

**CONTINGENT APPLICATION
AND
COST REIMBURSEMENT AGREEMENT**

THIS CONTINGENT APPLICATION AND COST REIMBURSEMENT AGREEMENT, entered into as of this 7th day of June 2004, by and between BROADSOUTH COMMUNICATIONS, INC. ("**BROADSOUTH**") and APEX BROADCASTING, INC. ("**APEX**");

WITNESSETH:

WHEREAS, **BROADSOUTH** is the current owner, operator, and licensee of Radio Station WDXX-FM (100.1 MHz) Selma, Alabama ("**WDXX**"); and,

WHEREAS, **APEX** is the current owner, operator and licensee of Radio Station WANZ (100.5 MHz) at Northport, Alabama; ("**WANZ**") and,

WHEREAS, **APEX** desires to apply to the Federal Communications Commission ("FCC") for authority to upgrade and improve the facilities of Radio Station **WANZ** to a full Class C1 but cannot do so without requiring **WDXX** to relocate its tower site and,

WHEREAS, in an effort to expedite and facilitate the FCC approval for the upgrade and improvement of Radio Station **WANZ**, **APEX** seeks the voluntary cooperation of **BROADSOUTH**, and **BROADSOUTH** has consented to such cooperation under the terms and conditions set forth herein; and,

WHEREAS, in situations such as this, FCC policies would require **APEX** to reimburse **BROADSOUTH** for certain costs associated with the modification of the **WDXX** license by virtue of the desired change to **WANZ**; and,

WHEREAS, **BROADSOUTH** and **APEX** have negotiated and agreed upon the full terms of such cost reimbursement, as set forth hereinbelow.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Preliminary FCC procedures:

a. Except as set forth in Section 2 hereof, the parties hereby acknowledge and agree that in order to trigger the cost reimbursement

obligations set forth herein, all of the following must occur: (1) the **BROADSOUTH** Application and the **APEX** Application must be filed on the same date (the "**Contingent Applications**") so as to comply with FCC contingent application policies; (2) there must be FCC approval of both applications and such approvals must no longer be subject to appeal or reversal; and except as set forth in Section 8 below; and (3) both **BROADSOUTH** and **APEX** must submit FCC license applications to cover the implementation of the modifications noted above.

b. The parties acknowledge and agree that a copy of this Agreement shall be submitted to the FCC when appropriate to apprise the FCC of the existence and terms of this cost reimbursement agreement.

2. Reimbursement: Pursuant to the terms of this agreement, and subject to the overall FCC approval process explained in Paragraph Number 1 hereinabove, **APEX** shall provide the following payments or cost reimbursements to **BROADSOUTH** in the manner so specified:

a. Within two (2) business days following the date that the Contingent Applications are filed, **APEX** shall reimburse **BROADSOUTH** for its reasonable and prudent documented legal and engineering expenses, and FCC filing fee, such documented expenses not to exceed Ten Thousand Dollars (\$10,000).

b. For a one-year period beginning on the commencement date of the new **WDXX** operations, **APEX** shall reimburse **BROADSOUTH** for all documented reasonable and prudent expenses necessary to resolve any legitimate complaints of blanketing interference from **BROADSOUTH's** operation at the new tower site.

3. Representations and Warranties: Each person executing this Agreement has the full power and authority to enter into this Agreement on behalf of their designated party.

4. Breach, Opportunity to Cure and Remedies. If either **BROADSOUTH** or **APEX** believes the other to be in default of any material representation, warranty, covenant, term, condition or obligation of this Agreement (including those Events of Default described in Section 7 hereof), the nondefaulting party shall provide the defaulting party with written notice specifying in reasonable detail the nature of such default. If such default has not been cured within ten (10) business days after delivery

of such written notice, then the party giving such notice may (A) terminate this Agreement, and (B) exercise the remedies available to such party pursuant to subsections 6(a) and 6(b) hereinbelow, subject to the right of the other party to contest such action through appropriate proceedings.

a. **APEX's Remedies.** Both parties hereby acknowledge that the circumstances surrounding the cost reimbursement and facility upgrade to full Class C1 matters are unique, and that **APEX** may be irreparably injured if this Agreement is not specifically enforced after default. The parties agree, therefore, that if this Agreement is not consummated due to default of **BROADSOUTH**, **APEX**, provided that **APEX** is not in default and has otherwise complied with its obligations under this Agreement, shall have the right to (i) specifically enforce **BROADSOUTH's** performance under this Agreement, or (ii) terminate this Agreement as a result of **BROADSOUTH's** default and sue to recover the actual reimbursement costs, if any, that **APEX** has paid to **BROADSOUTH** up until the date of default, which shall constitute **APEX's** liquidated damages. Following termination of this Agreement according to this section, **APEX** shall have no further obligations to perform under this Agreement.

b. **BROADSOUTH's Remedies.** Both parties hereby acknowledge that the circumstances surrounding the cost reimbursement and frequency change matters are unique, and that **BROADSOUTH** would be entitled to compensation in the event that the Agreement is not consummated. The parties agree, therefore, that if this Agreement is not consummated due to default of **APEX**, **BROADSOUTH**, provided that **BROADSOUTH** is not in default and has otherwise complied with its obligations under this Agreement, shall be entitled to: (i) recover its costs incurred in the prosecution of the **BROADSOUTH** Application; (ii) terminate this Agreement and (iii) recover from **APEX** the sum of Five Thousand Dollars (\$5,000.00). Further, in the event of such default by **APEX**, **APEX** shall be required to dismiss any application pending before the FCC or return for cancellation any construction permit that would interfere with **WDXX's** currently licensed operation. The parties acknowledge that **BROADSOUTH's** receipt of such sums and actions on the part of **APEX** shall constitute liquidated damages. Following termination of this Agreement according to this section, **BROADSOUTH** shall have no further obligations to perform under this Agreement.

5. **Events of Default:** The following shall, after the expiration of the applicable cure period, constitute Events of Default under this Agreement:

(a) **Non Payment.** APEX's failure to timely pay the consideration due to BROADSOUTH provided for by this Agreement, as and when due and payable; or

(b) **Default in Covenants.** Either party's default in the material observance or performance of any material covenant, condition, or agreement contained in this Agreement; or

(c) **Breach of Warranties and Representations.** If any material representation or warranty made by either party in this Agreement, or in any certificate or document furnished by one party to the other pursuant to its provisions, shall prove to have been false or misleading in any material respect as of the time made or furnished; or

(d) **Insolvency, Bankruptcy, Liquidation.** If either party shall become insolvent or unable to pay for its debts as they mature, or shall file a voluntary petition in bankruptcy or a voluntary petition seeking reorganization or to effect a plan or other arrangement with creditors, or shall file an Answer admitting to the jurisdiction of any Bankruptcy Court or other sovereign, and the material allegations of an involuntary petition, pursuant to any act of Congress relating the bankruptcy or any act purporting to be amendatory thereof, or shall be adjudicated bankrupt, or shall make an assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its assets, or shall apply for or consent to or suffer the appointment of any receiver or trustee for it or a substantial part of its property or assets; then, subject to the cure rights set forth immediately below, the non-defaulting party shall have the right to terminate the term of this Agreement upon written notice thereof to the defaulting party.

6. Timing of Construction. The parties hereby agree that following FCC approval of the mutual applications that are the subject of this Agreement (such FCC approval having become final and no longer subject to appeal, review or reversal), that each party will proceed in a commercially reasonable manner to complete construction as set forth in their respective construction permits.

7. Benefit: The parties hereto understand and agree that this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. Should either party submit an assignment of license application or transfer of control application to the FCC during the pendency of these

matters, the proposed assignee or transferee shall be required to assume this Agreement. Any action to the contrary shall be subject to enforcement by a decree of specific performance.

8. Other documents: The parties shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement.

9. No inconsistent actions: Neither **BROADSOUTH** nor **APEX** shall take any action which is materially inconsistent with its obligations under this Agreement.

10. Notices: All necessary notices required under this Agreement shall be sent first-class mail, postage pre-paid, and also faxed, to the following:

If to **BROADSOUTH**: Broadsouth Communications, Inc.
P.O. Box 1055
Selma, AL 36702-1055
(Facsimile – 334-874-6959)

With a copy to: Scott C. Cinnamon, Esq.
Law Offices of Scott Cinnamon, PLLC
1090 Vermont Ave., N.W.
Suite 800, # 144
Washington, D.C. 20005
(Facsimile – 202-789-2929)

If to **APEX**: Houston Pearce, Chairman
Apex Broadcasting, Inc.
1800 McFarland Blvd., North
Suite 100
Tuscaloosa, AL35406
(Facsimile – 205-752-7734)

With a copy to: M. Scott Johnson, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209
(Facsimile -703-812-0486)

to the rules and policies of the FCC.


14. Counterparts: This Agreement may be executed in counterparts.

IN WITNESS HEREOF, the parties hereto have hereunto set their hands and seals.

**BROADCASTSOUTH COMMUNICATIONS
INC.**

By: _____
Mike Reynolds
President

**APEX COMMUNICATIONS,
INC.**

By: 
Houston Pearce
~~President~~ *CHAIRMAN*

1300 North 17th Street
11th Floor
Arlington, VA 22209
(Facsimile -703-612-0486)

13. **Governing law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama with appropriate consideration given to the rules and policies of the FCC.

14. **Counterparts:** This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

BROADSOUTH COMMUNICATIONS, INC.

APEX COMMUNICATIONS, INC.

By: 
James M. Reynolds
President

By: _____
Houston Pearce
Chairman