

TIME BROKERAGE AGREEMENT

by and between

NEW MEXICO ROSWELL 21, LLC

and

ACME TELEVISION OF NEW MEXICO, LLC

for

CHANNEL 21

ROSWELL, NEW MEXICO

\* \* \*

January 25, 2003

## TIME BROKERAGE AGREEMENT

THIS TIME BROKERAGE AGREEMENT (the "Agreement"), made this 25th day of January, 2003, by and between New Mexico Roswell 21, LLC a New Mexico limited liability company ("Licensee"), and ACME Television of New Mexico, LLC, a Delaware limited liability company ("Programmer").

WHEREAS, Licensee is the holder of a construction permit (the "CP") issued by the Federal Communications Commission ("FCC") for a new television station on Channel 21 in Roswell, New Mexico (the "Station"); and

WHEREAS, Programmer has certain equipment (the "Equipment"), including those items identified in Attachment I annexed hereto, and programming which it can make available to Licensee for use by the Station; and

WHEREAS, Licensee and Programmer desire to enter into this Time Brokerage Agreement, pursuant to which Programmer shall make the Equipment available and provide programming for the Station in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, the parties, intending to be legally bound, hereby agree as follows:

### **Section 1. Sale of Station Air Time.**

**1. Scope.** On the Effective Date, as defined herein, Licensee shall make the Station's facilities available to Programmer for the broadcast of programming (including advertising) for broadcast on the Station 168 hours per week: provided, that Licensee shall be entitled to up to two (2) hours per week to broadcast programming necessary to serve the needs and interests of the Station's service area in accordance with FCC rules and policies.

**1.2. Term.** The term of this Agreement (the "Term") shall commence at 12:01 a.m. on January 25, 2003 (the "Effective Date") and shall continue in force for a period of three (3) years from such date unless otherwise terminated as set forth below.

### **1.3. Consideration.**

**a.** Programmer shall be entitled to retain any and all revenue generated from the sale of advertising time in conjunction with programming broadcast on the Station.

**b.** In addition to reimbursement of its expenses under Section 1.5(b) of this Agreement, Licensee shall be entitled to the following consideration: (i) payment of Fifty Thousand Dollars (\$50,000) by wire transfer of immediately available funds to an account designated by Licensee within three (3) business days after the Effective Date; (ii) if this Agreement is still in effect, another payment of Twenty-Five Thousand Dollars (\$25,000) on April 26, 2005 by wire transfer of immediately available funds to an account designated by Licensee; and (iii) access to the Equipment for use in conjunction with Licensee's operation of the Station.

**1.4. Licensee's Responsibilities.** Licensee shall (a) have exclusive control over the management and operations of the Station during the Term of this Agreement, (b) bear sole responsibility for the Station's compliance with all applicable provisions of the Communications Act of 1934, as amended, (the "Act"), the rules, regulations and policies of the FCC (including but not limited to the timely filing of one or more applications for a license to cover the CP and for any auxiliary authorizations necessary for Station operations as contemplated by this Agreement), and all other applicable laws and regulations, (c) be solely responsible for and timely pay all operating costs of the Station (except those for which a good faith dispute has been raised with the vendor or taxing authority), including but not limited to maintenance of the studio and transmitting facility and costs of electricity, (d) employ at its expense (i) a general manager who will direct the day-to-day operations of the Station, (ii) at least one non-management level employee, as required by the FCC, and (iii) such other personnel as may be necessary for the broadcast transmission of Licensee's own programs, and (e) subject to Section 1.5(b) below, be responsible for the salaries, taxes, insurance and all other related costs and expenses for all Station personnel employed by the Licensee. Whenever on the Station's premises, all personnel, including Programmer's employees and agents, shall be subject to the overall supervision of Licensee's general manager.

**1.5. Programmer Responsibilities.**

a. Programmer shall be solely responsible for any expenses incurred in the origination and delivery of programming provided by Programmer under this Agreement. Programmer shall employ and be solely responsible for the salaries, commissions, taxes, insurance and all other related costs and expenses for all personnel involved in the production and broadcast of its programs (including but not limited to on-air personalities, engineering personnel, sales personnel, traffic personnel, board operators and other programmers and production staff members).

b. In addition to the payments required under subsection (a) of this section, Programmer shall reimburse Licensee for all reasonable and necessary Station expenses incurred by Licensee in the operation of the Station solely in accordance with the schedule annexed hereto as Attachment II. Such payment will be made once a month within ten (10) business days after Programmer's receipt of invoices and other documentation reflecting Licensee's expenses in the prior month: provided, that Licensee and Programmer may at any time establish in writing a different schedule of payments to be made by Programmer to Licensee on a specified date each month to cover routine expenses which are incurred each month. To the extent there is any dispute as to whether an expense should be reimbursed by Programmer under this subsection, the parties shall engage in good faith discussions to resolve such dispute. If such dispute cannot be resolved within thirty (30) days after Licensee's presentation of an invoice for reimbursement, the parties shall refer the matter to a mutually agreeable third party (such as a certified public accountant or a qualified appraiser of broadcast properties) whose decision shall be final and binding. A dispute over any particular item or items shall not relieve Programmer of its responsibility under this subsection to make a timely payment to Licensee of those items which are not in dispute.

c. Subject to Licensee's ultimate supervision and control, Programmer shall be responsible for all matters relating to the carriage of the Station's signal on cable television

and satellite television systems, including but not limited to must carry elections, retransmission agreements, and channel position.

**1.6. Contracts.** Programmer will not enter into any third-party contract, lease or agreement that will bind Licensee in any way.

## **Section 2. Station Programming Policies.**

**2.1. Licensee Authority.** Notwithstanding any other provision of this Agreement, Licensee shall retain ultimate responsibility to broadcast programming to meet the needs and interests of viewers in the Station's service area. Licensee therefore retains the right to broadcast specific programming on issues of importance to the service area. Licensee shall also retain the right to interrupt Programmer's programming in case of an emergency or for programming which, in the good faith judgment of Licensee, is of greater local, regional or national public importance. Licensee shall coordinate with Programmer the Station's hourly Station identification and any other announcements required to be aired by FCC rules. Licensee shall continue to maintain a main studio, as that term is defined by the FCC, within the Station's principal community contour, shall maintain its local public inspection file in accordance with FCC rules, regulations and policies, and shall prepare and place in such inspection file or files in a timely manner all material required by of the FCC's rules, including without limitation the Station's quarterly issues and program lists and Children's Television Programming Reports. Programmer shall, upon request by Licensee, provide Licensee with such information concerning Programmer's programs and advertising as is necessary to assist Licensee in the preparation of such material. Licensee shall also maintain the Station's logs, receive and respond to telephone inquiries, and control and oversee any remote control point which may be established for the Station.

**2.2. Compliance with FCC Rules and Policies.** Programmer shall comply in all material respects with all published rules and policies of the FCC: provided, that no breach of the FCC rules and policies by Programmer shall be a cause for termination of this Agreement unless such breach or a series of such breaches would reasonably be expected to cause revocation or non-renewal of the Station's FCC Licenses. Licensee's recourse for any other breach of Programmer's obligation in the preceding sentence shall be limited to (a) recovery of Damages, as defined below, suffered by Licensee with respect thereto and (b) Programmer's immediate discontinuance and, if applicable, cure of any such breach. Programmer shall furnish or cause to be furnished the artistic personnel and material for the programs as provided by this Agreement and all programs shall be prepared and presented in conformity with the rules and policies of the FCC. All advertising spots and promotional material or announcements shall comply with applicable federal, state and local regulations and policies and shall be produced in accordance with quality standards established by Programmer. If Licensee determines, in the exercise of Licensee's sole discretion, that any broadcast material supplied by Programmer is for any reason unsatisfactory, unsuitable or contrary to the public interest, Licensee may, upon prior written notice to Programmer (to the extent time permits such notice), suspend or cancel the broadcast of such material without incurring liability to Programmer. Licensee will use reasonable efforts to provide such written notice to Programmer prior to the suspension or cancellation of such material. Programmer shall use reasonable efforts to notify Licensee 24

hours in advance of material changes in the programming provided by Programmer for broadcast on the Station.

**2.3. Public Service Programming.** Programmer shall cooperate as reasonably directed by Licensee to help Licensee ensure the broadcast of programming responsive to the needs and interests of the Station's service area in compliance with applicable FCC requirements. Programmer shall also provide Licensee upon reasonable request such other information necessary to enable Licensee to prepare records and reports required by the Commission or other local, state or federal government entities.

**2.4. Programmer Compliance with Copyright Act.** Programmer represents and warrants to Licensee that Programmer has authority to broadcast its programming on the Station and that Programmer shall not broadcast any material in violation of the Copyright Act. The right to use programming supplied by Programmer and to authorize its use in any manner shall be and remain vested in Programmer.

**2.5. Sales Expenses.** Programmer shall be responsible for payment of all expenses attributable to Programmer's sale of advertising time on the Station, including, but not limited to, commissions due to any national sales representative engaged by it for the purpose of selling national advertising which is carried during the programming it provides to Licensee.

**2.6. Payola.** Programmer agrees that it and its employees will not accept any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, material, supplies or other merchandise, services or labor (collectively "Consideration"), whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the program for which Consideration was provided as having paid for or furnished such Consideration, in accordance with the Act and FCC rules and policies. Programmer agrees to annually, or more frequently at the request of the Licensee, execute and provide Licensee with a Payola Affidavit from each of its employees involved with the Station substantially in the form attached hereto as Attachment III.

**2.7. Children's Television Programming and Advertising.** Programmer (a) shall, subject to Licensee's ultimate responsibility and supervision, arrange for the broadcast of programming on the Station necessary to comply with the FCC children's programming requirements, (b) will not broadcast advertising within programs originally designed for children aged 12 years and under in excess of the amounts permitted under applicable FCC rules, and (c) will take all steps necessary to pre-screen children's programming broadcast during the hours it is providing such programming to ensure that advertising is not being broadcast in excess of the applicable FCC rules.

**2.8. Control of the Station.** Programmer shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise, or direct, the operations of the Station. Such operations, including complete control and supervision of all of the programs, employees, and policies of the Station, shall be the sole responsibility of Licensee until the termination of this Agreement. To ensure that Licensee shall have the unfettered ability to control and supervise all programs, employees and policies of the Station, Licensee shall be permitted unrestricted

access to and the right to use at all times the Station's transmitter and studio facilities. In performing its responsibilities hereunder, Licensee shall use all commercially reasonable efforts to avoid interfering with Programmer's operations.

### **Section 3. Representations, Warranties and Covenants.**

**3.1. By Licensee.** Licensee represents, warrants, and covenants to Programmer that (a) Licensee has all requisite limited liability company power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Licensee hereunder, (b) the execution, delivery, and performance by Licensee of this Agreement and the documents contemplated hereby have been duly authorized by all necessary limited liability company actions on the part of Licensee, (c) this Agreement has been duly executed and delivered by Licensee and constitutes the legal, valid, and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies, (d) the execution, delivery, and performance by Licensee of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizational documents of Licensee; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any judicial order, law (including the Act), governmental regulation (including FCC rules and policies) agreement, instrument, license, or permit to which Licensee is a party or by which Licensee may be bound, and (e) during the Term of this Agreement Licensee will comply in all material respects with applicable law and governmental regulation and take whatever actions may be reasonably necessary (including the filing of any applications or reports with the FCC) necessary to preserve the CP without adverse modification and to obtain a license from the FCC to cover the CP without adverse modification.

**3.2. By Programmer.** Programmer represents, warrants and covenants to Licensee that (a) it has all requisite limited liability company power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Programmer hereunder, (b) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby have been duly authorized by all necessary actions on the part of Programmer, (c) this Agreement has been duly executed and delivered by Programmer and constitutes the legal, valid, and binding obligation of Programmer, enforceable against Programmer in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies, (d) the execution, delivery, and performance by Programmer of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) (i) do not require the consent of any third party, (ii) will not conflict with any provision of the organizational documents of Programmer, and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, or constitute a default under, any judicial order, law (including the Act), governmental regulation (including FCC rules and policies), material agreement, instrument,

license, or permit to which Programmer is a party or by which it may be bound, and (e) during the Term of this Agreement Programmer will comply in all material respects with applicable law and governmental regulation and use commercially reasonable efforts to cooperate with Licensee (including Licensee's filing of any applications or reports with the FCC) in taking whatever action may be necessary to preserve the CP without adverse modification and to obtain a license from the FCC to cover the CP without adverse modification..

#### **Section 4. Indemnification.**

**4.1. Programmer's Indemnification.** Programmer shall indemnify and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages, forfeitures and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description (collectively, "Damages") resulting from (a) Programmer's breach of any representation, warranty, covenant or agreement contained in this Agreement, (b) Programmer's negligence or willful misconduct or the negligence or willful misconduct of its employees or agents, and (c) Damages relating to violations of the Copyright Act, the Act or any rule, regulation or policy of the FCC, forfeitures imposed by the FCC, slander, defamation or other third-party claims relating to programming provided by Programmer and Programmer's broadcast and sale of advertising time on the Station.

**4.2. Licensee's Indemnification.** Licensee shall indemnify and hold Programmer harmless from and against any and all Damages resulting from (a) Licensee's breach of any representation, warranty, covenant or agreement contained in this Agreement, (b) Licensee's negligence or willful misconduct or the negligence or willful misconduct of its employees or agents, and (c) Damages relating to violations of the Copyright Act, the Act or any rule, regulation or policy of the FCC, forfeitures imposed by the FCC, slander, defamation or other third-party claims relating to programming provided by Licensee and Licensee's broadcast and sale of advertising time on the Station.

**4.3. Limitation.** Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this section unless such claim for indemnification is asserted in writing delivered to the other party within the time frame set forth in Section 4.6.

**4.4. Procedure for Indemnification.** The procedure for indemnification shall be as follows:

**a.** The party claiming indemnification (the "Claimant") shall promptly give written notice to the party from which indemnification is claimed (the "Indemnifying Party") of any claim, whether between the parties or brought by a third party, specifying in reasonable detail the factual basis for the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant no later than ten (10) business days after written notice of such action, suit, or proceeding was given to Claimant: provided, that the failure to timely give notice shall extinguish the Claimant's right to indemnification only to the extent that such failure materially adversely affects the Indemnifying Party's rights.

b. With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable. For the purposes of such investigation, the Claimant shall make available to the Indemnifying Party or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree in writing at or prior to the expiration of the 30-day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim or such amount as agreed to by the parties. If the Claimant and the Indemnifying Party do not agree within the 30-day period (or any mutually agreed upon extension thereof), the Claimant may seek any remedy available to it at law or equity.

c. With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right, at its own expense, to assume control of the defense of such claim, and the Claimant shall undertake any and all commercially reasonable efforts to cooperate with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not assume control, it shall be bound by the results obtained by the Claimant with respect to such claim: provided, that the Claimant shall not settle any third party claim without first giving the Indemnifying Party ten (10) business days' prior notice of the terms of such settlement.

d. If a claim, whether between the parties or by a third party, requires immediate action, the parties will make every commercially reasonable effort to reach a decision with respect thereto as expeditiously as possible.

e. The indemnification rights provided herein shall extend to the members, shareholders, directors, officers, employees, representatives and successors and permitted assigns of any Claimant (although, for the purpose of the procedures set forth in this Section 4.4, any indemnification claims by such parties shall be made by and through the Claimant).

**4.5. Challenge to Agreement.** Subject to the terms of Section 7.9, if this Agreement is challenged by or before the FCC, whether or not in connection with the Station's license application, Licensee and the Programmer shall jointly defend this Agreement and the parties' performance hereunder throughout all FCC proceedings. Each party shall bear any and all expenses incurred by it for such defense, including attorneys' fees. If the parties cannot reform this Agreement as necessary to satisfy or avoid any adverse FCC decision, the parties shall seek reversal of the FCC's decision and approval from the full Commission.

**4.6. Survival Period.** The representations and warranties of the parties under this Agreement shall survive for a period of six (6) months after termination of this Agreement in accordance with its terms. Any claim for indemnification under this section must be made on or before expiration of that 6-month period.

**Section 5. Access to Programmer Materials and Correspondence.**

**5.1. Confidential Review.** Licensee shall be entitled to review at its discretion from time to time on a confidential basis any of Programmer's programming material it may reasonably request. Programmer shall promptly provide Licensee with copies of all correspondence and complaints received from the public (including any telephone logs of complaints called in) and copies of all program logs and promotional materials. Except as otherwise set forth in this Agreement, nothing in this section shall entitle Licensee to review the internal corporate or financial records of the Programmer.

**5.2. Political Advertising.** Programmer shall assist Licensee in complying with all rules of the FCC regarding political broadcasting. Licensee shall promptly supply to Programmer, and Programmer shall promptly supply to Licensee, such information, including all inquiries concerning the broadcast of political advertising, as may be necessary to comply with FCC rules and policies, including the lowest unit rate, equal opportunities, reasonable access, political file and related requirements of applicable law. Licensee, in consultation with Programmer, shall develop a statement which discloses its political broadcasting rates and policies to political candidates, and Programmer shall follow those rates and policies in the sale of political programming and advertising. In the event that Programmer fails to satisfy the political broadcasting requirements under the Act and the rules of the FCC, then, to the extent reasonably necessary to assure compliance with such requirements and rules, Programmer shall either provide rebates to political advertisers or release broadcast time and/or advertising availabilities to Licensee at no cost to Licensee for use by the affected political candidates.

**Section 6. Termination and Remedies for Breach.**

**6.1. Termination.**

**a.** This Agreement may be terminated by Licensee or Programmer by written notice to the other, if the party or parties seeking to terminate is not then in material breach hereof, upon the occurrence of any of the following:

**(i)** subject to the provisions of Section 7.9, this Agreement is declared invalid or illegal in whole or material part by an order or decree of an administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial reconsideration or review;

**(ii)** by Licensee, if Programmer has committed a material breach or a series of material breaches of FCC rules or policy which would reasonably be expected to cause revocation or nonrenewal of the Station's CP or FCC license;

**(iii)** by Programmer, if either Licensee is in material breach of its obligations under this Agreement and has failed to cure such breach within thirty (30) days of notice from Programmer;

**(iv)** the mutual consent of both parties;

(v) a material change in FCC rules, policies or precedent that would cause this Agreement to be in violation thereof, and (x) such change has become final and is no longer subject to further administrative or judicial reconsideration or review and (y) this Agreement cannot be reformed, in a manner reasonably acceptable to Programmer and Licensee, to remove and/or eliminate the violation: provided, that, in the event the Agreement is terminated pursuant to this paragraph, Licensee shall accommodate any reasonable request by Programmer, at Programmer's sole expense, to provide Programmer with the benefit of the bargain reflected in this Agreement; or

(vi) upon the assignment of the CP, or, if the FCC has issued a license to cover the CP, the Station's FCC license, and other FCC authorizations, to Buyer (or its assignee) in accordance with the Option Agreement described in Section 7.14 of this Agreement.

b. During any period prior to the effective date of any termination of this Agreement, Programmer and Licensee shall cooperate in good faith to ensure that Station's operations will continue, to the extent feasible, in accordance with the terms of this Agreement as well as any and all contracts entered into by Licensee and Programmer prior to the effective date of such termination and in a manner that will otherwise minimize, to the extent feasible, any disruption of the Station's ongoing operations.

**6.2. Remedies.** In the event that any party breaches or threatens to breach any provision of this Agreement, the other party or parties shall be entitled to seek any remedy available in this Agreement (including termination in accordance with Section 6.1) and at law or equity. Notwithstanding anything to the contrary in this Agreement, the remedy of specific performance will be available to Programmer for any breach or threatened breach of this Agreement by Licensee with respect to Programmer's Option set forth in Section 7.14 of this Agreement or that would prevent Programmer from providing programming for the Station (in recognition of the unique status of the Station as a programming outlet and the inability to quantify Programmer's Damages in the event of such breach by Licensee). If Programmer does seek specific performance for an actual or threatened breach of such obligations, Licensee shall waive the defense that Programmer has an adequate remedy at law. If any party institutes litigation to enforce its rights under this Agreement, the prevailing party or parties shall be reimbursed by the other party or parties for all reasonable expenses incurred thereby, including reasonable attorney's fees.

## **Section 7. Miscellaneous.**

### **7.1. Assignment.**

a. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

b. Neither this Agreement nor any of the rights, interests or obligations of either party hereunder shall be assigned, encumbered, hypothecated or otherwise transferred without the prior written consent of the other party: provided, that Programmer may assign its rights and obligations under this Agreement or the Option Agreement specified in Section 7.14

at any time to any subsidiary of Programmer or to any other party under common control with Programmer; provided further, that Programmer may assign its rights and obligations under this Agreement at any time in conjunction with any permitted assignment of Buyer's rights and obligations under the Purchase Agreement; and, provided further, that Licensee shall use commercially reasonable efforts to cooperate with Programmer to effectuate any assignment permitted under this subsection.

**7.2. Call Letters.** Upon request of Programmer, subject to the consent of the Licensee (which shall not be unreasonably withheld), Licensee shall apply to the FCC for any call letters (with the consent of the FCC) that Programmer shall designate.

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

**7.4. Entire Agreement.** This Agreement (including the Attachments hereto and the other agreements referenced herein) embody the entire agreement and understanding of the parties relating to the operation of the Station and supersede any and all prior and contemporaneous agreements and understandings of the parties. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement will be effective unless evidenced by an instrument in writing signed by the parties.

**7.5. Taxes.** Licensee and Programmer shall each pay their own ad valorem taxes, if any, which may be assessed on such party's respective personal property for the periods that such items are owned by such party.

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

**7.7. Governing Law.** The obligations of Licensee and Programmer are subject to applicable federal, state and local law, rules and regulations, including, but not limited to, the Act and the rules and policies of the FCC. The construction and performance of the Agreement will be governed by the laws of the State of Delaware without regard to conflict of law principles.

**7.8. Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial overnight delivery service or certified mail – return receipt requested, (c) deemed to have been given on the date of personal delivery, or the date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows:

To Licensee:

Aaron Barnes, Member  
New Mexico Roswell 21, LLC  
Cielo Del Norte  
Anthony, NM 88021

With copy to: Stuart Mitchell, Esq.  
706 C Espada Drive  
El Paso, TX 79912

To Programmer: ACME Television of New Mexico, LLC  
Suite 202  
10829 Olive Blvd.  
St. Louis, MO 63141  
Attention: Douglas E. Gealy, President

ACME Television of New Mexico, LLC  
Suite 202  
2101 East 4<sup>th</sup> Street  
Santa Clara, CA 92705  
Attention: Thomas Allen, Executive Vice President

With copy to: Lewis J. Paper, Esq.  
Dickstein, Shapiro, Morin & Oshinsky L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20037-1526

**7.9. Severability.** If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event that the FCC raises a substantial and material question as to the validity of any provision of this Agreement, the parties hereto shall negotiate in good faith to revise any such provision of this Agreement with a view toward assuring compliance with all then existing FCC rules and policies which may be applicable, while attempting to preserve, as closely as possible, the intent of the parties as embodied in the provision of this Agreement which is to be so modified.

**7.10. No Joint Venture.** Nothing in this Agreement shall be deemed to create a joint venture between the Licensee and the Programmer.

**7.11. Force Majeure.** Any failure or impairment of the Station's facilities or any delay or interruption in the broadcast of programs, or failure at any time to furnish facilities, in whole or in part, for broadcast, due to Acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods and any other cause not reasonably within the control of Licensee, or for power reductions necessitated for maintenance of the Station or for maintenance of other radio or television broadcast stations located on the tower from which the Station is broadcasting, shall not constitute a breach of this Agreement, and Licensee will not be liable to Programmer for reimbursement or reduction of the consideration owed to Licensee.

**7.12. Other Agreements.** During the Term of this Agreement, neither Licensee nor Programmer will enter into any other agreement with any third party that would conflict with or result in breach of this Agreement by Licensee or Programmer.

**7.13. Certifications.**

(a) Licensee hereby certifies that it maintains ultimate control over the Station's facilities, including specifically control over Station finances, personnel and programming.

(b) Programmer hereby certifies that this Agreement complies with the provisions of paragraphs (b) through (d) of Section 73.3555 of the FCC rules.

**7.14. Option for Purchase.**

(a) For a period of five (5) years commencing on the date on which this Agreement is executed (the "Option Period"), Programmer shall have an option (the "Option") to acquire the CP, or if Licensee has secured a license from the FCC to cover the CP, the license, along with all other authorizations issued to Licensee by the FCC for the Station as well as any and all equipment and other assets owned or held by Licensee and used or useful in the operation of the Station. The Option can be exercised by Programmer by executing the Asset Purchase Agreement (the "Purchase Agreement") annexed hereto as Attachment IV and forwarding the Purchase Agreement to Licensee, who shall be required to execute the Purchase Agreement within five (5) business days after receipt and return the executed Purchase Agreement to Programmer by overnight courier (charges prepaid) to the address set forth in Section 7.8 of this Agreement. Programmer may revise the Purchase Agreement if the CP has been replaced by a license and other authorizations from the FCC (in which case all references to the CP in the Purchase Agreement will be replaced by reference to the license and other authorizations issued by the FCC). Licensee may update the schedules to the Purchase Agreement to account for developments occurring subsequent to the date of this Agreement but shall not otherwise be entitled to make any other changes to the Purchase Agreement as a condition of its execution of that agreement. During the Option Period, Licensee shall not enter into any agreement that would in any way be inconsistent with Programmer's Option or the provisions of the Purchase Agreement.

(b) Programmer may assign the Option to any party controlled by or under common control with Programmer. Programmer shall provide Licensee with notice of any such assignment within thirty (30) days of its consummation.

*[Remainder of the Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written above.

NEW MEXICO ROSWELL 21, LLC

By: \_\_\_\_\_

Name:

Title:

ACME TELEVISION OF NEW MEXICO, LLC

By: \_\_\_\_\_

Name: Thomas D. Allen,

Title: Executive Vice President

## **ATTACHMENT I**

### **EQUIPMENT**

Modulation Sciences STV-784 Stereo Generator; Modulation Sciences SRD-1 Stereo Reference Decoder; Modulation Sciences TVmm-1 Modulation Status Panel; Modulation Sciences MSI-320 Precision Video Demodulator; Grass Valley Group 7510 NTSC Proc Amp; Grass Valley Group 7510T1 1RU Frame and Power Supply; 2-Leitch XPR12VA Video and Stereo Audio Switcher; Tektronix TSG-130A Test Signal Generator; Tektronix TVGF11A rack mount for TSG-130A; Tektronix VITS-200 Vertical Interval Test Signal Generator; and Wohler AMP2-AMVU. NEC digital microwave interconnect from program origination point to transmitter site.

**ATTACHMENT III**

**Payola Statement**

FORM OF PAYOLA AFFIDAVIT

City of \_\_\_\_\_ )  
 )  
County of \_\_\_\_\_ ) SS:  
 )  
State of \_\_\_\_\_ )

ANTI-PAYOLA AFFIDAVIT

\_\_\_\_\_, being first duly sworn, deposes and says as follows:

1. He is \_\_\_\_\_ for \_\_\_\_\_.  
Position
2. He has acted in the above capacity since \_\_\_\_\_.
3. No matter has been broadcast by [CALL SIGN] for which service, money or other valuable consideration has been directly or indirectly paid, or promised to, or charged, or accepted, by him from any person, which matter at the time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person.
4. So far as he is aware, no matter has been broadcast by [CALL SIGN] for which service, money, or other valuable consideration has been directly or indirectly paid, or promised to, or charged, or accepted by [CALL SIGN] or by any independent contractor engaged by [CALL SIGN] in furnishing programs, from any person, which matter at the time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person.
5. In future, he will not pay, promise to pay, request, or receive any service, money, or any other valuable consideration, direct or indirect, from a third party, in exchange for the influencing of, or the attempt to influence, the preparation of presentation of broadcast matter on [CALL SIGN].
6. Nothing contained herein is intended to, or shall prohibit receipt or acceptance of anything with the expressed knowledge and approval of my employer, but henceforth any such approval must be given in writing by someone expressly authorized to give such approval.
7. He, his spouse and his immediate family do\_\_ / do not \_\_ have any present direct or indirect ownership interest in (other than an investment in a corporation whose stock is publicly held), serve as an officer or director of, whether with or without compensation, or serve as an employee of, any person, firm or corporation engaged in:

1. The publishing of music;

2. The production, distribution (including wholesale and retail sales outlets), manufacture or exploitation of music, films, tapes, recordings or electrical transcriptions of any program material intended for radio broadcast use;
3. The exploitation, promotion, or management or persons rendering artistic, production and/or other services in the entertainment field;
4. The ownership or operation of one or more radio or television Station;
5. The wholesale or retail sale of records intended for public purchase;
6. Advertising on [CALL SIGN], or any other station owned by its Licensee (excluding nominal stockholdings in publicly owned companies).

8. The facts and circumstances relating to such interest are none \_\_\_ / as follows \_\_\_ :

---

---

---

Affiant

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_.

**ATTACHMENT IV**  
**FORM OF ASSET PURCHASE AGREEMENT**