemnification Threshold"** means the aggregate amount of all indemnification claims by Ocean against Sea-Comm, below which Sea-Comm shall not be obliged to indemnify Ocean, pursuant to Article XI hereunder, and shall be the sum of Thirty-three Thousand Six Hundred and Fifteen United States Dollars (\$33,615.00), less the aggregate amount required to be paid by Ocean following the Closing under the Sea-Comm Contracts (other than the Sea-Comm Advertising Contracts) not listed on Schedule 4.9(a) hereto (even if such Sea-Comm Contracts, other than the Sea-Comm Advertising Contracts, involve aggregate payments within the limits of Section 4.9(a)(ii)(A) hereof).

**"Sea-Comm Initial Order"** has the meaning set forth in Section 3.1(a) hereof.

**"Sea-Comm Insurance Proceeds"** means all insurance proceeds and rights thereto derived from loss, damage, or destruction of or to any Sea-Comm Tangible Personal Property or Sea-Comm Real Property, to the extent not used prior to the Closing to repair or replace the lost, damaged, or destroyed items.

**"Sea-Comm Intangibles"** means the call letters of each of the Sea-Comm Stations, and all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, applications for any of the foregoing, telephone numbers and listings, trade secrets, confidential or proprietary information, and other intangible property used, or held for use, principally by or for the Sea-Comm Stations and/or Sea-Comm principally

in connection with the business or operation of the Sea-Comm Stations, and any and all universal resource locators ("URLs"), web sites, and domain names of, or maintained principally by, or for, any of the Sea-Comm Stations, including without limitation the URLs [www.surf1075.com](http://www.surf1075.com) (for WFSM) and [www.b999fm.com](http://www.b999fm.com) (for WKXB), and any web site or home page of, or maintained principally by, or for, any of the Sea-Comm Stations, and all property and assets (tangible or intangible) used or necessary to create and publish any such web site or home page (collectively, the "Sea-Comm Site"), and all goodwill associated with any of the above.

**"Sea-Comm Lien Release Instruments"** has the meaning set forth in Section 6.10(a) hereof.

**"Sea-Comm Material Adverse Effect"** means a material adverse effect on the Sea-Comm Exchanged Assets or the business, operations, financial condition, or results of operation of the Sea-Comm Stations, taken as a whole, occurring (a) between the date of the most recent Sea-Comm Financial Statements and the date of the commencement of the term of the Sea-Comm Stations LMA, or (b) between the date of the commencement of the term of the Sea-Comm Stations LMA and the Closing Date and not attributable to the acts or failure to act (provided, however, that such failure to act shall be in derogation of a specific duty on the part of Ocean to act, as expressly set forth in the Sea-Comm Stations LMA, or shall constitute negligence or willful misconduct) on the part of Ocean, its employees, representatives, or agents pursuant to or in connection with the Sea-Comm Stations LMA.

**"Sea-Comm Material Contracts"** means all Sea-Comm Contracts set forth on Schedule 1.1(a)(i) hereto.

**"Sea-Comm Other Authorizations"** means all licenses, permits, variances, franchises, certifications, approvals, construction permits, and authorizations issued or granted by any administrative body or licensing authority or governmental or regulatory agency, other than the Sea-Comm Commission Authorizations, used principally in connection with the operation of any of the Sea-Comm Stations and/or the ownership and/or use of the Sea-Comm Exchanged Assets, including, without limitation, all of those listed in Schedule 4.6(b)(ii) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto.

**"Sea-Comm Permitted Liens"** means, with respect to the Sea-Comm Exchanged Assets, (i) those Liens for Sea-Comm Taxes (as hereinafter defined), assessments, levies, or other governmental charges not yet due and payable or being contested in good faith; (ii) mechanics', warehousemen's, workmen's, landlords', and other statutory liens (or other liens arising by operation of law) incurred in the ordinary course of business for amounts not past due or being contested in good faith (provided, however, that in the event that any such liens are being contested in good faith, they shall either have been removed by the Closing Date, or Sea-Comm shall otherwise have concluded arrangements, reasonably satisfactory to Ocean, on or before the Closing Date, for the discharge of the same); and (iii) those Liens listed in Schedule 1.1(b)(i) hereto.

**"Sea-Comm Personal Property Leases"** has the meaning set forth in Section 4.8(c) hereof.

**"Sea-Comm Programs"** means those computer systems (including management information and order systems, hardware, software, servers, computers, printers, scanners, monitors, peripheral and accessory devices, and the related media, manuals, documentation, and user guides) of, or used by, or in the operation of, the Sea-Comm Stations, those related claims, credits, and rights of recovery and set-off with respect thereto, and such right, title, and interest (including by reason of license or lease) of Sea-Comm or the Sea-Comm Stations in or to the software, computer program, or software product owned, used, developed, or being developed by, or for, the Sea-Comm Stations, whether for internal use or for sale or license to others, and such software, computer program, or software product licensed by Sea-Comm for use by the Sea-Comm Stations, and such proprietary rights of Sea-Comm or the Sea-Comm Stations, whether or not patented or copyrighted, associated therewith, as are specifically set forth in Schedule 2.1(i)(h) hereof, it being understood and agreed that any other item otherwise falling within the definition of Sea-Comm Programs herein but not appearing on Schedule 2.1(i)(h) hereto shall not be deemed to be Sea-Comm Programs but shall be deemed to be Sea-Comm Excluded Assets.

**"Sea-Comm Real Property"** means the land, the buildings, the improvements, the fixtures, and the transmitting towers (to the extent they constitute fixtures or other interests in real property and not Sea-Comm Tangible Personal Property), and such other real property owned by Sea-Comm, and such leaseholds and other interests in real property and in the buildings and improvements thereon and appurtenances thereto, including, without limitation, easements, variances, air rights, and the like, and such security deposits with respect to the foregoing, used, or held for use by, or for, the Sea-Comm Stations and/or Sea-Comm in connection with the operation of the Sea-Comm Stations, as are specifically set forth in Schedule 2.1(i)(d) hereto, it being understood and agreed that any other item otherwise falling within the definition of Sea-Comm Real Property herein but not appearing on Schedule 2.1(i)(d) hereto shall not be deemed to be Sea-Comm Real Property but shall be deemed to be Sea-Comm Excluded Assets.

**"Sea-Comm Real Property Leases"** has the meaning set forth in Section 4.8(b) hereof.

**"Sea-Comm Station Benefit Plans"** has the meaning set forth in Section 4.15(a) hereof.

**"Sea-Comm Stations"** has the meaning set forth in the Background Statement of this Agreement.

**"Sea-Comm Stations LMA"** means the Local Marketing Agreement entered into as of the date hereof by and between Ocean, as the time broker, and Sea-Comm, as the holder of the Sea-Comm Commission Authorizations, in the form of Exhibit B hereto.

**"Sea-Comm Tangible Personal Property"** means the fixed and tangible personal property used, or held for use by, or for, the Sea-Comm Stations and/or Sea-Comm in connection with the business or operation of the Sea-Comm Stations, including those physical assets and equipment, leasehold improvements, machinery, vehicles, furniture, fixtures, transmitters, antennae, office materials and supplies, spare parts, and music libraries that are specifically set forth in Schedule 4.8(c) hereto (it being understood and agreed that any other item otherwise falling within the definition of Sea-Comm Tangible Personal Property herein but not appearing on Schedule 4.8(c) hereto shall not be deemed to be Sea-Comm Tangible Personal Property but shall be deemed to be Sea-Comm Excluded Assets), together with such replacements thereof, additions and alterations thereto, and substitutions therefor, that shall be required to be made between the date hereof and the Closing Date pursuant to this Agreement or pursuant to the Sea-Comm Stations LMA.

**"Sea-Comm Taxes" or "Sea-Comm Tax"** has the meaning set forth in Section 4.17 hereof.

**"Title Company"** has the meaning set forth in Section 7.1(g) hereof.

**"Warranty Deed"** has the meaning set forth in Section 6.12 hereof.

**"WSFM Ground Lease"** has the meaning set forth in Schedule 1.1(c)(i) hereto.

**"WSFM Tower Lease"** has the meaning set forth in Section 6.16 hereof.

## **ARTICLE II**

### **EXCHANGE OF BUSINESS AND ASSETS; EXCHANGE PRICE PAYMENT; ASSUMPTION OF OBLIGATIONS**

#### **2.1     Exchanged Assets.**

(i) Subject to, and upon the terms and conditions of, this Agreement, Sea-Comm hereby covenants and agrees to sell, transfer, convey, assign, grant, and deliver to Ocean, and Ocean hereby covenants and agrees to accept, at the Closing, free and clear of any Liens, except for the Sea-Comm Permitted Liens, such right, title, and interest of Sea-Comm in and to the business, properties, assets, machinery, equipment, furniture, fixtures, franchises, goodwill, and rights of Sea-Comm, tangible and intangible, owned or leased, to the extent the foregoing are used or held for use in connection with the operation of the Sea-Comm Stations, except as may be otherwise provided herein (including in any of the Schedules hereto), and any replacements of or additions to such assets made between the date of this Agreement and the Closing that are required to be made pursuant to the terms of this Agreement or pursuant to the terms of the Sea-Comm Stations LMA, but excluding the Sea-Comm Excluded Assets.

As used herein, the foregoing items are herein collectively referred to as the "**Sea-Comm Exchanged Assets**" and include, without limitation, all of Sea-Comm's right, title, and interest in and to the following as is provided in this Agreement:

- (a) Sea-Comm Commission Authorizations;
- (b) Sea-Comm Other Authorizations;
- (c) Sea-Comm Tangible Personal Property;
- (d) Sea-Comm owned Real Property and the WSFM Tower Lease;
- (e) Sea-Comm Assumed Contracts;
- (f) Sea-Comm Intangibles;
- (g) Sea-Comm Insurance Proceeds;
- (h) Sea-Comm Programs;
- (i) Sea-Comm Documentation;
- (j) Sea-Comm FCC logs and similar records that relate to the operation of the Sea-Comm Stations ("**Sea-Comm FCC Logs**");
- (k) goodwill in, and going concern value of, the Sea-Comm Stations; and
- (l) such other assets listed on Schedule 2.1(i)(l) hereto.

(ii) In exchange therefor, and subject to, and upon the terms and conditions of, this Agreement, Ocean hereby covenants and agrees to sell, transfer, convey, assign, grant, and deliver to Sea-Comm, and Sea-Comm hereby covenants and agrees to accept, at the Closing, free and clear of any Liens, except for the Ocean Permitted Liens, such right, title, and interest of Ocean in and to the business, properties, assets, machinery, equipment, furniture, fixtures, franchises, goodwill, and rights of Ocean, tangible and intangible, owned or leased, to the extent the foregoing are used or held for use in connection with the operation of the Ocean Station, except as may be otherwise provided herein (including in any of the Schedules hereto), and any replacements of or additions to such assets made between the date of this Agreement and the Closing that are required to be made pursuant to the terms of this Agreement or pursuant to the terms of the Ocean Station LMA, but excluding the Ocean Excluded Assets.

As used herein, the foregoing items are herein collectively referred to as the **"Ocean Exchanged Assets"** and include, without limitation, all of Ocean's right, title, and interest in and to the following as is provided in this Agreement:

- (a) Ocean Commission Authorizations;
  - (b) Ocean Other Authorizations;
  - (c) Ocean Tangible Personal Property;
  - (d) Ocean Real Property;
  - (e) Ocean Assumed Contracts;
  - (f) Ocean Intangibles;
  - (g) Ocean Insurance Proceeds;
  - (h) Ocean Programs;
  - (i) Ocean Documentation;
  - (j) Ocean FCC logs and similar records that relate to the operation of the Ocean Station (**"Ocean FCC Logs"**);
  - (k) goodwill in, and going concern value of, the Ocean Station;
- and
- (l) such other assets listed on Schedule 2.1(ii)(l) hereto.

2.2 Excluded Assets. (i) The Sea-Comm Exchanged Assets shall not include any of the following (the **"Sea-Comm Excluded Assets"**):

- (a) All cash, cash equivalents, or similar types of investments of Sea-Comm, such as certificates of deposit, Treasury bills, and other marketable securities on hand and/or in banks, and unearned insurance premiums and security deposits;
- (b) Any and all policies of insurance including, without limitation, any and all rights thereunder, unless otherwise agreed herein;
- (c) All rights of Sea-Comm under this Agreement and the other agreements, instruments, and documents executed in connection herewith;
- (d) The organizational documents of Sea-Comm, Sea-Comm's corporate and tax records, records having to do with the capitalization of Sea-Comm, and financial records not primarily related to the Sea-Comm Stations;



(e) Items of incidental personal property or personal effects, which may be located at the offices of Sea-Comm, but which are owned by any officers or employees of Sea-Comm in their personal capacity, none of which are individually or in the aggregate material to the operations of the Sea-Comm Stations;

(f) All inoperable or obsolete tangible personal property, sold or disposed of, and all inventories, supplies, and similar items consumed in the ordinary course of business between the date of this Agreement and the Closing Date;

(g) All accounts receivable of the Sea-Comm Stations in respect of air time broadcast by the Sea-Comm Stations prior to the date of the commencement of the term of the Sea-Comm Stations LMA ("**Sea-Comm Excluded Receivables**");

(h) All Sea-Comm Station Benefit Plans;

(i) The Sea-Comm Excluded Contracts;

(j) Any assets not used exclusively in the operations of the Sea-Comm Stations, except as may be otherwise provided herein or in any Schedule hereto;

(k) All rights to claims for refunds for Sea-Comm Taxes with respect to periods ending prior to the Closing Date;

(l) All causes of action of Sea-Comm in respect of the Sea-Comm Excluded Assets; and

(m) All assets described in Schedule 2.2(i)(m) hereto, or otherwise defined as Sea-Comm Excluded Assets herein or in any Schedule hereto.

(ii) The Ocean Exchanged Assets shall not include any of the following (the "**Ocean Excluded Assets**"):

(a) All cash, cash equivalents, or similar types of investments of Ocean, such as certificates of deposit, Treasury bills, and other marketable securities on hand and/or in banks, and unearned insurance premiums and security deposits;

(b) Any and all policies of insurance including, without limitation, any and all rights thereunder, unless otherwise agreed herein;

(c) All rights of Ocean under this Agreement and the other agreements, instruments, and documents executed in connection herewith;

(d) The organizational documents of Ocean, Ocean's limited liability company and tax records, records having to do with the capitalization of Ocean, and financial records not primarily related to the Ocean Station;

(e) Items of incidental personal property or personal effects, which may be located at the offices of Ocean, but which are owned by any members or employees of Ocean in their personal capacity, none of which are individually or in the aggregate material to the operations of the Ocean Station;

(f) All inoperable or obsolete tangible personal property, sold or disposed of, and all inventories, supplies, and similar items consumed in the ordinary course of business between the date of this Agreement and the Closing Date;

(g) All accounts receivable of Ocean and/or the Ocean Station in respect of air time broadcast by the Ocean Station prior to the date of the commencement of the term of the Ocean Station LMA ("**Ocean Excluded Receivables**");

(h) All Ocean Station Benefit Plans;

(i) The Ocean Excluded Contracts;

(j) Any assets not used exclusively in the operations of the Ocean Station, except as may be otherwise provided herein or in any Schedule hereto;

(k) All rights to claims for refunds for Ocean Taxes with respect to periods ending prior to the Closing Date;

(l) All causes of action of Ocean in respect of the Ocean Excluded Assets; and

(m) All assets described in Schedule 2.2(ii)(m) hereto, or otherwise defined as Ocean Excluded Assets herein or in any Schedule hereto.

### 2.3 Exchange Price; Escrow Deposit.

(a) Subject to, and upon the terms and conditions of, this Agreement, in reliance on the representations, warranties, covenants, and agreements of Sea-Comm and Ocean, respectively, contained herein, and in further payment and consideration for the exchange, conveyance, assignment, transfer, and delivery of the Sea-Comm Exchanged Assets and the Ocean Exchanged Assets, respectively, as described herein, Ocean shall pay to Sea-Comm consideration (the "**Exchange Price**") equal to the amount of Eleven Million Two Hundred Fifty Thousand United States Dollars (U.S. \$11,250,000.00), to be adjusted and paid as set forth in Section 2.4 below. In addition, Ocean shall assume certain obligations of Sea-Comm as provided in Section 2.6(a) hereof, and Sea-Comm shall assume certain obligations of Ocean as provided in Section 2.6(b) hereof.

(b) Within three (3) business days following the execution and delivery of this Agreement, Ocean shall deposit with Media Services Group, Inc., as escrow agent (the "**Escrow Agent**"), as a good-faith deposit, an irrevocable bank letter of credit in form and substance satisfactory to Sea-Comm (the "**Letter of Credit**") in the

stated principal amount of Five Hundred Sixty-Two Thousand Five Hundred United States Dollars (\$562,500.00). The Letter of Credit shall be held and disbursed by the Escrow Agent, pursuant to the terms of an escrow agreement in the form of Exhibit C hereto (the "**Escrow Agreement**") and in accordance with Section 10.3 hereof, which Escrow Agreement shall be executed and delivered by Sea-Comm, Ocean and the Escrow Agent simultaneously with the execution and delivery of this Agreement.

2.4 Payment. At Closing, an amount equal to the Exchange Price (less the amounts to be credited to the account of Ocean, in accordance with Schedule 2.4 hereto) shall be paid in immediately available funds, in cash by wire transfer pursuant to written wire transfer instructions delivered by Sea-Comm to Ocean no later than three (3) business days prior to Closing, or by such other means as Sea-Comm and Ocean shall agree.

2.5 Allocation. Sea-Comm and Ocean shall (i) separate the Sea-Comm Exchanged Assets and the Ocean Exchanged Assets into exchange groups and, if applicable, a residual group as provided in Treasury Regulations § 1.1031(j)-1, and shall assign fair market values to each of the Sea-Comm Exchanged Assets and the Ocean Exchanged Assets, and (ii) offset the obligations under the Sea-Comm Assumed Contracts against the obligations under the Ocean Assumed Contracts, treating the excess, if any, as provided in Treasury Regulations §§ 1.1031(j)-1(b)(2)(ii). The fair market values of such assets will be based upon an appraisal of such assets (the "**Allocation Schedule**") to be conducted by an independent valuation firm reasonably acceptable to the parties hereto. The Allocation Schedule shall be delivered to Sea-Comm and to Ocean by the sixtieth (60th) day after the Closing Date. The cost of such appraisal shall be paid one-half by Sea-Comm and one-half by Ocean. Each party shall file its federal income tax returns for the year in which the Closing shall occur on IRS Form 8824 (and 8594 if required) in a manner consistent with the Allocation Schedule.

2.6 Assumed Obligations.

(a) The parties shall, at the Closing, execute and deliver an Assignment and Assumption Agreement (the "**Sea-Comm Assignment and Assumption Agreement**"), in a form and substance reasonably satisfactory to each of Ocean and Sea-Comm, pursuant to which Sea-Comm shall assign to Ocean Sea-Comm's rights in the contracts identified on Schedule 2.6(a) hereto (the "**Sea-Comm Assumed Contracts**"), and Ocean shall assume all obligations arising under such Sea-Comm Assumed Contracts to the extent that such obligations first arise or become payable on or after the Closing Date (or, in the case of the Sea-Comm Assumed Contracts identified on Schedule 2.6(a) hereto, to the extent that such obligations first arise or become payable on or after the date of the commencement of the term of the Sea-Comm Stations LMA), excluding any obligations arising as a result of any previous breach or default by Sea-Comm (or its affiliates or predecessors) thereunder. Except as expressly provided in the Sea-Comm Assignment and Assumption Agreement, Ocean shall not, and does not, assume any liability or obligation of Sea-Comm of any nature, known or unknown, fixed or contingent, disclosed or undisclosed (collectively the "**Sea-Comm Excluded Liabilities**"), all of which shall be retained and discharged by Sea-Comm. Sea-Comm

Excluded Liabilities include, without limitation: (i) all Sea-Comm Environmental Liabilities (other than any liabilities, debts, obligations, or duties arising or resulting from any action taken, or any failure to act, on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA; provided, however, that such action or failure to act on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA shall have been in derogation of a specific duty on the part of Ocean, or such employees, agents, or representatives, as expressly set forth in the Sea-Comm Stations LMA, or shall have constituted negligence or willful misconduct on the part of Ocean or such employees, agents, or representatives); (ii) any and all debts, liabilities, and obligations of Sea-Comm, and any and all violations of Sea-Comm Contracts, laws, rules, regulations, codes, or orders by Sea-Comm (other than any liabilities, debts, obligations, duties, or violations arising or resulting from any action taken, or any failure to act, on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA; provided, however, that such action or failure to act on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA shall have been in derogation of a specific duty on the part of Ocean, or such employees, agents, or representatives, as expressly set forth in the Sea-Comm Stations LMA, or shall have constituted negligence or willful misconduct on the part of Ocean or such employees, agents, or representatives), which exist prior to the Closing Date or which arise on or after the Closing Date but which are based upon, or arise from, any act, transaction, circumstance, sale or providing of air time, goods, or services, state of facts, or other condition which occurred or existed, or the content of any program, advertisement, or transmission broadcasted or aired, before the commencement of the term of the Sea-Comm Stations LMA, whether or not then known; (iii) any trade payable or accounts payable of Sea-Comm; (iv) all claims, liabilities, or obligations of Sea-Comm as an employer, including, without limitation, liabilities to any of its employees or to any other Person under any collective bargaining agreement, employment contract, or Sea-Comm Station Benefit Plan, or for wages, salaries, bonus payments, or with respect to compliance with applicable federal, state, or local laws, rules, or regulations relating to minimum wages, overtime rates, labor or employment liabilities for supplemental unemployment benefits, vacation benefits, severance benefits, retirement benefits, COBRA benefits, Federal Workers Adjustment and Retraining Notification Act obligations and liabilities, or any other employee benefits, withholding tax liabilities, workers' compensation, or unemployment compensation benefits or premiums, or other claims attributable in whole or in part to employment or termination by Sea-Comm or arising out of any labor matter involving Sea-Comm as an employer; (v) any litigation arising from or relating to facts, circumstances, or any conduct of Sea-Comm prior to the Closing Date (other than any litigation arising or resulting from any action taken, or any failure to act, on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA; provided, however, that such action or failure to act on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA shall have been in derogation of a specific duty on the part of Ocean, or such employees, agents, or representatives, as expressly set forth in the Sea-Comm Stations LMA, or shall have constituted negligence or willful misconduct on the part of Ocean or such

employees, agents, or representatives); (vi) all liabilities in respect of or arising out of any and all Sea-Comm Taxes in respect of the Sea-Comm Exchanged Assets prior to the Closing Date; (vii) all liabilities under Sea-Comm Excluded Contracts; (viii) all liabilities or obligations arising from the ownership or operation of the Sea-Comm Stations relating to periods prior to the Closing (other than liabilities or obligations expressly assumed by Ocean pursuant to the terms of the Sea-Comm Stations LMA, and other than any liabilities, debts, obligations, or duties arising or resulting from any action taken, or any failure to act, on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA; provided, however, that such action or failure to act on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA shall have been in derogation of a specific duty on the part of Ocean, or such employees, agents, or representatives, as expressly set forth in the Sea-Comm Stations LMA, or shall have constituted negligence or willful misconduct on the part of Ocean or such employees, agents, or representatives); and (ix) any liability for noncompliance with any bulk sales act or statute. Except as expressly provided by the Sea-Comm Assignment and Assumption Agreement, Ocean shall not be required to defend, nor be responsible for the payment of any award of damages resulting from any outcome of, nor be responsible for any payment in connection with any settlement of, any suit or claim arising out of any act, event, or transaction occurring prior to the Closing in connection with the ownership or operations of, or otherwise relating to, the Sea-Comm Stations or Sea-Comm, unless such suit or claim arises from any action, or failure to act, on the part of Ocean, its employees, agents, or representatives, during the term of the Sea-Comm Stations LMA; provided, however, that such action or failure to act on the part of Ocean, its employees, agents, or representatives during the term of the Sea-Comm Stations LMA shall have been in derogation of a specific duty on the part of Ocean, or such employees, agents, or representatives, as expressly set forth in the Sea-Comm Stations LMA, or shall have constituted negligence or willful misconduct on the part of Ocean or such employees, agents, or representatives.

(b) The parties shall, at the Closing, execute and deliver an Assignment and Assumption Agreement (the "**Ocean Assignment and Assumption Agreement**"), in a form and substance reasonably satisfactory to each of Ocean and Sea-Comm, pursuant to which Ocean shall assign to Sea-Comm Ocean's rights in the contracts identified in Schedule 2.6(b) hereto (the "**Ocean Assumed Contracts**"), and Sea-Comm shall assume all obligations arising under such Ocean Assumed Contracts to the extent that such obligations first arise or become payable on or after the Closing Date (or, in the case of the Ocean Assumed Contracts so identified in Schedule 2.6(b) hereto, to the extent that such obligations first arise or become payable on or after the date of the commencement of the term of the Ocean Station LMA), excluding any obligations arising as a result of any previous breach or default by Ocean (or its affiliates or predecessors) thereunder. Except as expressly provided in the Ocean Assignment and Assumption Agreement, Sea-Comm shall not, and does not, assume any liability or obligation of Ocean of any nature, known or unknown, fixed or contingent, disclosed or undisclosed (collectively the "**Ocean Excluded Liabilities**"), all of which shall be retained and discharged by Ocean. Ocean Excluded Liabilities include, without

limitation, (i) all Ocean Environmental Liabilities (other than any liabilities, debts, obligations, or duties arising or resulting from any action taken, or any failure to act, on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA; provided, however, that such action or failure to act on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA shall have been in derogation of a specific duty on the part of Sea-Comm, or such employees, agents, or representatives, as expressly set forth in the Ocean Station LMA, or shall have constituted negligence or willful misconduct on the part of Sea-Comm or such employees, agents, or representatives); (ii) any and all debts, liabilities, and obligations of Ocean, and any and all violations of Ocean Contracts, laws, rules, regulations, codes, or orders by Ocean (other than any liabilities, debts, obligations, duties, or violations arising or resulting from any action taken, or any failure to act, on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA; provided, however, that such action or failure to act on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA shall have been in derogation of a specific duty on the part of Sea-Comm, or such employees, agents, or representatives, as expressly set forth in the Ocean Station LMA, or shall have constituted negligence or willful misconduct on the part of Sea-Comm or such employees, agents, or representatives), which exist prior to the Closing Date or which arise on or after the Closing Date but which are based upon, or arise from, any act, transaction, circumstance, sale or providing of air time, goods, or services, state of facts, or other condition which occurred or existed, or the content of any program, advertisement, or transmission broadcast or aired, before the commencement of the term of the Ocean Station LMA, whether or not then known; (iii) any trade payable or accounts payable of Ocean; (iv) all claims, liabilities, or obligations of Ocean as an employer, including, without limitation, liabilities to any of its employees or to any other Person under any collective bargaining agreement, employment contract, or Ocean Station Benefit Plan, or for wages, salaries, bonus payments, or with respect to compliance with applicable federal, state, or local laws, rules, or regulations relating to minimum wages, overtime rates, labor or employment liabilities for supplemental unemployment benefits, vacation benefits, severance benefits, retirement benefits, COBRA benefits, Federal Workers Adjustment and Retraining Notification Act obligations and liabilities, or any other employee benefits, withholding tax liabilities, workers' compensation, or unemployment compensation benefits or premiums, or other claims attributable in whole or in part to employment or termination by Ocean or arising out of any labor matter involving Ocean as an employer; (v) any litigation arising from or relating to facts, circumstances or any conduct of Ocean prior to the Closing Date (other than any litigation arising or resulting from any action taken, or any failure to act, on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA; provided, however, that such action or failure to act on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA shall have been in derogation of a specific duty on the part of Sea-Comm, or such employees, agents, or representatives, as expressly set forth in the Ocean Station LMA, or shall have constituted negligence or willful misconduct on the part of Sea-Comm or such employees, agents, or representatives); (vi) all liabilities in respect of or arising out

of any and all Ocean Taxes in respect of the Ocean Exchanged Assets prior to the Closing Date; (vii) all liabilities under Ocean Excluded Contracts; (viii) all liabilities or obligations arising from the ownership or operation of the Ocean Station relating to periods prior to the Closing (other than liabilities or obligations expressly assumed by Sea-Comm pursuant to the terms of the Ocean Station LMA and other than any liabilities, debts, obligations, or duties arising or resulting from any action taken, or any failure to act, on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA; provided, however, that such action or failure to act on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA shall have been in derogation of a specific duty on the part of Sea-Comm, or such employees, agents, or representatives, as expressly set forth in the Ocean Station LMA, or shall have constituted negligence or willful misconduct on the part of Sea-Comm or such employees, agents, or representatives); and (ix) any liability for noncompliance with any bulk sales act or statute. Except as expressly provided by the Ocean Assignment and Assumption Agreement, Sea-Comm shall not be required to defend, nor be responsible for the payment of any award of damages resulting from any outcome of, nor be responsible for any payment in connection with any settlement of, any suit or claim arising out of any act, event, or transaction occurring prior to the Closing in connection with the ownership or operations of, or otherwise relating to, the Ocean Station or Ocean, unless such suit or claim arises from any action, or failure to act, on the part of Sea-Comm, its employees, agents, or representatives, during the term of the Ocean Station LMA; provided, however, that such action or failure to act on the part of Sea-Comm, its employees, agents, or representatives during the term of the Ocean Station LMA shall have been in derogation of a specific duty on the part of Sea-Comm, or such employees, agents, or representatives, as expressly set forth in the Ocean Station LMA, or shall have constituted negligence or willful misconduct on the part of Sea-Comm or such employees, agents, or representatives.

## 2.7 Assignments of Assumed Contracts.

(a) Ocean and Sea-Comm acknowledge that certain of the Sea-Comm Assumed Contracts to be included in the Sea-Comm Exchanged Assets, and the rights and benefits thereunder, may not, by their terms, be assignable. Anything in this Agreement or in the Sea-Comm Assignment and Assumption Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any such Sea-Comm Assumed Contract, and Ocean shall not be deemed to have assumed the same or to be required to perform any obligations thereunder, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way adversely affect the rights under any such Sea-Comm Assumed Contract of Ocean or Sea-Comm. In such event, Sea-Comm will cooperate with Ocean to provide to Ocean all benefits to which Sea-Comm is entitled under such Sea-Comm Assumed Contracts, Ocean will perform all such Sea-Comm Assumed Contracts in accordance with their terms in the ordinary course of business (unless Sea-Comm is unable to provide Ocean with the benefits thereunder), and any transfer or assignment to Ocean by Sea-Comm of any such Sea-Comm Assumed Contract, or any right or benefit arising

thereunder or resulting therefrom which shall require the consent or approval of any third party, shall be made subject to such consent or approval being obtained. Sea-Comm will use its commercially reasonable efforts prior to, and if requested by Ocean, after, the commencement of the term of the Sea-Comm Stations LMA, or after the Closing Date, as the case may be, to obtain all necessary consents to the transfer and assignment to Ocean of all Sea-Comm Assumed Contracts. Nothing in this Section 2.7(a) shall constitute a waiver by Ocean of the conditions set forth in Section 7.1(e) hereof.

(b) Ocean and Sea-Comm acknowledge that certain of the Ocean Assumed Contracts to be included in the Ocean Exchanged Assets, and the rights and benefits thereunder, may not, by their terms, be assignable. Anything in this Agreement or in the Ocean Assignment and Assumption Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any such Ocean Assumed Contract, and Sea-Comm shall not be deemed to have assumed the same or to be required to perform any obligations thereunder, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way adversely affect the rights under any such Ocean Assumed Contract of Ocean or Sea-Comm. In such event, Ocean will cooperate with Sea-Comm to provide to Sea-Comm all benefits to which Ocean is entitled under such Ocean Assumed Contracts, Sea-Comm will perform all such Ocean Assumed Contracts in accordance with their terms in the ordinary course of business (unless Ocean is unable to provide Sea-Comm with the benefits thereunder), and any transfer or assignment to Sea-Comm by Ocean of any such Ocean Assumed Contract, or any right or benefit arising thereunder or resulting therefrom which shall require the consent or approval of any third party, shall be made subject to such consent or approval being obtained. Ocean will use its commercially reasonable efforts prior to, and if requested by Sea-Comm, after, the commencement of the term of the Ocean Station LMA, or after the Closing Date, as the case may be, to obtain all necessary consents to the transfer and assignment to Sea-Comm of all Ocean Assumed Contracts. Nothing in this Section 2.7(b) shall constitute a waiver by Sea-Comm of the conditions set forth in Section 7.2(e) hereof.

### ARTICLE III APPLICATION TO AND CONSENT BY FCC

#### 3.1 FCC Consents.

(a) Prior to the Closing, the FCC shall have issued its approval, without any condition adverse to Ocean or to any of its affiliates, of the assignment (the "Sea-Comm Assignment") of the Sea-Comm Commission Authorizations to Ocean in accordance with the terms of this Agreement (the "Sea-Comm Initial Order"). In the event that any such FCC approval shall fail to authorize the assignment to Ocean, without adverse condition to Ocean or to any of its affiliates, of any particular Sea-Comm Commission Authorization, Ocean may, at its option, elect to waive such failure by written notice to Sea-Comm, and in such event, such approval shall nevertheless be deemed to be a Sea-Comm Initial Order for purposes of this Agreement.



(b) Prior to the Closing, the FCC shall have issued its approval, without any condition adverse to Sea-Comm or to any of its affiliates, of the assignment (the "**Ocean Assignment**") of the Ocean Commission Authorizations to Sea-Comm in accordance with the terms of this Agreement (the "**Ocean Initial Order**"). In the event that any such FCC approval shall fail to authorize the assignment to Sea-Comm, without adverse condition to Sea-Comm or to its affiliates, of any particular Ocean Commission Authorization, Sea-Comm may, at its option, elect to waive such failure by written notice to Ocean, and in such event, such approval shall nevertheless be deemed to be an Ocean Initial Order for purposes of this Agreement.

### 3.2 Application for FCC Consents.

(a) (i) Sea-Comm and Ocean agree to use their commercially reasonable efforts and to cooperate with each other in preparing and filing the Sea-Comm Assignment Application (as hereinafter defined) and in causing the grant of the Sea-Comm Initial Order to become a Final Order. Within five (5) business days following the date on which the Letter of Credit is deposited by Ocean with the Escrow Agent, the parties shall prepare and file with the FCC an application for the FCC's consent to the voluntary assignment of the Sea-Comm Commission Authorizations to Ocean (the "**Sea-Comm Assignment Application**"), and all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Sea-Comm Assignment Application. Each party further agrees to expeditiously prepare and file with the FCC any amendments or any other filings required by the FCC in connection with the Sea-Comm Assignment Application, whenever such amendments or filings are required by the FCC or its rules. For purposes of this Agreement, each party shall be deemed to be using its commercially reasonable efforts with respect to obtaining the Sea-Comm Initial Order, and to advancing such Sea-Comm Initial Order into becoming a Final Order, and to otherwise be complying with the foregoing provisions of this Section 3.2(a)(i), so long as such party truthfully provides information necessary in completing the application process, provides its comments on any filing materials, and uses its commercially reasonable efforts to oppose attempts by third parties to resist, modify, or overturn the grant of the Sea-Comm Assignment Application, without prejudice to the parties' termination rights under this Agreement, it being further understood that neither Sea-Comm nor Ocean shall be required to expend any funds or efforts contemplated under this Article III unless the other party is concurrently and likewise complying with its obligations under this Article III.

(ii) Sea-Comm and Ocean agree to use their commercially reasonable efforts and to cooperate with each other in preparing and filing the Ocean Assignment Application (as hereinafter defined) and in causing the grant of the Ocean Initial Order to become a Final Order. Within five (5) business days following the date on which the Letter of Credit is deposited by Ocean with the Escrow Agent, the parties shall prepare and file with the FCC an application for the FCC's consent to the voluntary assignment of the Ocean Commission Authorizations to Sea-Comm (the "**Ocean Assignment Application**"), and all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Ocean Assignment Application.