

## **FACILITIES USE AGREEMENT**

**THIS FACILITIES USE AGREEMENT** (this "Lease") is entered into as of the 2nd of May, 2003, by and between HBC ILLINOIS, INC., a Delaware corporation ("Lessor"), and BIG CITY RADIO-CHI, L.L.C., a Delaware limited liability company ("Lessee").

### **RECITALS:**

WHEREAS, concurrently herewith, Lessee and Lessor are amending and restating their time brokerage agreement (the "Time Brokerage Agreement"), pursuant to which Lessee will retain Lessor to provide programming and related services for radio broadcast station WVIV-FM, licensed to Highland Park, Illinois (FCC Facility ID No. 74177) (the "Station"), all in conformity with Lessee's policies and procedures, Federal Communications Commission ("FCC") rules and policies for time brokerage arrangements, and the provisions thereof; and

WHEREAS, the parties now desire to set forth in further detail their respective rights and obligations with respect to the use of certain assets owned by Lessor in connection with the operation of the Station.

### **AGREEMENT:**

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

#### **SECTION 1            DEFINITIONS**

1.1    Definitions. Capitalized terms used herein without definition shall have the respective meanings assigned thereto in Annex I attached hereto and incorporated herein for all purposes of this Lease (such definitions to be equally applicable to both the singular and plural forms of the terms defined). Unless otherwise specified, all references herein to "Articles" or "Sections" are to Articles or Sections of this Lease. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

#### **SECTION 2            LEASE AND RELATED MATTERS**

2.1    Term. The term of this Lease shall begin on the date hereof and shall terminate automatically upon the termination of the Time Brokerage Agreement (the "Term"); provided, that, Lessee shall have the right, upon notice to Lessor, to extend the Term for up to ninety (90) days after the termination of the Time Brokerage Agreement.

2.2    Lease. Lessor agrees to lease, license or sublet to Lessee, and Lessee agrees to lease, license or sublet from Lessor, at any time and from time to time during the Term, all equipment, assets, studio space, rights under leases, and other property owned or held by Lessor and used and useful in connection with the operation of the Station (collectively, the "Leased Assets"), to the extent such Leased Assets are required to be used by Lessee in the operation of the Station, subject to and upon the terms and conditions of this Lease.

### 2.3 Lease Payments.

(a) In consideration of the lease by Lessor to Lessee of the Leased Assets, Lessee shall pay a monthly lease fee to Lessor of One Hundred Dollars (\$100) (the "Lease Fee"), such Lease Fee to be payable on the date of consummation of the Closing.

(b) Lessee is hereby granted the right of offset against its obligation to pay the Lease Fee any and all amounts owed by Lessor to Lessee that become due under Section 2 of the Time Brokerage Agreement.

### 2.4 Maintenance and Use of Leased Assets.

(a) Lessee shall use the Leased Assets only to perform its obligations under the Time Brokerage Agreement and as Lessee of the Station and to produce programming that Lessee is obligated to provide.

(b) The Leased Assets will, to the extent used by Lessee throughout the Term, be used in all material respects in accordance with the FCC Licenses, the Act and applicable FCC rules, regulations and policies. Lessee may not, without Lessor's prior written consent, make alterations in, modifications to or material additions to the Leased Assets.

(c) Lessee shall not use or permit the Leased Assets to be used in any manner or for any purpose for which the Leased Assets are not designated or reasonably suitable. Lessee shall comply in all material respects with all laws, rules and regulations of Governmental Authorities concerning the operation of the Leased Assets.

(d) Lessor shall perform at its expense all reasonably necessary maintenance and repair of the Leased Assets.

2.5 Control of the Station. Pursuant to Section 2.1 of the Time Brokerage Agreement, Lessee shall retain ultimate authority, power and control over the operations of the Station during the Term, including specifically, control over the personnel, programming and finances of the Station.

## **SECTION 3 COVENANTS OF LESSEE**

Upon termination of this Lease, Lessee shall return to Lessor, as soon as practicable after the expiration or sooner termination of this Lease, all Leased Assets or other property of Lessor relating to the Station, including all originals and all copies of documents, notes, computer discs, tapes, or other tangible information of any sort that Lessee has in its possession or under its custody or control that are the property of Lessor, and will not retain any copies of such matter. Lessee shall not, without obtaining the prior written consent of Lessor, sublease, license, sublicense or subject to any lien, any of the Leased Assets or enter into any agreement with respect to the foregoing.

## SECTION 4

## REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties by Lessee. Lessee represents and warrants that:

(a) The execution, delivery and performance by Lessee of this Agreement, the fulfillment of and the compliance with the terms and provisions hereof, and the consummation by Lessee of the transactions contemplated hereby have been duly authorized by all requisite corporate action (which authorization has not been modified or rescinded and is in full force and effect), and do not and will not: (i) conflict with, or violate any provision of, any Law having applicability to Lessee or any affiliate of Lessee; (ii) conflict with, or result in any breach of, or constitute a default under, any agreement to which Lessee is a party or by which Lessee is bound; or (iii) result in or require the creation or imposition of or result in the acceleration of any indebtedness, or of any mortgage, lien, pledge, encumbrance, security interest, deed of trust, option, encroachment, reservation, order, decree, judgment, restriction, charge, agreement, claim or equity of any kind ("Encumbrance") of any nature upon, or with respect to, Lessee or any of the assets now owned or hereafter acquired by Lessee. No other action is necessary for Lessee to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) This Agreement constitutes a valid and binding obligation of Lessor, enforceable in accordance with its terms.

### 4.2 Representations and Warranties by Lessor. Lessor represents and warrants that:

(a) The execution, delivery and performance by Lessor of this Agreement, the fulfillment of and the compliance with the respective terms and provisions hereof, and the consummation by Lessor of the transactions contemplated hereby have been duly authorized by all necessary corporate action (which authorization has not been modified or rescinded and is in full force and effect), and do not and will not: (i) conflict with, or violate any provision of, any Law having applicability to Lessor or any affiliate of Lessor or any provision of the organizational documents of Lessor; (ii) conflict with, or result in any breach of, or constitute a default under, any agreement to which Lessor is a party or by which Lessor is bound; or (iii) result in or require the creation or imposition of or result in the acceleration of any indebtedness, or of any Encumbrance of any nature upon, or with respect to, Lessor or any of the assets now owned or hereafter acquired by Lessor. No other corporate action is necessary for Lessor to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) This Agreement constitutes a valid and binding obligation of Programmer, enforceable in accordance with its terms.

## SECTION 5

## INDEMNIFICATION

5.1 Indemnification by Lessee. Lessee shall indemnify and hold harmless Lessor from and against any and all claims, losses, costs, liabilities, damages, expenses, including any FCC fines or forfeitures (including reasonable legal fees and other expenses incidental thereto), of every kind, nature and description (collectively "Damages") arising or resulting from or relating to Lessee's breach of any representation, covenant, agreement or other obligation of Lessee contained in this Lease.

5.2 Indemnification by Lessor. Lessor shall indemnify and hold harmless Lessee from and against any and all Damages arising or resulting from or relating to Lessor's breach of any representation, covenant, agreement or other obligation of Lessor contained in this Lease.

## **SECTION 6                      MISCELLANEOUS**

6.1 Further Assurances. Each of the parties hereto hereby agrees to take or cause to be taken such further actions, to execute, deliver and file or cause to be executed, delivered and filed such further documents, and will obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Lease.

6.2 Expenses. Each party hereto will pay its own expenses incurred by such party in connection with the negotiation, preparation, execution and consummation of this Lease and the transactions contemplated hereby, including all legal and accounting fees and disbursements.

6.3 Assignment. Lessor shall require any third party that becomes the assignee of Lessor's rights under the Time Brokerage Agreement or any of the Leased Assets to assume the obligations of Lessor under this Lease. Except as aforesaid, no party shall assign its rights and obligations under this Lease, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party hereto, and any such assignment contrary to the terms hereof shall be null and void and of no force and effect. In no event shall the assignment by any party of its respective rights or obligations under this Lease release such party from its respective liabilities and obligations hereunder.

6.4 Entire Agreement; Amendments. This Lease and the Time Brokerage Agreement constitute the entire agreement among the parties hereto with respect to the transactions contemplated herein and, except for the Purchase Agreement and documents delivered pursuant thereto, supersede all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein. No amendment, modification or discharge of this Lease shall be valid or binding unless set forth in writing and duly executed and delivered by the party against whom enforcement of the amendment, modification, or discharge is sought. The parties hereto agree that to the extent the terms of this Lease are inconsistent with the terms of the Time Brokerage Agreement, the terms of the Time Brokerage Agreement shall control.

6.5 Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Lease or under any other documents furnished in connection with or pursuant to this Lease shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

### **6.6      Consent to Jurisdiction.**

(a) This Lease and the duties and obligations of the parties hereunder and under each of the documents referred to herein shall be enforceable against any party in the courts of the United States of America and of the State of New York. For such purpose, each

party hereto hereby irrevocably submits to the non-exclusive jurisdiction of such courts, and agrees that all claims in respect of this Lease and such other documents may be heard and determined in any of such courts.

(b) Each party hereto hereby irrevocably agrees that a final judgment of any of the courts specified above in any action or proceeding relating to this Lease or to any of the other documents referred to herein or therein shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

6.7 Governing Law. This Lease, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of New York (excluding the choice of law rules thereof).

6.8 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by any party to any other party pursuant to this Lease shall be in writing and shall be hand delivered, sent by overnight courier or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by telegram, telecopy or telex, addressed as follows:

(a) If the notice is to Lessor:

Hispanic Broadcasting Corporation  
3102 Oak Lawn Avenue, Suite 215  
Dallas, Texas 75219  
Attention: Jeffrey T. Hinson, Senior Vice President  
Telephone: (214) 525-7711  
Facsimile: (214) 525-7750

with a copy (which shall not constitute notice) to:

Hallett & Perrin, P.C.  
2001 Bryan Street, Suite 3900  
Dallas, Texas 75201  
Attention: Bruce H. Hallett  
Telephone: (214) 922-4120  
Facsimile: (214) 922-4170

or to such other address as Lessor may from time to time designate.

(b) If to Lessee:

Big City Radio, Inc.  
c/o Metromedia Company  
One Meadowlands Plaza  
East Rutherford, New Jersey 07073-2137  
Attention: David A. Persing  
Telephone: (201) 531-8022  
Facsimile: (201) 531-2803

with a copy (which shall not constitute notice) to:

Hogan & Hartson L.L.P.  
8300 Greensboro Drive  
Suite 1100  
McLean, Virginia 22102  
Attention: Thomas E. Repke  
Telephone: (703) 610-6138  
Facsimile (703) 610-6200

or to such other address as Lessee may from time to time designate.

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be hand delivered, sent, mailed or faxed in the manner described above shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or confirmation of facsimile transmission being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

6.9 Interpretation. Section headings contained in this Lease are inserted for convenience of reference only, shall not be deemed to be a part of this Lease for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

6.10 Counterparts. To facilitate execution, this Lease may be executed in as many counterparts as may be required. It shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Lease to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

6.11 Limitation on Benefits. The covenants, undertakings and agreements set forth in this Lease shall be solely for the benefit of, and shall be enforceable only by, the parties hereto and their respective successors, heirs, executors, administrators, legal representatives and permitted assigns.

6.12 Binding Effect. Subject to any provisions hereof restricting assignment, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, executors, administrators, legal representatives and permitted assigns.

6.13 Taxes. Lessor and Lessee shall each pay its own ad valorem taxes, if any, which may be assessed on such party's personal property for the periods that such items are owned by such party.

6.14 No Joint Venture or Partnership. Lessor shall act as an independent contractor in rendering its services hereunder. Neither party shall have any power or authority to act for or on behalf of the other or to bind the other in any manner whatsoever, except as and to the extent expressly provided for in this Lease. The parties hereto agree that nothing herein shall constitute a joint venture or partnership between them.

**[SIGNATURE PAGE TO FOLLOW]**

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

HBC ILLINOIS, INC.

By:       / s / Gerald J. Ryan        
Gerald J. Ryan  
President and General Manager

BIG CITY RADIO—CHI, L.L.C.

By: Big City Radio, Inc.,  
Its Managing Member

By:       / s / Paul R. Thomson        
Paul R. Thomson  
Vice President and Chief Financial Officer



## ANNEX I

“Act” means the Communications Act of 1934 and any rules, regulations or policies promulgated thereunder, each as amended or modified from time to time.

“Closing” has the meaning ascribed thereto in the Purchase and Sale Agreement.

“Damages” has the meaning ascribed thereto in Section 5.1.

“Encumbrance” has the meaning ascribed thereto in Section 4.1(a).

“FCC” has the meaning ascribed thereto in the Recitals of this Lease.

“FCC Licenses” means all licenses, permits and other authorizations issued by the FCC with respect to the ownership, operation or construction of the Station and all auxiliary broadcast and satellite earth station facilities used in the operation of the Station.

“Governmental Authority” means (i) the United States of America, (ii) any state or commonwealth of the United States of America and any political subdivision thereof (including counties, municipalities and the like) or (iii) any agency, authority or instrumentality of any of the foregoing, including any court, tribunal, department, bureau, commission or board.

“Law” means any applicable law, regulation, rule, writ, injunction, ordinance, franchise, decree, determination, award, permit, license, authorization, requirement, ruling, order or decision of, or by, a Governmental Authority, including FCC Licenses.

“Lease” has the meaning ascribed thereto in the Preamble of this Lease.

“Leased Assets” has the meaning ascribed thereto in Section 2.2.

“Lease Fee” has the meaning ascribed thereto in Section 2.3.

“Lessee” has the meaning ascribed thereto in the Preamble of this Lease.

“Lessor” has the meaning ascribed thereto in the Preamble of this Lease.

“Purchase and Sale Agreement” means that certain Asset Purchase Agreement between Lessor and Lessee dated as of January 2, 2003, as amended.

“Station” has the meaning ascribed thereto in the Recitals of this Lease.

“Term” has the meaning ascribed thereto in Section 2.1.

“Time Brokerage Agreement” has the meaning ascribed thereto in the Recitals of this Lease.