

## **FACILITIES IMPROVEMENT AGREEMENT**

This Facilities Improvement Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of January, 2006, by and between Radio Stations WPAY/WPFB, Inc., an Ohio corporation ("WPAY") and Franklin Communications, Inc., a Delaware corporation ("Franklin") licensee of Station WJZK(FM), licensed to Richwood, Ohio ("WJZK")

WHEREAS, WPAY is the licensee of WPAY-FM, operating on Channel 281C as a full Class C commercial FM station licensed to Portsmouth, Ohio, pursuant to a license ("License") (File No. BLH-20060921ADI) granted by the Federal Communications Commission ("FCC");

WHEREAS, Franklin is the licensee of WJZK and desires to improve the facilities thereof;

WHEREAS, on November 3, 2006, the FCC adopted new FM processing rules ("New Rules") effective January 19, 2007, that will permit WJZK to improve its facilities through the filing of a minor change application coordinated and contingent with other minor change applications and Franklin desires to take advantage of this opportunity;

WHEREAS, WPAY desires to cooperate with Franklin by filing a modification application with the FCC to modify its license and take such other actions and make such other filings that will enable Franklin to relocate and improve WJZK, subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration exchanged by the parties and hereby acknowledged, and for the mutual covenants and agreements set forth herein, WPAY and Franklin hereby agree as follows:

1. WPAY Filings. On the effective date of the New Rules, WPAY agrees to file an application ("Modification Application") with the FCC to modify its License at the site specified in its License to downgrade WPAY-FM to Class C-1 facilities. No later than January 18, 2007, WPAY shall upload to the FCC's Consolidated Data Base System for filing with the FCC an application on FCC Form 301 for a minor change construction permit to downgrade WPAY-FM from operation on Channel 281 C to Channel 281C-1. WPAY shall file the Modification Application as a contingent application, in full compliance with the procedures set out in Title 47 C.F.R. §73.3517(e), simultaneous with the Franklin's filing of the WJZK Improvement Application (along with any other applications deemed necessary by Franklin). Each of WPAY and Franklin agree to cooperate with each other in the preparation and filing of the Modification Application. Provided, however, that WPAY intends to amend its application as soon as possible to specify Class C-0 facilities using the provisions of Title 47 CFR §73.215 ("Amended Modification Application"). If, as of the 55<sup>th</sup> day after notice regarding the Modification Application is published in the Federal Register, in WPAY's sole judgment it is not possible to file an Amended Modification Application specifying C-0 facilities without requesting a waiver of the Commission's rules, to include, but not be limited to a waiver of the minimum distance separation requirements of 47 C.F.R. Section 73.215(e), WPAY, at its option and sole discretion,

may dismiss the Modification Application. The parties expressly acknowledge that such dismissal will result in the dismissal of the WJZK Improvement Application. If the Amended Modification Application is filed, WPAY agrees diligently to prosecute the Amended Modification Application so as to obtain from the FCC a grant of a Class C-0 construction permit that will permit the grant of the WJZK application. WPAY agrees further to promptly respond to all FCC inquiries concerning the Amended Modification Application and to promptly provide to the FCC any requested information and to file any amendments to the Amended Modification Application necessary to obtain a grant. Upon grant of the Amended Modification Application, WPAY agrees to (i) to cooperate with Franklin and promptly construct the WPAY-FM Class C-0 facility; (ii) upon completion of construction, to promptly initiate program tests as a Class C-0 station and (iii) to promptly file an application for license to cover the Class C-0 facilities in coordination with Franklin's initiation of program tests and subsequent filing of a license to cover the WJZK Improvement Application. WPAY agrees to comply with any and all conditions that may be imposed on the construction permit received as a result of the Amended Modification Application.

2. Franklin's Filings. On the effective date of the New Rules, in coordination with WPAY, Franklin shall file an application with the FCC to relocate and improve the facilities of WJZK ("WJZK Improvement Application"). Franklin shall have the right to file other applications with the FCC, or amend the WJZK Improvement Application as Franklin may deem necessary, to permit grant of the WJZK Improvement Application.

3. Consideration. In order to induce WPAY to enter into this agreement, within ten business days of the execution hereof, Franklin has agreed to cause the owner of the tower on which WPAY-FM is located to execute and deliver to WPAY a lease ("WPAY-FM Tower Lease") in the form reasonably acceptable to WPAY, Franklin and the owner of the WPAY-FM Tower for use by WPAY of the WPAY-FM Tower on terms favorable to WPAY effective upon filing of the Modification Application. In the event the Franklin, the tower owner and WPAY have not executed the WPAY-FM Tower Lease within ten business days hereof, WPAY shall have the right to unilaterally dismiss its Modification Application.

4. Expenses. Each party shall bear its own fees and expenses in connection with the transactions contemplated by this Agreement; provided, however, that Franklin agrees to reimburse WPAY for any (i) reasonable engineering expenses incurred in connection with the preparation and prosecution of the Modification Application and the Amended Modification Application and (ii) reasonable legal, engineering and FAA consulting fees and expenses incurred in connection with the Modification Application and the Amended Modification Application and transactions contemplated hereby; in each case, within ten (10) business days after Franklin's receipt of an invoice and other documentation for such expenses.

5. Termination. This Agreement may be terminated as follows:

(a) by either party, in the event that the Amended Modification Application and the WJZK Improvement Applications have not been granted by the FCC by two years after the Amended Modification Application is accepted for filing or

(b) by Franklin, in the event that WPAY is in material breach of any of the covenants contained in this agreement (provided that Franklin has given WPAY notice thereof and opportunity to cure such breach within 15 business days of such notice); or

(c) by WPAY, in the event that Franklin is in material breach of any of the covenants contained in this agreement (provided that WPAY has given Franklin notice thereof and opportunity to cure such breach within 15 business days of such notice).

6. Further Agreements of WPAY. WPAY agrees that any and all documents, filings, statements and instruments to be executed, delivered and/or filed in connection with this Agreement, including without limitation, the Amended Modification Application, shall be in form and substance satisfactory to Franklin, and that WPAY shall take all such further actions reasonably requested by Franklin to consummate the transactions contemplated by this Agreement.

7. Assignment. Neither party shall have the right to assign its rights and obligations under this Agreement in whole or in part without the prior written consent of the other party, except that either party may assign its rights and obligations under this Agreement, without the other party's prior written consent, to any subsidiary, parent company or affiliate of the assigning party, or to a successor-in-interest in the event Franklin assigns the license of WJZK to a third party or WPAY assigns the license of WPAY-FM to a third party, pursuant to FCC consent, so long as any such affiliate or assignee assumes all rights and obligations under this Agreement.

8. Severability. If any term or provision of this Agreement is determined to be void, unenforceable or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for either party.

9. Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto at the time of execution and delivery thereof with respect to the subject matter hereof and may not be amended except by written amendment signed by both parties. All prior agreements between the parties with respect to the subject matter hereof shall be of no further force or effect. The undersigned each represent and warrant that each has the requisite authority to bind their respective parties to the terms and obligations of this Agreement.

10. Specific Performance. If either party breaches its obligations under this Agreement, the other party shall each have the right to seek injunctive relief and/or specific performance. The breaching party agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy.

11. Counterparts. This agreement may be signed in counterparts with the same effect as if the signature on each counterpart were on the same instrument.

12. Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Delaware, specifically excluding its choice-of-laws provisions.

13. Notices. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be deemed duly given on the next business day if sent by facsimile or overnight delivery, and on the third (3rd) business day if sent by registered or certified mail, postage prepaid, addressed as follows:

- (a) If to WPAY: Radio Stations WPAY/WPFB, Inc.  
Douglas L. Braden, President  
4505 Central Avenue  
Middletown, Ohio 45044  
Fax: (513) 424-9732
- with copy to: Matthew McCormick, Esq.  
Irwin, Campbell and Tannewald, PC  
1730 Rhode Island Avenue, NW  
Suite 200  
Washington, DC 20036-3101  
Fax: (202)728-0354
- (b) If to Franklin: c/o Saga Communications, Inc.  
Samuel D. Bush, Treasurer  
73 Kercheval Avenue  
Grosse Pointe Farms, MI 48236  
Fax: (313) 886-7150
- with copy to: Sarah N. A. Camougis, Esq.  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110  
Fax: (617) 439-4170

or any such other addresses as the parties may from time to time designate in writing.

***\*\*The Next Page is the Signature Page\*\****

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

FRANKLIN COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Samuel D. Bush, Treasurer

RADIO STATIONS WPAY/WPFB, INC.

By: \_\_\_\_\_  
Douglas L. Braden, President