

**CONTRIBUTION AGREEMENT**  
**BY AND AMONG**  
**SMITH TELEVISION OF NEW YORK, INC.,**  
**SMITH TELEVISION OF NEW YORK LICENSE HOLDINGS, LLC,**  
**SMITH BROADCASTING OF SANTA BARBARA LIMITED PARTNERSHIP,**  
**SMITH TELEVISION GROUP, INC.,**  
**SMITH TELEVISION LICENSE HOLDINGS, INC.,**  
**AND**  
**SMITH BROADCASTING OF VERMONT, LLC,**  
**as the Smith Entities**  
**AND**  
**SMITH MEDIA, LLC,**  
**as the Company**

**Dated as of August 26, 2004**

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## CONTRIBUTION AGREEMENT

**THIS CONTRIBUTION AGREEMENT** (this “**Agreement**”) is entered into as of August \_\_\_, 2004, by and among SMITH TELEVISION OF NEW YORK, INC., a Delaware corporation (“**STNY**”), SMITH BROADCASTING OF SANTA BARBARA LIMITED PARTNERSHIP, a Delaware limited partnership (“**SBSB**”), SMITH TELEVISION GROUP, INC., a Nevada corporation (“**STG**”), SMITH TELEVISION LICENSE HOLDINGS, INC., a Nevada corporation (“**STLH**”), SMITH TELEVISION OF NEW YORK LICENSE HOLDINGS, LLC, Delaware limited liability company (“**STNYLH**”), SMITH BROADCASTING OF VERMONT, LLC, a Delaware limited liability company (“**SBV**”, and together with STNY, SBSB, STG, STLH and STNYLH, each individually a “**Smith Entity**” and collectively, the “**Smith Entities**”); and SMITH MEDIA, LLC, a Delaware limited liability company (“**SMLLC**”), and SMITH MEDIA LICENSE HOLDINGS, LLC, a Delaware limited liability company (“**SMLLC License Sub**”; together with SMLLC, the “**Company**”).

**WHEREAS**, STNY and STNYLH own and operate television broadcast station WKTV(TV), Utica, New York (“**WKTV**”); SBSB owns and operates television broadcast station KEYT-TV, Santa Barbara, California (“**KEYT**”); STG and STLH own and operate television broadcast stations KIMO(TV), Anchorage, Alaska (“**KIMO**”), KATN(TV), Fairbanks, Alaska (“**KATN**”) and KJUD(TV), Juneau, Alaska (“**KJUD**”; and together with KIMO and KATN, the “**Alaska Stations**”); and SBV owns and operates television broadcast station WFFF-TV, Burlington, Vermont (“**WFFF**”; and together with WKTV, KEYT, KIMO, KATN and KJUD, each individually a “**Station**” and collectively, the “**Stations**”);

**WHEREAS**, the Smith entities wish to contribute the Assets (as defined below) to the Company in exchange for the LLC Interests (as defined below), all on the terms described in this Agreement; and

**WHEREAS**, on the date hereof, certain of the Smith Entities, SM Investment Holdings of Santa Barbara, LLC (“**SM Investments**”), Frontyard Management, LLC (“**Frontyard**”), Boston Ventures Limited Partnership VI (“**BV**”), Michael Granados (“**Granados**”) and Ian Guthrie (“**Guthrie**”), are entering into a Securities Purchase Agreement (the “**Securities Purchase Agreement**”), pursuant to which such Smith Entities have agreed to sell, and the Purchasers thereunder have agreed to purchase, certain of the LLC Interests received by such Smith Entities pursuant to this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE 1.**  
**DEFINITIONS AND REFERENCES**

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 Agreement (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 Agreement. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

**ARTICLE 2.**  
**CONTRIBUTION OF ASSETS; ISSUANCE OF LLC INTERESTS;**  
**ASSUMPTION OF LIABILITIES**

**2.1. Contribution of Assets.**

Subject to the terms and conditions of this Agreement (including Section 8.5), on the Closing Date, the Smith Entities shall contribute, assign, transfer, convey and deliver to the Company, and the Company shall acquire and accept from the Smith Entities, all right, title and interest of the Smith Entities in, to and under all real, personal and mixed assets, rights, benefits and privileges, both tangible and intangible, wheresoever located, owned, leased, used or held for use by the Smith Entities in connection with the business or operations of the Stations (collectively, the “**Assets**”), except that the Assets shall not include the Excluded Assets. The Assets shall include all right, title and interest of the Smith Entities in, to and under the following:

**2.1.1. FCC Licenses.**

All licenses, permits and other authorizations issued by the FCC and held by the respective Smith Entities for the operation of the Stations listed on Schedule 2.1.1 (which identifies the Station to which they apply), and all applications therefor, together with any renewals, extensions or modifications thereof and additions thereto (the “**FCC Licenses**”).

**2.1.2. Real and Leased Property Interests.**

(a) The real property owned by the Smith Entities listed or described in Schedule 2.1.2 (the “**Real Property**”), including all land, fee interests, easements and other interests of every kind and description in such real property and the buildings, structures, fixtures, appurtenances, towers, antennae and other improvements thereon.

(b) The real property leasehold interests of the Smith Entities listed or described in Schedule 2.1.2 (the “**Leaseholds**”).

### **2.1.3. Tangible Personal Property.**

The furniture, fixtures, furnishings, machinery, computers, equipment, inventory, spare parts, supplies, office materials and other tangible personal property which are set forth and identified in Schedule 2.1.3 (which identifies each item having a book value in excess of Fifty Thousand Dollars (\$50,000)), and all such property not set forth on Schedule 2.1.3 which has a book value less than or equal to Fifty Thousand Dollars (\$50,000) (collectively, the “**Tangible Personal Property**”).

### **2.1.4. Intellectual Property.**

The service marks, copyrights, franchises, trademarks, trade names, domain names, jingles, slogans, logotypes, trade secrets, confidential information, technical and computer data, documentation and software (including any “off the shelf” or “shrink wrapped” computer software, programs or licenses), business and marketing plans and all other intangible assets maintained, owned, used or held for use by the Smith Entities in connection with the business and operations of the Stations (including any and all applications, registrations, extensions and renewals relating thereto) (collectively, the “**Intellectual Property**”), and all of the goodwill, rights, benefits and privileges associated therewith, including those set forth and identified in Schedule 2.1.4 and the right to use the “WKTV”, “KEYT”, “KIMO”, “KATN”, “KJUD” and “WFFF” call letters for the Stations (collectively, with the Intellectual Property, the “**Intangibles**”).

### **2.1.5. Program Contracts.**

The program (cash and non-cash) licenses and contracts in effect as of the Closing Date under which the Smith Entities are authorized to broadcast programs on the Stations set forth and identified in Schedule 2.1.5 and all such program licenses and contracts not listed on Schedule 2.1.5 which require payments of less than Fifty Thousand Dollars (\$50,000) per contract per year and One Hundred Fifty Thousand Dollars (\$150,000) per year in the aggregate (collectively, the “**Program Contracts**”).

### **2.1.6. Trade-out Agreements.**

The contracts and agreements (excluding Program Contracts) in effect as of the Closing Date pursuant to which the Smith Entities have sold, traded or bartered commercial air time on the Stations in consideration for any property or services in lieu of or in addition to cash, set forth and identified in Schedule 2.1.6 and all such trade contracts not listed on Schedule 2.1.6 under which the value of commercial air time to be run by the Stations as of the Closing Date is less than One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate (collectively, the “**Trade-out Agreements**”). For purposes of this Section 2.1.6 and Section 3.14.4, the value of commercial air time to be run by the Stations as of the Closing Date shall be valued according to the value of the property or services receivable by the Stations under such Trade-out Agreements as of the Closing Date.

#### **2.1.7. Broadcast Time Sales Agreements.**

All contracts and agreements in effect as of the Closing Date pursuant to which the Smith Entities have sold commercial airtime on the Stations for cash (collectively, the “**Time Sales Agreements**”).

#### **2.1.8. Network Affiliation Agreements.**

The Network Affiliation Agreements and other agreements set forth on Schedule 2.1.8.

#### **2.1.9. Employee Related Contracts.**

The agreements, talent contracts and collective bargaining agreements listed on Schedule 2.1.9 which relate to any of the Transferred Employees, together with any amendments, renewals, extensions or modifications thereof (collectively, the “**Employment Contracts**”).

#### **2.1.10. Operating Contracts.**

The other contracts and agreements set forth and identified in Schedule 2.1.10 that are in effect as of the Closing Date, and all other contracts and agreements entered into by the Smith Entities in connection with the business and operations of the Stations and in accordance with this Agreement that are in effect as of the Closing Date that are not listed on Schedule 2.1.10 which require payments of less than Fifty Thousand Dollars (\$50,000) per contract per year and One Hundred Fifty Thousand Dollars (\$150,000) per year in the aggregate (collectively, the “**Operating Contracts**” and together with the Program Contracts, the Trade-out Agreements, the Time Sales Agreements, the Network Affiliation Agreements and the other agreements set forth on Schedule 2.1.8, the Employment Contracts and the Additional Agreements, the “**Station Contracts**”).

#### **2.1.11. Vehicles.**

The automotive equipment and motor vehicles maintained, owned, used or held for use by the Smith Entities in connection with the business and operations of the Stations set forth and described in Schedule 2.1.11 (collectively, the “**Vehicles**”).

#### **2.1.12. Files and Records.**

All engineering, business and other books, papers, logs, files, and accounting, financial and other records pertaining to the business and operations of the Stations (collectively, the “**Files and Records**”).

#### **2.1.13. FCC Files and Records.**

The public and political files of the Stations and those papers, logs, files and other records maintained by the Smith Entities to ensure compliance by the Stations with all applicable rules, regulations and policies of the FCC (the “**FCC Files**”).

#### **2.1.14. Auxiliary Facilities.**

All translators, earth stations and other auxiliary facilities owned, used or held for use by the Smith Entities in connection with the business and operations of the Stations (collectively, the “**Auxiliary Facilities**”).

#### **2.1.15. Permits and Licenses.**

All permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with, any Governmental Authority (other than the FCC) in any jurisdiction, which have been issued or granted to or are owned, used or held for use by the Smith Entities in connection with the business and operations of the Stations (collectively, the “**Permits**”).

#### **2.1.16. Goodwill.**

The business of the Stations as a “going concern”, customer relationships and goodwill, if any (the “**Goodwill**”).

#### **2.1.17. Accounts Receivable.**

Except for any intercompany receivables, the SBG Receivable, the Excluded Contracts and any interest accrued on any of the foregoing, all Accounts Receivable of the Stations (collectively, the “**Transferred Accounts Receivable**”).

#### **2.1.18. Deposits and Prepaid Expenses.**

All deposits and prepaid expenses of the Stations (collectively, the “**Deposits**”).

#### **2.1.19. Contributed Cash**

In addition to the Employee Payment Amount, the Florida Lease Termination Amount and any W/C Cash, cash equal to the amount, if any, by which (a) the sum of (i) Reimbursable Expenses (as defined in the Operating Agreement) and the other expenses of the Company payable by the Company pursuant to the first sentence of Section 12.1 of the Operating Agreement (subject to the terms and conditions thereof, including the caps provided for therein), (ii) an amount equal to One Million Four Hundred Thirteen Thousand Dollars (\$1,413,000) for Bank Fees (as defined in the Operating Agreement) and other expenses of the Company related to the Bank Facility, and (iii) the amount of Transfer Taxes, exceeds (b) the Net

Bank Facility Proceeds (the amount of cash contributed by the Smith Entities pursuant to this Section 2.1.19, the “**Contributed Cash**”). As used herein, “**Net Bank Facility Proceeds**” means Twenty Seven Million Four Hundred Thousand Dollars (\$27,400,000), *less* the amount of cash necessary for the Company to pay (i) the cash portion of the Assumed SBSB Payable pursuant to Section 1(b) of Schedule 2.4.1 hereto, and (ii) the Wells Fargo Indebtedness pursuant to Section 2 of Schedule 2.4.1 hereto.

**2.1.20. Personnel Files.**

All personnel files and records pertaining to the Transferred Employees (the “**Personnel Files**”).

**2.1.21. Benefit Plans.**

All Benefit Plans and assets thereof requested to be transferred by the Company in accordance with Section 8.4.3 (the “**Transferred Benefit Plans**”).

**2.1.22. Employee Payments.**

Cash in the amount of Six Hundred Fifty Thousand Dollars (\$650,000), minus any severance amounts paid to Station Employees by the Smith Entities in accordance with Section 6.3.1(c) after the date hereof and on or prior to the Closing Date, to be used solely and exclusively by the Company pursuant to Section 8.3.5(a), excluding any Retained Liabilities (the “**Employee Payment Amount**”).

**2.1.23. Florida Lease Termination Amount.**

Cash in the amount of Sixty Thousand Dollars (\$60,000) to be used solely and exclusively by the Company pursuant to Section 8.8 (the “**Florida Lease Termination Amount**”).

**2.2. Excluded Assets.**

Notwithstanding anything to the contrary in this Agreement, there shall be excluded from the Assets and retained by the Smith Entities, the following assets (collectively, the “**Excluded Assets**”):

**2.2.1. Cash.**

All cash and cash equivalents owned by the Smith Entities, except for the Contributed Cash, the Employee Payment Amount, the Florida Lease Termination Amount and the W/C Cash.



**2.2.2. Right to Tax Refunds.**

Any and all claims of the Smith Entities with respect to any Tax refunds.

**2.2.3. Certain Books and Records.**

All of (a) the Smith Entities' organizational documents and other corporate records, and originals of account books of original entry, (b) duplicated copies of any books, records, accounts, checks, payment records, Tax records (including payroll, unemployment, real estate and other Tax records) and other similar books, records and information of the Smith Entities relating to the business or operations of the Stations, (c) all records prepared by or on behalf of the Smith Entities in connection with the sale of the Stations, and (d) all records and documents to the extent relating to any Excluded Assets.

**2.2.4. Rights Under this Agreement.**

All of the rights of the Smith Entities under or pursuant to this Agreement or any of the other agreements contemplated hereby or referred to herein.

**2.2.5. Name.**

Except as set forth in Section 8.7, all rights to the name "Smith", "Smith Television", "Smith Broadcasting" and any logo or variation thereof and the goodwill associated therewith.

**2.2.6. Securities.**

All capital stock or other securities of any direct or indirect subsidiary of any Smith Entity.

**2.2.7. WETM Assets.**

All assets, rights, benefits and privileges being conveyed pursuant to the WETM Purchase Agreement, and all rights of the Smith Entities under or pursuant to the WETM Purchase Agreement.

**2.2.8. SBG Receivable.**

The SBG Receivable, any intercompany receivables, any stockholder loans and all interest accrued on any of the foregoing.

**2.2.9. Insurance.**

Except to the extent included in the Transferred Benefit Plans, all contracts of insurance and all insurance plans and the assets thereof (collectively, "**Insurance**").

#### **2.2.10. Excluded Contracts and Other Excluded Assets.**

The contracts, agreements and any other assets listed on Schedule 2.2.10 (collectively, the “**Excluded Contracts**”), and the rights of the Smith Entities under the Excluded Contracts.

#### **2.3. Issuance of LLC Interests.**

In exchange for the conveyances and assignments described herein and in addition to the assumption of Liabilities as set forth in Section 2.4, on the Closing Date, the Company shall issue to the Smith Entities membership interests in the Company as set forth on Schedule 2.3 hereto (the “**LLC Interests**”), free and clear of all Encumbrances (other than any restrictions under securities laws and restrictions under this Agreement, the Bank Facility and related agreements, the Initial Company LLC Agreement and the Operating Agreement), pursuant to the terms and conditions of the Initial Company LLC Agreement, and the Smith Entities agree to accept the LLC Interests from the Company.

#### **2.4. Assumption of Liabilities.**

##### **2.4.1. Assumed Liabilities.**

At the Closing, the Company shall assume, and shall agree to pay, perform and discharge as and when the same become due and payable or are required to be performed all of the following Liabilities of the Smith Entities (the “**Assumed Liabilities**”): (a) all Liabilities of the Stations related to or arising in connection with the business or operation of the Stations as of and after, and relating to the period as of and after, the Closing, (b) all Liabilities under the Station Contracts arising on or after the Closing, (c) all Liabilities of the Stations included in Net Working Capital, including accounts payable and accrued expenses, (d) all Liabilities of the Smith Entities relating to the employment (or termination of employment) of the Transferred Employees, including Liabilities under the Transferred Benefit Plans, related to or arising in connection with the business or operation of the Stations as of and after, and relating to the period as of and after, the Closing and (e) the Liabilities described in Schedule 2.4.1.

##### **2.4.2. Retained Liabilities.**

The Company shall not assume or be liable for any Liabilities of the Smith Entities that are not Assumed Liabilities (all such Liabilities of the Smith Entities, other than the Assumed Liabilities, the “**Retained Liabilities**”), and the Smith Entities shall retain and pay, perform and discharge the Retained Liabilities. The Retained Liabilities shall include:

(a) all Taxes attributable to the Stations for any period, or any portion of any period, ending prior to the Closing Date;

- (b) all Liabilities relating to any of the Excluded Assets;
- (c) except as set forth in Schedule 2.4.1, all intercompany payables;
- (d) any Liabilities of the Smith Entities under this Agreement and the other Smith Entities Documents;
- (e) except to the extent expressly included in the Assumed Liabilities, all Liabilities relating to employment (or termination of employment) of any employee by the Smith Entities; and
- (f) the Liabilities set forth on Schedule 2.4.2(f).

## **2.5. Net Working Capital.**

(a) At least three (3) business days prior to the Closing Date, the Smith Entities shall deliver to the Company an estimated statement of the Net Working Capital of the Stations as of the close of business on the day before the Closing Date (the “**Estimated Net Working Capital Statement**”). The parties acknowledge and agree that on the Closing Date, the Smith Entities shall contribute to the Company, and the Company shall assume from the Smith Entities, the assets and liabilities included in the Net Working Capital of the Stations. If the amount of Net Working Capital of the Stations as reflected on the Estimated Net Working Capital Statement shall be less than One Million Six Hundred Thousand Dollars (\$1,600,000), then the Smith Entities shall contribute the amount of such shortfall in cash to the Company at Closing (the “**W/C Cash**”). For purposes of example only, the parties acknowledge and agree that a calculation of the Net Working Capital of the Stations as of July 31, 2004, is set forth as Schedule 2.5.

(b) Within sixty (60) days following the Closing Date, the Company shall deliver to the Smith Entities a proposed final statement of the Net Working Capital of the Stations as of the Closing Date. If the Company shall fail to deliver such statement to the Smith Entities prior to such date, then the Estimated Net Working Capital Statement shall be final and binding on the parties. If the Company shall deliver such statement to the Smith Entities prior to such date, then such statement shall be final and binding on the Smith Entities unless, within fifteen (15) days after the receipt thereof, the Smith Entities shall make a good faith written objection thereto that is delivered to the Company. If such an objection is made, then the Smith Entities and the Company shall consult with each other and attempt to resolve such objection. If they are unable to resolve such objection within fifteen (15) days of receipt of such objection, then the Smith Entities and the Company shall select a nationally recognized, independent public accounting firm, which accounting firm shall not have been the auditing firm representing the Smith Entities or the Company or any of their Affiliates during the last two (2) years (the “**Arbitrator**”), to prepare and deliver to the Smith Entities and the Company, within thirty (30) days of being selected, the Arbitrator’s own final statement of the Net Working Capital of the Stations as of the Closing Date. Such statement of the Arbitrator shall be binding on the Smith

Entities and the Company. The fees and expenses of the Arbitrator shall be borne equally by the Smith Entities and the Company.

(c) If the Net Working Capital of the Stations as of the Closing Date as reflected on the final Net Working Capital statement determined in accordance with Section 2.5(b) (the “**Final Net Working Capital**”) exceeds Two Million Dollars (\$2,000,000), then the Company shall pay to the Smith Entities the amount of such excess plus any W/C Cash previously contributed to the Company within five (5) business days after the Final Net Working Capital is determined. If the sum of the Final Net Working Capital and any W/C Cash previously contributed to the Company is less than One Million Six Hundred Thousand Dollars (\$1,600,000), then the Smith Entities shall pay to the Company the amount of such shortfall within five (5) business days after the Final Net Working Capital is determined. If the Smith Entities shall contribute any W/C Cash to the Company and the sum of the Final Net Working Capital and such W/C Cash is greater than One Million Six Hundred Thousand Dollars (\$1,600,000), then the Company shall pay to the Smith Entities an amount equal to the lesser of such excess or such amount of W/C Cash within five (5) business days after the Final Net Working Capital is determined. No amount shall be payable pursuant to this Section 2.5(c) if the Final Net Working Capital shall be (i) equal to or greater than One Million Six Hundred Thousand Dollars (\$1,600,000), and (ii) equal to or less than Two Million Dollars (\$2,000,000), except that the Company shall pay to the Smith Entities any W/C Cash previously contributed by the Smith Entities to the Company.

## **2.6. Earnest Money Deposit.**

Simultaneously with the execution and delivery of this Agreement, (a) BV is depositing with the Preferred Investors Seven Hundred Fifty Thousand Dollars (\$750,000) in cash, and (b) SM Investments is depositing with the Preferred Investors Two Hundred Fifty Thousand Dollars (\$250,000) in cash (collectively, the “**Earnest Money Deposit**”). The Earnest Money Deposit shall be held and applied in accordance with the terms and conditions of the Deposit Agreement.

## **ARTICLE 3. REPRESENTATIONS AND WARRANTIES BY THE SMITH ENTITIES**

Except as set forth in the Disclosure Schedules attached hereto, each of the Smith Entities hereby, jointly and severally, represents and warrants to the Company as follows:

### **3.1. Organization and Standing.**

Each Smith Entity is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to do business and is in good standing in any jurisdiction where such qualification is necessary, except for those jurisdictions where the failure to be so qualified would not have, individually or in the aggregate, a Material Adverse Effect. Each Smith Entity has the corporate power, limited liability company power or the limited partnership power, as the case may be, and authority to own, lease and otherwise to

hold and operate its respective Assets, to carry on the business of its respective Stations as now conducted, and to enter into and perform the terms of this Agreement, the other Smith Entities Documents to which it is a party and the transactions contemplated hereby and thereby.

### **3.2. Authorization.**

The execution, delivery and performance of this Agreement and of the other Smith Entities Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate, limited liability company or limited partnership actions, as the case may be, of each Smith Entity (none of which actions has been modified or rescinded and all of which actions are in full force and effect). This Agreement constitutes, and, upon execution and delivery, each other Smith Entities Document to which each Smith Entity is a party, will constitute, a valid and binding agreement and obligation of each Smith Entity, enforceable against each Smith Entity in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

### **3.3. Compliance with Laws.**

The Smith Entities are in compliance in all material respects with all applicable Laws. Except as set forth in Schedule 2.1.1 and Schedule 3.3, the Smith Entities have obtained and hold all material permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with, any Governmental Authorities which are necessary in order to conduct the operations of the Stations as presently conducted, none of which has been modified or rescinded and all of which are in full force and effect.

### **3.4. Consents and Approvals; No Conflicts.**

**3.4.1.** The execution and delivery of this Agreement, and the performance of the transactions contemplated herein by each Smith Entity, does not and will not require any consent, approval, authorization, order, license, certificate, permit, or other action by, or declaration or filing with or notification to, any Person except that certain of the Station Contracts may be assigned to the Company only with the consent of third parties, as specified in Schedule 3.4.1.

**3.4.2.** The execution and delivery of this Agreement, and the performance of the transactions contemplated herein by each Smith Entity, will not require any consent, approval, authorization or other action by, or filing with or notification to, any Governmental Authority, except as follows: (a) consents to the assignment of the FCC Licenses to the Company by the FCC, and (b) filings, if any, with respect to real estate transfers and real estate transfer taxes.

**3.4.3.** Except as set forth in Schedule 3.4.3, assuming all consents, approvals, authorizations and other actions described in Section 3.4.1 and Section 3.4.2 have been obtained

and all filings and notifications described in Section 3.4.1 and Section 3.4.2 have been made, the execution, delivery and performance of this Agreement and the other Smith Entities Documents by each applicable Smith Entity do not and will not (a) conflict with or violate any material Law applicable to each Smith Entity, the Assets or the Stations or by which any of the Assets or the Stations is subject or affected, (b) conflict with or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, result in the acceleration of the rights of any party under, or create in any party the right to terminate, modify or cancel any material contract or agreement to which any Smith Entity is a party or by which each Smith Entity is bound or to which any of the Assets or the Stations is subject or affected including any Station Contract, (c) result in the creation of any Encumbrance upon the Assets, or (d) conflict with or violate the organizational documents of any Smith Entity.

### **3.5. Financial Statements; Undisclosed Liabilities.**

**3.5.1.** Attached to Schedule 3.5.1 are (a) the unaudited balance sheets of STNY and SBV as of June 30, 2004 (the “**Current Balance Sheet**”), (b) the unaudited statements of operations and cash flows of STNY and SBV as of and for the six (6) month period ended June 30, 2004, and (c) the audited balance sheets, statements of operations, shareholders’ or members’ equity and cash flows of STNY and SBV as of and for the years ended December 31, 2003, and December 31, 2002. The financial statements referred to in this Section 3.5.1 present fairly in all material respects the financial position of STNY, SBV and their respective Subsidiaries as of the respective dates and the results of operations for the respective periods indicated in accordance with GAAP (except that the unaudited financial statements referred to in this Section 3.5.1 do not contain all footnotes required under GAAP), subject to year-end audit adjustments, including (i) an entry as required by SFAS No. 109, Accounting for Income Taxes; (ii) an entry as required by SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets in regard to the sale of WETM; (iii) an entry as required by SFAS No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity in regard to the redeemable preferred stock; (iv) an entry as required by SFAS No. 142, Goodwill and Other Intangible Assets in regard to an update of the annual testing that occurred at December 31, 2003; (v) an entry based on a final assessment of the transaction costs related to general restructuring, equity issuance and debt issuance; (vi) an entry to reflect the liquidation of redeemable preferred stock; and (vii) a vacation accrual entry.

**3.5.2.** There exist no Liabilities of the Stations relating to, or arising out of, the business or operations of the Stations, contingent or absolute, matured or unmatured, known or unknown, except (a) as reflected on the Current Balance Sheet, (b) obligations under the Station Contracts (but not liabilities for breaches thereof), and (c) for Liabilities that were incurred after June 30, 2004, in the ordinary course of business consistent with past practice or otherwise in accordance with the terms and conditions of this Agreement (none of which is a material liability for breach of contract, breach of warranty, tort or infringement or a claim or lawsuit).

**3.5.3.** The broadcast cash flow of the Stations for the twelve (12) month period ended June 30, 2004, was not less than Two Million Three Hundred Thousand Dollars (\$2,300,000).

**3.6. Absence of Certain Changes or Events.**

Since June 30, 2004, through the date hereof, there has been no Material Adverse Effect. Since June 30, 2004, the Smith Entities have conducted the business of the Stations in the ordinary course of business consistent with past practice, and the Smith Entities have not (a) incurred loss of, or injury to, any of the Assets as the result of any fire, explosion, flood, windstorm, earthquake, labor trouble, riot, accident, act of God or public enemy or armed forces, or other casualty; (b) incurred, or become subject to, any Liability with respect to the Stations, except current Liabilities incurred in the ordinary course of business consistent with past practice; (c) mortgaged, pledged or subjected to any Encumbrance any of the Assets other than Encumbrances in connection with Liabilities arising under any credit or loan agreement between the Smith Entities and their lenders; (d) sold, exchanged, transferred or otherwise disposed of any Assets, or canceled any debts or claims; (e) entered into any transactions with respect to the Stations other than in the ordinary course of business consistent with past practice; (f) made any material change in any method of accounting or accounting practice with respect to the Stations; (g) made or committed to make any payments or other transfers in connection with, or in contemplation of, the transactions contemplated by this Agreement or the other Smith Entities Documents, or (h) made any agreement to do any of the foregoing with respect to the Stations. As of June 30, 2004, all impairments of the Smith Entities' film assets have been recorded in the books and records of the Smith Entities in accordance with GAAP.

**3.7. Absence of Litigation.**

Except as set forth in Schedule 3.7, there is no action, suit, investigation, claim, arbitration or litigation pending or, to the knowledge of the Smith Entities, threatened against the Smith Entities with respect to the Stations or the Assets, and none of the Smith Entities is subject to any outstanding injunction, judgment, order, decree, ruling or charge, except any of the foregoing affecting the broadcast television industry generally.

**3.8. Assets.**

The Excluded Assets, the FCC Licenses, the Real Property, the Leaseholds, the Tangible Personal Property, the Intellectual Property, the Intangibles, the Station Contracts, the Vehicles, the Files and Records, the FCC Files, the Auxiliary Facilities, the Permits, the Goodwill, the Transferred Accounts Receivable, the Deposits, the Contributed Cash, the Net Working Capital of the Stations, the Employee Payment Amount, the Florida Lease Termination Amount, the W/C Cash, the Personnel Files and the Transferred Benefit Plans constitute all of the assets or property owned, leased, used or held for use in the business or operations of the Stations as presently conducted by the Smith Entities. The Smith Entities are the owners of, and have good title to, the Assets free and clear of any Encumbrances, except for and subject only to (a) the Permitted Encumbrances, (b) those Encumbrances listed in Schedule 3.8, which shall be

discharged and removed on or prior to the Closing Date, and (c) as to the Real Property, those Encumbrances listed in Schedule 3.10 which, to the extent so indicated in Schedule 3.10, shall be discharged and removed on or prior to the Closing Date. At the Closing, the Company shall acquire good title to, and all right, title and interest in and to the Assets, free and clear of all Encumbrances, except for the Permitted Encumbrances.

### **3.9. FCC Matters.**

The Smith Entities hold the FCC Licenses listed as held by the Smith Entities in Schedule 2.1.1. The FCC Licenses constitute all of the licenses, permits and authorizations of the FCC that are necessary or required for and/or used in the business and operations of the Stations as they are currently being operated. The FCC Licenses are valid and in full force and effect through the dates set forth in Schedule 2.1.1. The Stations have been operated by the Smith Entities in all material respects in accordance with the terms of the FCC Licenses and the Communications Laws. Except as set forth on Schedule 3.9, no application, action or proceeding is pending for the renewal or modification of any of the FCC Licenses, and, except for actions or proceedings affecting television broadcast stations generally, no application, complaint, action or proceeding is pending or, to the Smith Entities' knowledge, threatened that may result in the (a) the revocation, modification, non-renewal or suspension of any of the FCC Licenses, (b) the issuance of a cease-and-desist order, (c) the imposition of any administrative or judicial sanction with respect to the Stations or (d) the denial of an application for renewal. The Smith Entities have no knowledge of any facts, conditions or events relating to the Smith Entities or the Stations that would cause the FCC to deny the assignment of the FCC Licenses as provided for in this Agreement. The Smith Entities have filed with the FCC all reports, forms and statements required by the FCC to be filed by the Smith Entities relating to the Stations.

### **3.10. Real Property.**

**3.10.1.** The Smith Entities have good and marketable title to the Real Property listed in Schedule 2.1.2, free and clear of all Encumbrances, except for (a) those items listed in Schedule 3.10 (which, to the extent so indicated on Schedule 3.10, shall be discharged and removed on or prior to the Closing Date), and (b) Permitted Encumbrances. Schedule 2.1.2 sets forth each parcel of real property owned by the Smith Entities and used or held for use in the operation of the Stations.

**3.10.2.** The Smith Entities have a valid leasehold interest in all real property listed as leased by the Smith Entities in Schedule 2.1.2 (the "**Leased Property**"). Schedule 2.1.2 lists all leases, subleases and other occupancy agreements (the "**Leases**") pursuant to which any of the Leased Property is leased by the Smith Entities. The Smith Entities are the owners and holders of all Leaseholds which cover all the Leased Property purported to be granted by the Leases. Each Lease is in full force and effect and constitutes a legal, valid and binding obligation of, and is legally enforceable against each Smith Entity which is a party to such lease and, to the knowledge of such Smith Entity, each other party thereto, and grants the leasehold interest it purports to grant. The Smith Entities have complied with all of the material provisions of the Leases and are not in default thereunder in any material respect, and there has not occurred any



event which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute such a default by the Smith Entities or, to the knowledge of the Smith Entities, any other parties to the Leases.

**3.10.3.** The Real Property listed in Schedule 2.1.2, the Leased Property listed in Schedule 2.1.2 and the rights arising under the documents listed on Schedule 3.10.3, constitute all of the real property owned, leased, used or held for use in the business or operations of the Stations. Except as set forth in Schedule 3.10, pursuant to the rights granted to third parties under the leases listed in Schedule 2.1.2, and except for any Permitted Encumbrances, other than the Smith Entities, no Person occupies or has the current or future right to occupy, the Real Property or the Leased Property in a manner that would infringe the Smith Entities' right with respect thereto.

**3.10.4.** All buildings, structures, fixtures and other improvements on the Real Property or the Leased Property presently used by the Smith Entities are in sufficient operating condition and adequate repair (ordinary wear and tear excepted) for the purposes to which they are currently devoted.

**3.10.5.** To the knowledge of the Smith Entities, no portion of the Real Property or the Leased Property or any building, structure, fixture or improvement thereon is the subject of, or affected by, any condemnation, eminent domain or inverse condemnation proceeding currently instituted or pending.

**3.10.6.** The Smith Entities have delivered to the Company copies of all title policies and surveys with respect to the Real Property that are in the possession of the Smith Entities or any Affiliate of the Smith Entities.

### **3.11. Condition of Tangible Assets.**

Except as set forth in Schedule 3.11, all tangible Assets presently in use are in good operating condition and good repair (ordinary wear and tear excepted) for the purposes to which they are currently devoted. Schedule 2.1.3 contains a listing of each item of Tangible Personal Property with a book value in excess of Fifty Thousand Dollars (\$50,000).

### **3.12. Intellectual Property.**

Schedule 2.1.4 contains a true, correct and complete listing of all registered or applied-for Intellectual Property owned or licensed by or registered in the name of any Smith Entity that is used in the business and operations of the Stations. Except as set forth in Schedule 3.4.1, all Intellectual Property owned or licensed by the Smith Entities and used or held for use in the business and operations of the Stations is transferable to the Company by the sole act and deed of the Smith Entities. Except as set forth in Schedule 3.4.1, no consent on the part of, approval, authorization, order, license, certificate, permit or other action by, or declaration of, notice to or filing with, any other Person is necessary in connection with the transfer to the Company of such Intellectual Property. No royalty is payable to any Person as a result of or with

respect to the use of any Intellectual Property by any Smith Entity. The Smith Entities own or possess pursuant to a valid and enforceable license, all rights to use all such Intellectual Property material to the conduct of the business of the Stations. The Smith Entities do not have any knowledge and the Smith Entities have not received any notice to the effect that the conduct of the business of the Stations may infringe, misappropriate or conflict with any Intellectual Property right or other legally protectable right of another. The Smith Entities have the right to the use of the call letters set forth in Section 2.1.4 pursuant to the Communications Laws. The Smith Entities have no knowledge of any claim by another Person contesting the validity, enforceability, use or ownership of any Intellectual Property or any grounds for the same.

### **3.13. Reports and Records.**

All material returns, reports and statements relating to the Stations required to be filed by the Smith Entities with the FCC or any other Governmental Authority have been filed and when filed were correct and complete in all material respects. All reports, returns and statements relating to the Stations and required to be filed with the FCC shall continue to be filed by the Smith Entities on a current basis until the Closing Date, and will be correct and complete in all material respects when filed. All documents required by the Communications Laws to be placed in the Stations' public files by the Smith Entities has been placed and are being held in such files. All logs and business records of every type and nature relating to the business and operations of the Stations have been maintained in all material respects in accordance with the Communications Laws.

### **3.14. Station Contracts.**

**3.14.1.** The Station Contracts and the Leases are all of the contracts and agreements relating to the Assets, to the Stations or to the business and operations thereof. Complete and correct copies of all Station Contracts have been made available to the Company.

**3.14.2.** Except as set forth in Schedule 3.4.1 or Schedule 3.14.2, (a) each Station Contract is in full force and effect; (b) the Smith Entities are not in breach or default of the terms of any Station Contract in any material respect; (c) none of the material rights of the Smith Entities under any Station Contract will be subject to termination or modification, nor will a default occur, as a result of the consummation of the transactions contemplated hereby; and (d) to the knowledge of the Smith Entities, no other party to any Station Contract is in material breach or default of the terms thereunder.

**3.14.3.** As of August 1, 2004, the total amount of the Time Sales Agreements is as set forth on Schedule 3.14.3.

**3.14.4.** Schedule 2.1.5 contains a listing of all Program Contracts that require payments of Fifty Thousand Dollars (\$50,000) or more per contract per year and One Hundred Fifty Thousand Dollars (\$150,000) or more per year in the aggregate. Schedule 2.1.6 contains a listing of all Trade-Out Agreements under which the value of commercial air time to be run by the Stations is Fifty Thousand Dollars (\$50,000) or more per contract per year or One Hundred

Fifty Thousand Dollars (\$150,000) or more per year in the aggregate. Schedule 2.1.10 contains a listing of all Operating Contracts that require payments of Fifty Thousand Dollars (\$50,000) or more per contract per year and One Hundred Fifty Thousand Dollars (\$150,000) or more per year in the aggregate.

### **3.15. Taxes.**

Except as set forth in Schedule 3.15, the Smith Entities have duly filed all the Smith Entities Tax Returns required to be filed by the Smith Entities on or before the Closing Date where the failure to file such Smith Entities Tax Returns on a timely basis could result in an Encumbrance on the Assets or the imposition on the Company of any material Liability for Taxes, and such Tax Returns were true and correct in all material respects. In the case of any of the Smith Entities Tax Returns which have received an extension for their date of filing, such Smith Entities Tax Returns will be considered due on, and not considered required to be filed before, the extended due date. Except as set forth in Schedule 3.15, each Smith Entity: (a) has paid all Taxes due or payable by any of the Smith Entities pursuant to the Smith Entities' Tax Returns; or (b) has established adequate reserves (in conformity with GAAP consistently applied) for the payment of such Taxes in each case except where the failure to pay or contest such amounts would not result in a material Encumbrance on the Assets or the imposition on the Company of any material Liability for Taxes. No Smith Entity has waived any statute of limitations in respect of Taxes or agreed to an extension of time with respect to any Tax assessment or deficiency. To the knowledge of the Smith Entities, there are no unresolved claims raised, or investigations pending, by any Governmental Authority concerning the Tax Liability of the Smith Entities.

### **3.16. Employee Benefit Plans.**

**3.16.1.** Schedule 3.16 lists all Plans and Benefit Arrangements maintained by or contributed to by the Smith Entities, or with respect to which the Smith Entities have any liability, for the benefit of the employees of the Stations (collectively, the "**Benefit Plans**"). Each Benefit Plan has been maintained in substantial compliance with its terms and with the requirements prescribed by applicable Law, including ERISA and the Code.

**3.16.2.** Schedule 3.16 sets forth a list of all Qualified Plans. All Qualified Plans and any related trust agreements or annuity agreements (or any other funding document) have been maintained in compliance with ERISA and the Code (including the requirements for Tax qualification described in Section 401 thereof). The trusts established under such Plans are exempt from federal income taxes under Section 501(a) of the Code.

**3.16.3.** Schedule 3.16 lists all funded Welfare Plans that provide benefits to current employees of the Smith Entities or its beneficiaries. The funding under each Welfare Plan does not exceed and has not exceeded the limitations under Sections 419A(b) and 419A(c) of the Code. The Smith Entities are not subject to taxation on the income of any Welfare Plan's welfare benefit fund (as such term is defined in Section 419(e) of the Code) under Section 419A(g) of the Code.

**3.16.4.** Except as required by applicable Law and except as set forth in Schedule 3.16, the Smith Entities have no post-employment medical, life insurance or other benefits promised, provided or otherwise due now or in the future to current, former or retired employees of the Stations. There have been no failures to provide continuation coverage as required by Section 4980B(f) of the Code.

**3.16.5.** Except as set forth in Schedule 3.16, the Smith Entities have (a) filed or caused to be filed all returns and reports on the Plans that they are required to file and (b) paid or made adequate provision for all fees, interest, penalties, assessments or deficiencies that have become due pursuant to those returns or reports or pursuant to any assessment or adjustment that has been made relating to those returns or reports. All other fees, interest, penalties and assessments that are payable by or for the Smith Entities have been timely reported, fully paid and discharged. There are no unpaid fees, penalties, interest or assessments due from the Smith Entities or from any other person that are or could become an Encumbrance on any Asset or could otherwise adversely affect the business of the Stations or the Assets. The Smith Entities have collected or withheld all amounts that are required to be collected or withheld by the Smith Entities to discharge their obligations, and all of those amounts have been paid to the appropriate Governmental Authority or set aside in appropriate accounts for future payment when due. The Smith Entities have furnished to the Company true and complete copies of all documents (including any amendment thereto) setting forth the terms and funding of each written Benefit Plan and complete descriptions of any unwritten Benefit Plans, along with copies of any employee handbooks or similar documents describing such Benefit Plans. The Smith Entities are not a party to and do not have in effect or to become effective after the date of this Agreement any arrangement or other scheme which will become a Benefit Plan or any amendment to a Benefit Plan.

**3.16.6.** The Smith Entities have not incurred any material Liability to the Pension Benefit Guaranty Corporation (other than premium payments) or otherwise under Title IV of ERISA, including any withdrawal liability, or under the Code, with respect to any employee pension plan covering employees of the Stations that either the Smith Entities (or any other Person that, together with the Smith Entities, is treated as a single employer under Section 414 of the Code) maintain or have maintained or to which any of the Smith Entities contributes, has contributed or is required to contribute. None of the Smith Entities (or any other Person that, together with the Smith Entities, is treated as a single employer under Section 414 of the Code) is required to contribute to, or has been required to contribute within the last six (6) years to, any Plan subject to Title IV of ERISA, any multiemployer plan (as defined in Section 3(37) of ERISA) or any multiple employer plan as described in Section 413(c) of the Code.

**3.16.7.** The Smith Entities are not aware of the existence of any governmental inspection, investigation, audit or examination of any Benefit Plan or of any facts which would lead them to believe that any such governmental inspection, investigation, audit or examination is pending or threatened. There exists no action, suit or claim (other than routine claims for benefits) with respect to any Benefit Plan pending or threatened against any such plan or

arrangement, and the Smith Entities possess no knowledge of any facts that would give rise to any such action, suit or claim.

**3.16.8.** (a) Except as disclosed on Schedule 3.16.8(a), no material payment will become due to any director, employee, consultant or independent contractor of the Smith Entities solely as a result of the execution of this Agreement or consummation of the transactions contemplated hereby.

(b) Except as disclosed on Schedule 3.16.8(b), there will be no material increase in benefits otherwise payable under any Benefit Plan solely as a result of the execution of this Agreement or consummation of the transactions contemplated hereby.

### **3.17. Labor Relations.**

**3.17.1.** Except as set forth in Schedule 3.17.1, none of the Smith Entities is bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any employee or any consultant or independent contractor providing personal services, that can not be terminated without penalty or continuing obligation upon notice of thirty (30) days or less. Except as set forth in Schedule 3.17.1, there are no and have not been within the last five (5) years any strikes, work stoppages, grievance proceedings, union organization efforts, or other controversies pending or threatened between any Smith Entity and any union or collective bargaining unit representing such employees. Each Smith Entity is in compliance in all material respects with all Laws relating to the employment or the workplace, including provisions relating to wages, hours, collective bargaining, safety and health, work authorization, equal employment opportunity, nondiscrimination, immigration and the withholding of income and payroll taxes, unemployment compensation, worker's compensation, employee privacy and right to know and social security contributions. Except as set forth in Schedule 3.17.1 hereto, there are no collective bargaining agreements relating to the Stations or the business and operations thereof, none of the Smith Entities has agreed to recognize any union or other collective bargaining unit, no union or collective bargaining unit has been certified as representing any employees of the Smith Entities, and within the last five (5) years, no labor union has requested or sought to represent any of the employees, representatives or agents of the Smith Entities. There are no pending or threatened challenges, investigations or disputes regarding any alleged misclassification of employees of any of the Smith Entities as independent contractors. There are no proceedings, complaints, claims or charges outstanding or threatened, and there are no orders, decisions, directions or convictions currently registered or outstanding, against or affecting the Smith Entities relating to the alleged violation of any legal requirement pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Authority. None of the Smith Entities has prepared, and none is required to prepare, any affirmative action plan applicable to any of the employees of the Smith Entities.

**3.17.2.** Schedule 3.17.2 sets forth a true and complete list of all individuals who are actively providing services to the Stations and each such individual's position, salary, leave status (if applicable) and date of hire.

**3.18. Environmental Matters.**

**3.18.1.** Except as disclosed on Schedule 3.18, the Smith Entities have not received any oral or written notice, report or information regarding any Environmental Claims or liabilities (whether accrued, absolute, contingent, unliquidated or otherwise) or any corrective, investigatory or remedial obligations arising under Environmental and Safety Requirements which relate to the Stations.

**3.18.2.** To the Smith Entities' knowledge, no property or facility owned, occupied or operated by any Smith Entity with respect to the Stations: (a) underground storage tanks or surface impoundments; (b) except as disclosed on Schedule 3.18, asbestos-containing material in any form or condition; (c) materials or equipment containing polychlorinated biphenyls; or (d) landfills.

**3.18.3.** Except as disclosed on Schedule 3.18, to the Smith Entities' knowledge, none of the Smith Entities, with respect to the Stations, has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled or Released any Hazardous Materials or owned, occupied or operated any facility or property, so as to give rise to any past or present Environmental Claims or liabilities of such Smith Entity for response costs, natural resource damages or attorneys' fees pursuant to CERCLA or any other Environmental and Safety Requirements.

**3.18.4.** No Environmental Lien has attached to any property owned, leased or operated by any Smith Entity with respect to the Stations.

**3.19. Transactions With Affiliates.**

Except as set forth in Schedule 3.19 and the Excluded Assets, no Smith Entity is a party, directly or indirectly, to any contract, lease, arrangement or transaction which is included in the Assets, whether for the purchase, lease or sale of property, for the rendition of services or otherwise, with any Affiliate of any Smith Entity, or any officer, director, employee, proprietor, partner or shareholder of any Smith Entity.

**3.20. Insurance.**

Schedule 3.20 contains a list and brief summary of all policies of title, property, fire, casualty, liability, life, workmen's compensation, libel and slander, and other forms of insurance of any kind relating to the Assets or the business and operations of the Stations and held by the Smith Entities. All such policies: (a) are in full force and effect; (b) are sufficient for compliance in all material respects by the Smith Entities with all requirements of Law and of all

material agreements to which each Smith Entity is a party; and (c) are valid, outstanding, and enforceable policies.

#### **ARTICLE 4.**

#### **REPRESENTATIONS AND WARRANTIES BY THE COMPANY**

The Company represents and warrants to the Smith Entities as follows:

##### **4.1. Organization and Standing.**

The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business as a foreign limited liability company where such qualification is necessary, unless the failure to be so qualified would not materially and adversely affect the Company's ability to consummate the transactions contemplated by this Agreement. The Company has the full power and authority to enter into and perform the terms of this Agreement and the other the Company Documents and to carry out the transactions contemplated hereby and thereby.

##### **4.2. Authorization.**

The execution, delivery and performance of this Agreement and of the other Company Documents, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary actions of the Company (none of which actions has been modified or rescinded and all of which actions are in full force and effect). This Agreement constitutes, and upon execution and delivery each other Company Document will constitute, a valid and binding agreement and obligation of the Company, enforceable against the Company in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

##### **4.3. Compliance with Laws.**

The Company has obtained and holds all material permits, approvals, orders, authorizations, consents, licenses, certificates, franchises, exemptions of, or filings or registrations with, any Governmental Authorities (none of which will have been modified or rescinded and all of which are in full force and effect) which are necessary in order to conduct the operations of the Stations as the Company intends to conduct them and to own, use and maintain the Assets, subject to obtaining the FCC Orders.

##### **4.4. Consents and Approvals; No Conflicts.**

**4.4.1.** The execution and delivery of this Agreement, and the performance of the transactions contemplated herein by the Company, does not and will not require any consent, approval, authorization or other action by, or filing with or notification to, any Person or

Governmental Authority where the failure to make such filing or obtain such consent would reasonably be expected to have a material adverse effect on the Company's ability to consummate the transactions contemplated by this Agreement, except as follows: (a) approvals of the assignment of the FCC Licenses to the Company by the FCC, and (b) certain of the Station Contracts may be assigned only with the consent of third parties.

**4.4.2.** Assuming all consents, approvals, authorizations and other actions described in Section 4.4.1 have been obtained and all filings and notifications described in Section 4.4.1 have been made, the execution, delivery and performance of this Agreement and the other Company Documents by the Company do not and will not (a) conflict with or violate any Law applicable to the Company, (b) conflict with or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) of any contract or agreement to which the Company is a party or by which the Company is bound, or (c) conflict with or violate the organizational documents of the Company.

#### **4.5. Qualification of the Company.**

The Company is legally, technically, financially and otherwise qualified under the Communications Laws to acquire and operate the Stations. To the Company's knowledge, there are no facts or proceedings which would reasonably be expected to disqualify the Company under the Communications Laws or otherwise from acquiring or operating the Stations or would cause the FCC not to approve the assignment of the FCC Licenses to the Company. No waiver of any FCC rule or policy is necessary to be obtained for the grant of the applications for the assignment of the FCC Licenses to the Company.

#### **4.6. Unitholder Agreements.**

Except as contemplated by this Agreement, the Operating Agreement and the Securities Purchase Agreement, there are no agreements, written or oral, between the Company and any holder of its limited liability company interests, or among any holders of its limited liability company interests, relating to the acquisition (including rights of first refusal or preemptive rights), disposition, voting, redemption, repurchase or transfer of any limited liability company interests, other than the Employment Agreements (as defined in the Operating Agreement).

#### **4.7. Issuance of LLC Interests.**

The issuance, sale and delivery of the LLC Interests at the Closing in accordance with this Agreement have been duly authorized by all necessary limited liability company action on the part of the Company. The LLC Interests when so issued, sold and delivered against payment therefor in accordance with the provisions of this Agreement will be duly and validly issued and will not be subject to any liens or other encumbrances (other than any restrictions under securities laws and restrictions under this Agreement, the Bank Facility and related agreements, the Initial Company LLC Agreement and the Operating Agreement).



#### **4.8. Conduct of Business.**

Other than transactions in connection with the formation of the Company, the issuance of LLC Interests to the Smith Entities pursuant to this Agreement and activities in connection with the negotiation of this Agreement, the Bank Facility, the Deposit Agreement, the Operating Agreement, the Remedies Agreement and the agreements referred to herein and therein or related to any of the foregoing, the Company has not conducted any business as of the date hereof.

#### **4.9. Contracts.**

Other than the Bank Facility, the Deposit Agreement, the JPM Notes, the Subordination Agreement, the Remedies Agreement and this Agreement, there are no contracts, licenses, consents or other agreements to which the Company is a party or by which the Company may be bound, other than as contemplated by this Agreement.

#### **4.10. Absence of Liabilities.**

Other than Liabilities under the Bank Facility, this Agreement, the Operating Agreement, the JPM Notes, the Remedies Agreement and Liabilities assumed pursuant to this Agreement, the Company has no Liabilities.

#### **4.11. Absence of Litigation.**

There is no action, suit, investigation, claim, arbitration or litigation pending or, to the knowledge of the Company, threatened against the Company.

### **ARTICLE 5. FCC CONSENT**

Within two (2) business days of the date hereof, the Company shall jointly file with each of STNYLH, SBSB, STLH and SBV an application with the FCC requesting the consent of the FCC to the assignment to SMLLC License Sub of the FCC Licenses for each of the Stations held, respectively, by each of STNYLH, SBSB, STLH and SBV, such applications attached hereto as Exhibit A (collectively, the “**Assignment Applications**”). The Assignment Applications shall specifically request that the FCC grant its consent concurrently with respect to all the Stations. The Smith Entities and the Company will diligently take, or fully cooperate in the taking of, all necessary and appropriate steps, and provide any additional information reasonably requested by the FCC in order to obtain promptly the requested consents and approvals of the Assignment Applications by the FCC. If there are any regulatory impediments to the Closing, the Company and the Smith Entities shall take all commercially reasonable actions to remove such impediments.

### **ARTICLE 6. COVENANTS AND AGREEMENTS OF THE SMITH ENTITIES**

The Smith Entities covenant and agree with the Company as follows:

**6.1. Negative Covenants.**

Pending and prior to the Closing Date, the Smith Entities will not, without the prior written consent of the Company, do or agree to do any of the following with respect to the Stations or the Assets:

**6.1.1. Additional Agreements.**

Except as contemplated in Section 6.3, acquire or enter into any network affiliation agreements, local marketing arrangements, joint operating agreements, time brokerage agreements, collective bargaining agreements or other contracts or agreements, or renew, extend, amend, alter, modify or otherwise change any of the Leases or the Station Contracts, including the Network Affiliation Agreements; provided, however, that the Smith Entities shall be permitted, without the Company's prior consent, to enter into new agreements for the sale of commercial airtime on the Stations for cash in the ordinary course of business consistent with past practice (the "**Additional Agreements**").

**6.1.2. Actions Affecting FCC Licenses.**

Take any action which may jeopardize the validity or enforceability of or rights under any of the FCC Licenses or Network Affiliation Agreements.

**6.1.3. Dispositions.**

Sell, encumber, assign, lease, license or otherwise transfer or dispose of any of the Assets.

**6.1.4. Compromise Debts or Claims.**

Cancel or compromise any debt or claim or waive or release any material right of any of the Smith Entities to the extent such debt, claim or material right is included in the Assets.

**6.1.5. Amend Certain Agreements.**

Amend, supplement, modify, waive or terminate the WETM Purchase Agreement, the Harron Redemption Agreement, the Preferred Investors Redemption Agreement or the Wells Fargo Amendment.

**6.1.6. Adverse Actions.**

Take any actions which would adversely affect the ability of the Smith Entities to consummate the transactions contemplated by this Agreement.

**6.1.7. Agree to the Foregoing.**

Agree to do anything prohibited by this Section 6.1.

**6.2. Affirmative Covenants.**

Pending and prior to the Closing Date, the Smith Entities will:

**6.2.1. Preserve Existence.**

Preserve their respective corporate and limited liability company existences, as applicable.

**6.2.2. Maintain FCC Licenses.**

Maintain the validity of the FCC Licenses, and comply in all material respects with all requirements of the FCC Licenses and the Communications Laws and all other applicable Laws.

**6.2.3. Network Affiliation Agreements.**

Use reasonable efforts to maintain in full force and effect the present Network Affiliation Agreements for the Stations (and any and all modifications and renewals thereof).

**6.2.4. Amend Certain Agreements.**

Comply with and perform the terms of the WETM Purchase Agreement, the Harron Redemption Agreement, the Preferred Investors Redemption Agreement and the Wells Fargo Amendment.

**6.2.5. Operate in the Ordinary Course.**

Subject to the terms and conditions of this Agreement (including Section 6.1), cause the Stations to operate in the ordinary course of business, consistent with past practice.

**6.2.6. Preserve the Business.**

Use their commercially reasonable efforts to preserve their current business, operations, and goodwill, including preserving their existing relationships with Persons having business with the Smith Entities (including customers, advertisers, suppliers, employees, programmers and networks).

**6.2.7. Maintain Assets.**

Maintain all of the Assets substantially in their current condition, ordinary wear and tear excepted.

**6.2.8. Maintain Insurance.**

Maintain insurance upon all of the Assets and the business and operations of the Smith Entities as in effect on the date hereof.

**6.2.9. Maintain Books and Records.**

Maintain the books of account and records of the Smith Entities in the ordinary course of business, consistent with past practice.

**6.2.10. Collections and Payments.**

Collect all accounts receivable and pay all accounts payable utilizing historically customary procedures and working capital practices and without discounting such accounts receivable or accelerating or delaying payment of such accounts payable, other than in the ordinary course of business, consistent with past practice.

**6.2.11. Comply with Law.**

Comply in all material respects with all applicable laws.

**6.2.12. Access.**

Subject to Section 8.9, give the Company and its employees and representatives during normal business hours and with reasonable prior notice, reasonable access to the Assets and to all other books, records and documents of the Smith Entities relating to the Stations for the purpose of review and inspection, including conducting any surveys of Real Property (which right of access shall not be exercised in any way which would unreasonably interfere with the normal operations, business or activities of the Stations), and furnish or cause to be furnished to the Company and its employees and representatives, upon reasonable notice, all information with respect to the business and operation of the Stations that the Company may reasonably request.

**6.2.13. Facilities Upgrades.**

(a) Pay all amounts owed to vendors for the equipment and related matters required in connection with the digital television upgrade, the Parkervision project and other facilities upgrades at television station KEYT(TV) and use commercially reasonable efforts to install all such equipment, solely in all cases as set forth on Schedule 6.2.13;

(b) (i) enter into contracts to purchase equipment for the digital television upgrade at television station WKTV(TV) and make deposits (but pay no other amounts) with the vendors of such equipment as required by such contracts, which contracts shall be acceptable to the Company in its sole discretion and substantially consistent with the "Estimated Cost" set forth in Schedule 6.2.13, and (ii) pay all amounts owed to vendors for the Parkervision project equipment and related matters required in connection with the other facilities upgrades at television station WKTV(TV) and use commercially reasonable efforts to install all such equipment, solely in all cases as set forth on Schedule 6.2.13; and

(c) pay all amounts owed to vendors for the equipment and other items for television stations WFFF-TV and KIMO(TV), solely in all cases as set forth on Schedule 6.2.13.

#### **6.2.14. Financial and Operating Information.**

Furnish to the Company and its representatives (a) within thirty (30) days (forty-five (45) days in the case of a month that is the end of one of the Smith Entities' fiscal quarters) after the end of each month ending between the date of this Agreement and the Closing Date a consolidated balance sheet, income statement and statement of cash flow for the Stations for the month just ended, together with such supporting materials as the Company may reasonably request and (b) such other financial or operating information as the Company may reasonably request; provided, that the furnishing of such information shall not unreasonably disrupt the personnel or operations of the Smith Entities. All financial statements delivered pursuant to Section 6.2.14(a) shall be in compliance with the representations and warranties with respect to unaudited financial statements in Section 3.5.1.

#### **6.3. Covenants Related to Employees.**

**6.3.1.** Pending and prior to the Closing Date, the Smith Entities will not, without the prior written consent of the Company (a) change or agree to change the compensation for or the Benefits Plans applicable to employees of the Stations, except for changes made in the ordinary course of the business of the Stations, (b) enter into any contract with an individual to provide services to the Stations, other than a contract terminable at will without penalty or further obligation or (c) amend or modify the amount of any severance or change of control benefit or pay any amounts other than in accordance with the terms of the Benefit Plans or under the terms of any Employment Contracts.

**6.3.2.** Pending and prior to the Closing Date, the Smith Entities will (a) use reasonable efforts to keep available the services of employees of the Stations and preserve the goodwill of such employees and others providing personal services to the Smith Entities, and (b) cause to remain in full force and effect the Transferred Benefit Plans and the policies of insurance related to such Transferred Benefit Plans.

## ARTICLE 7. ACCESS

### 7.1. Smith Entities Access.

In addition to any access and information rights under the Operating Agreement, for a period of seven (7) years from and after the Closing Date, the Company shall cause to be afforded to representatives of the Smith Entities reasonable access during normal business hours to the offices, books and records, contracts and reports of the Stations which relate to the operations of the Stations during the period during which the Stations were owned by the Smith Entities and that are included in the Assets (the “**Pre-Closing Date Records**”), as the Smith Entities shall from time to time reasonably request for the Smith Entities’ reasonable business purposes, and shall provide to the Smith Entities copies of any Pre-Closing Date Records reasonably requested by the Smith Entities. Any costs incurred by the Company in connection with any such copying shall be paid by the Smith Entities. All requests for access to the Pre-Closing Date Records shall be made to such representatives as the Company shall designate in writing, who shall be solely responsible for coordinating all such requests and all access permitted hereunder. For a period of seven (7) years from and after the Closing Date, the Company shall not dispose of any Pre-Closing Date Records; provided, however, that the Company may destroy any Pre-Closing Date Records upon providing thirty (30) days written notice to the Smith Entities of an intent to destroy such Pre-Closing Date Records; provided, further, that the Company, at the Smith Entities’ expense, shall transfer to the Smith Entities such Pre-Closing Date Records, rather than destroy them, if before the expiration of such thirty (30) day notice period, the Smith Entities direct the Company to transfer such Pre-Closing Date Records to the Smith Entities.

### 7.2. Company Access.

For a period of seven (7) years from and after the Closing Date, the Smith Entities shall cause to be afforded to representatives of the Company reasonable access during normal business hours to the offices, books and records, contracts and reports of the Stations which relate to the operations of the Stations during the period during which the Stations were owned by the Smith Entities and that are Excluded Assets (the “**Excluded Assets Pre-Closing Date Records**”), as the Company shall from time to time reasonably request for the Company’s reasonable business purposes, and shall provide to the Company copies of any Excluded Assets Pre-Closing Date Records reasonably requested by the Company. Any costs incurred by the Smith Entities in connection with any such copying shall be paid by the Company. All requests for access to the Excluded Assets Pre-Closing Date Records shall be made to such representatives as the Smith Entities shall designate in writing, who shall be solely responsible for coordinating all such requests and all access permitted hereunder. For a period of seven (7) years from and after the Closing Date, the Smith Entities shall not dispose of any Excluded Assets Pre-Closing Date Records; provided, however, that the Smith Entities may destroy any Excluded Assets Pre-Closing Date Records upon providing thirty (30) days written notice to the Company of an intent to destroy such Excluded Assets Pre-Closing Date Records; provided,

further, that the Smith Entities, at the Company's expense, shall transfer to the Company such Excluded Assets Pre-Closing Date Records, rather than destroy them, if before the expiration of such thirty (30) day notice period, the Company directs the Smith Entities to transfer such Excluded Assets Pre-Closing Date Records to the Company.

**ARTICLE 8.**  
**MUTUAL COVENANTS AND UNDERSTANDINGS**  
**OF THE COMPANY AND THE SMITH ENTITIES**

**8.1. Possession and Control.**

Between the date hereof and the Closing Date, the Company shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct, the business and operations of any Station, and such operations, including complete control and supervision of all programming, shall be the sole responsibility of the Smith Entities.

**8.2. Public Announcements.**

Between the date hereof and the Closing Date, the Smith Entities and the Company shall consult and cooperate with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated herein and shall not issue any such press release or make any such public statement without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that a party may, without the prior written consent of the other party, issue such press release or make such public statement if it has used all reasonable efforts to consult with the other party and to obtain such party's consent but has been unable to do so in a timely manner.

**8.3. Employee Matters.**

**8.3.1. Transferred Employees.**

(a) No later than forty-five (45) days after the date of this Agreement, the Smith Entities shall provide a list to the Company of all individuals, who are then actively providing personal services with respect to the Stations (the "**Station Employees**"). The Company shall offer employment, effective as of the Closing Date, to all such Station Employees, at the same salary or wage rate (as applicable) disclosed on Schedule 3.17.2, and place of employment as held by each such Station Employee immediately prior to the Closing Date (subject to the provisions of any Employment Contracts applicable to such Station Employees).

(b) To the extent such Station Employees accept employment with the Company as of the Closing Date (collectively, "**Transferred Employees**"), such Transferred Employees will be included in the Company's employee benefit plans and will be subject to the Company's employment policies. Subject to any applicable waiting periods and other

qualification standards, the Company agrees that Transferred Employees shall be credited under all of the Company's applicable employee benefit plans covering such employees for their service at the Stations or with the Smith Entities, to the same extent and for the same purpose as credited by the Smith Entities under the Benefit Plans.

#### **8.3.2. COBRA Obligations.**

The Company shall satisfy and discharge any obligations to provide health care continuation coverage as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 and as described in Section 4980B of the Code and Sections 601 through 608 of ERISA and as required by any applicable state continuation of health coverage provisions with respect to Transferred Employees (and such employees' covered dependents), and the Smith Entities shall have such responsibility with respect to any employee of the Stations whose employment is terminated prior to the Closing Date (and such employee's covered dependents).

#### **8.3.3. Benefits Plans.**

Within forty-five (45) days after the date hereof, the Company shall notify the Smith Entities if the Company will agree to accept the sponsorship, assets and/or liabilities under any Benefit Plan.

#### **8.3.4. 401(k) Plans.**

The Company agrees to permit those Transferred Employees eligible for a distribution under the Smith Entities 401(k) Plan, at each such Transferred Employee's option, to transfer as a rollover, in cash, to the Company's 401(k) Plan their respective pre-tax account balances under the Smith Entities' 401(k) Plan, provided that such plan is a tax qualified plan under Section 401(a) and 401(k) of the Code and that the transfer as a rollover of any such pre-tax account balance will not affect the tax qualified status of the Company's 401(k) Plan. The Smith Entities agree that if any such Transferred Employee elects to transfer as a rollover its pre-tax account balance to the Company's 401(k) Plan, the Smith Entities will cause the trustees of the Smith Entities' 401(k) Plan to transfer each such electing Transferred Employee's account to the trustee of the Company's 401(k) Plan. Effective as of the Closing Date, the Smith Entities shall fully vest Transferred Employees in their account balances under the Smith Entities' 401(k) Plan.

#### **8.3.5. Severance Benefits.**

(a) The Company agrees to pay severance in accordance with this Section 8.3.5(a) to each Transferred Employee whose employment the Company terminates, without cause, at any time during the first six (6) months following the Closing Date. The Company shall provide a lump sum equal to (a) one (1) week of base pay to a Transferred Employee with at least six (6) months of service but not more than two (2) years of service; (b) two (2) weeks of base pay to a Transferred Employee with at least two (2) years of service but



not more than five (5) years; (c) four (4) weeks of base pay to a Transferred Employee with at least five (5) years of service but not more than ten (10) years; and (d) one (1) week of base pay per year of service, up to a maximum of thirteen (13) weeks of base pay, for a Transferred Employee with ten (10) or more years of service. No severance is required to be paid to a Transferred Employee with less than six (6) months of service. For purposes of this Section 8.3.5(a), a Transferred Employee's base pay shall be the higher of the base pay in effect immediately prior to the Closing Date or the date of the employee's termination of employment. For purposes of this Section 8.3.5(a), an employee's service shall include the sum of the employee's service with the Smith Entities prior to the Closing Date and the employee's service with the Company or an Affiliate on or after the Closing Date. As a condition to making any severance payments to any Transferred Employee pursuant to this Section 8.3.5(a), the Company shall use reasonable efforts to obtain from such Transferred Employee an executed agreement releasing the Smith Entities from all Liabilities to such Transferred Employee.

(b) On the date that is six (6) months after the Closing Date, the Company shall (i) provide the Smith Entities with written documentation evidencing the severance payments made by the Company to any Transferred Employees pursuant to Section 8.3.5(a), and (ii) pay in cash to the Smith Entities the amount, if any, by which the Employee Payment Amount exceeds the amount of severance payments made or owed by the Company in respect of any Transferred Employee pursuant to Section 8.3.5(a) which arises out of or relates to any termination of employment of any Transferred Employee within the six (6) month period after the Closing Date.

#### **8.4. Bulk Sales Laws.**

The Company hereby waives compliance by the Smith Entities, in connection with the transactions contemplated hereby, with the provisions of any applicable bulk transfer laws.

#### **8.5. Consents.**

**8.5.1.** Prior to the Closing, the Smith Entities and the Company shall take all reasonable actions required to obtain all consents, approvals and agreements of any third parties (the initial requests for which shall be provided by the Smith Entities) necessary to authorize, approve or permit the lawful consummation of the transactions contemplated by this Agreement, provided that none of the Smith Entities nor the Company shall be required to make any financial accommodations to any third party in order to obtain such consents and approvals (other than payment by the Smith Entities of any amount otherwise due such third party and normal administrative costs); provided, further, that although the Smith Entities may request release from any contract as part of a request for any such consent, approval or agreement, the failure to obtain such release will not be deemed to be a financial accommodation. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Station Contract, Lease or Permit or any claim, right or benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach or other contravention thereof or be ineffective with respect to

any party thereto unless at the Closing, the Company consents to such assignment, in its sole discretion, in which event, the Smith Entities shall assign to the Company such Station Contracts, Leases, permits and all claims, rights and benefits arising thereunder or resulting therefrom at the Closing.

**8.5.2.** With respect to any Station Contract, Lease or Permit and any claim, right or benefit arising thereunder or resulting therefrom which would otherwise be assumed at the Closing, following the Closing, the parties will use reasonable good faith efforts to transfer the economic benefit and any corresponding Liabilities under such Agreement and to obtain, or cause to be obtained, as expeditiously as possible the written consent of the other parties to such Station Contract, Lease or Permit for the assignment or, if required, novation thereof to the Company or, alternatively, written confirmation from such parties that such consent is not required. Upon receipt of any such consent or novation, the Smith Entities shall assign such Station Contract, Lease or Permit to the Company, and the Company will assume such Station Contract, Lease or Permit insofar as it relates to the period on and after the Closing Date pursuant to an instrument of assignment and assumption in form and substance consistent with the terms of this Agreement and otherwise reasonably acceptable to the parties.

**8.5.3.** If any consent, waiver, confirmation, novation or approval is not obtained with respect to any Station Contract, Lease or Permit, then the parties will cooperate to establish an agency type or other similar arrangement reasonably satisfactory to the parties under which the Company would obtain, to the extent practicable, the claim, rights, benefits and assume any corresponding Liabilities thereunder in accordance with the Agreement (including by means of any subcontracting, sublicensing or subleasing arrangement) or under which the Smith Entities would enforce for the benefit of the Company, with the Company assuming and agreeing to pay the Smith Entities' obligations and expenses, any and all claims, rights and benefits of the Smith Entities against a third party to any such agreement or permit.

**8.6. No Inconsistent Action.**

Neither the Smith Entities nor the Company shall take any action (or fail to take any action) that could hinder or delay in any material respect the consummation of the Closing.

**8.7. Smith Name.**

The Smith Entities hereby grant the Company an irrevocable, royalty-free license to use the name "Smith Media" and any variant thereof in connection with the conduct of the Company's business pursuant to the Operating Agreement. Such license shall not be assigned or sublicensed, directly or indirectly, by the Company, whether by operation of law or otherwise, without the prior written consent of STNY, except that the Company may grant a sublicense to use the name "Smith Media" and any variant thereof to any wholly-owned subsidiary of the Company in connection with the conduct of any such subsidiary's business and any such sublicense shall be without the payment of any royalty to the Smith Entities.

## **8.8. Florida Lease.**

The Company shall use the Florida Lease Termination Amount solely for the purpose of terminating the Lease set forth under the heading "General/Administrative" in Schedule 2.1.2 prior to the expiration of the current term of such Lease. Within sixty (60) days after the Closing Date, the Company shall pay in cash to the Smith Entities the amount, if any, which equals the difference between (x) the Florida Lease Termination Amount and (y) the amount paid by the Company to terminate such Lease pursuant to this Section 8.8 during such sixty (60) day period after the Closing Date.

## **8.9. Confidentiality.**

(a) The Smith Entities shall, at all times, maintain the confidentiality with respect to all documents and information furnished to the Smith Entities by or on behalf of the Company, and documents and information related to the business and operations of the Stations during the period prior to the Closing Date to the extent included in the Assets. Nothing shall be deemed to be confidential information that: (i) is known to the Smith Entities at the time of its disclosure to the Smith Entities; (ii) becomes publicly known or available other than through disclosure by the Smith Entities; (iii) is received by the Smith Entities from a third party not actually known by the Smith Entities to be bound by a confidentiality agreement with or obligation to the Company; or (iv) is independently developed by the Smith Entities. Notwithstanding the foregoing provisions of this Section 8.9(a), the Smith Entities may disclose such confidential information (A) to the extent required or deemed advisable to comply with applicable Laws; and (B) to its officers, directors, employees, representatives, financing sources, financial advisors, attorneys, accountants, and agents with respect to the transactions contemplated hereby; provided, however, the Smith Entities shall be liable for any disclosure by any such Person that such Person would not have been permitted to make if such Person were a Smith Entity hereunder. In the event this Agreement is terminated, the Smith Entities will return to the Company all documents and other material prepared or furnished by the Company relating to the transactions contemplated hereunder, whether obtained before or after the execution of this Agreement. In the event that the Smith Entities are required by Law (including by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar legal process) to disclose any confidential information, the Smith Entities will promptly notify the Company of such requirement so that the Company may, as it may elect, either seek an appropriate protective order or waive the Smith Entities' compliance with the provisions of this Section 8.9(a). In the event that such protection or other remedy is not obtained or that the Company waives compliance, the Smith Entities agree to furnish only that portion of the confidential information which the Smith Entities are advised by counsel is legally required and to exercise the Smith Entities' reasonable efforts to obtain assurance that confidential treatment will be accorded such confidential information.

(b) The Company shall, at all times prior to the Closing, maintain the confidentiality with respect to all documents and information furnished to the Company by or on behalf of the Smith Entities. Nothing shall be deemed to be confidential information that: (i) is

known to the Company at the time of its disclosure to the Company; (ii) becomes publicly known or available other than through disclosure by the Company; (iii) is received by the Company from a third party not actually known by the Company to be bound by a confidentiality agreement with or obligation to the Smith Entities; or (iv) is independently developed by the Company. Notwithstanding the foregoing provisions of this Section 8.9(b), the Company may disclose such confidential information (A) to the extent required or deemed advisable to comply with applicable Laws; and (B) to its officers, directors, partners, employees, representatives, financing sources, financial advisors, attorneys, accountants, agents, underwriters, lenders, investors and any other potential sources of financing with respect to the transactions contemplated hereby; provided, however, the Company shall be liable for any disclosure by any such Person that such Person would not have been permitted to make if such Person were the Company hereunder. In the event this Agreement is terminated, the Company will return to the Smith Entities all documents and other material prepared or furnished by the Smith Entities relating to the transactions contemplated by this Agreement, whether obtained before or after the execution of this Agreement. In the event that the Company is required by Law (including by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar legal process) to disclose any confidential information, the Company will promptly notify the Smith Entities of such requirement so that the Smith Entities may, as they may elect, either seek an appropriate protective order or waive the Company's compliance with the provisions of this Section 8.9(b). In the event that such protection or other remedy is not obtained or that the Smith Entities waive compliance, the Company agrees to furnish only that portion of the confidential information which the Company is advised by counsel is legally required and to exercise the Company's reasonable efforts to obtain assurance that confidential treatment will be accorded such confidential information.

## **ARTICLE 9.**

### **CONDITIONS PRECEDENT TO THE COMPANY'S OBLIGATION TO CLOSE**

The obligations of the Company to issue the LLC Interests and to proceed with the Closing are subject to the satisfaction (or waiver in writing by the Company) at or prior to the Closing of each of the following conditions:

#### **9.1. Representations and Covenants.**

The representations and warranties of the Smith Entities made in this Agreement shall be true and correct in all respects (without regard to any materiality qualifiers) when made and on and as of the Closing Date (except for representations and warranties that speak as of a specific date or time, which need only be true and correct in all respects as of such date or time), with only such exceptions as would not, in the aggregate, have a Material Adverse Effect. The agreements and covenants of the Smith Entities required to be performed on or before the Closing Date shall have been performed in all material respects.

**9.2. Delivery of Documents.**

The Smith Entities shall have delivered to the Company all contracts, agreements, instruments and documents required to be delivered by the Smith Entities to the Company pursuant to Section 11.3.

**9.3. Legal Proceedings.**

No injunction, restraining order or decree of any nature of any court or Governmental Authority of competent jurisdiction shall be in effect that restrains or prohibits the transactions contemplated by this Agreement; and no action or proceeding by or before any Governmental Authority (other than an action or proceeding instituted or threatened by the Company) shall have been instituted or threatened (and not subsequently dismissed, settled or otherwise terminated) which, if determined adversely, would be reasonably likely to restrain, prohibit or invalidate the transactions contemplated by this Agreement or any other Smith Entities Document or the Company Documents.

**9.4. Redemption Agreements.**

The Smith Entities shall have redeemed, or shall be redeeming concurrently with the Closing, the interests of the Preferred Investors and Harron Television Holdings, LP in the Smith Entities pursuant to the Preferred Investors Redemption Agreement and the Harron Redemption Agreement, respectively.

**9.5. FCC Order.**

The FCC Order shall have been granted without the imposition of any conditions outside of the ordinary course and shall be in effect and shall not have been stayed, and the parties shall have complied with any conditions to the effectiveness of the FCC Order.

**9.6. WETM Closing.**

The Closing under the WETM Purchase Agreement shall have occurred in accordance with the terms of the WETM Purchase Agreement.

**9.7. Securities Purchase Agreement.**

The Closing under the Securities Purchase Agreement shall be occurring immediately after, and on the same day as, the Closing under this Agreement.

**9.8. No Material Adverse Effect.**

No Material Adverse(as defined under the Bank Facility) effect shall have occurred and be continuing as of the Closing Date and the conditions precedent set forth in Article 6 of the Bank Facility shall have been satisfied or waived.

**ARTICLE 10.**  
**CONDITIONS PRECEDENT TO**  
**THE SMITH ENTITIES' OBLIGATION TO CLOSE**

The obligations of the Smith Entities to contribute, transfer, convey and deliver the Assets and to proceed with the Closing are subject to the satisfaction (or waiver in writing by the Smith Entities) at or prior to the Closing of each of the following conditions:

**10.1. Representations and Covenants.**

The representations and warranties of the Company made in this Agreement shall be true and correct in all material respects (without regard to any materiality qualifiers) when made and on and as of the Closing Date (except for representations and warranties that speak as of a specific date or time, which need only be true and correct in all material respects as of such date and time). The agreements and covenants of the Company required to be performed on or before the Closing Date shall have been performed in all material respects.

**10.2. Delivery by the Company.**

The Company shall have delivered to the Smith Entities the LLC Interests in accordance with Section 2.3, and all contracts, agreements, instruments and documents required to be delivered by the Company to the Smith Entities pursuant to Section 11.4.

**10.3. Legal Proceedings.**

No injunction, restraining order or decree of any nature of any court or Governmental Authority of competent jurisdiction shall be in effect that restrains or prohibits the transactions contemplated by this Agreement; and no action or proceeding by or before any Governmental Authority (other than an action or proceeding instituted or threatened by the Smith Entities) shall have been instituted or threatened (and not subsequently dismissed, settled or otherwise terminated) which would be reasonably likely to restrain, prohibit or invalidate the transactions contemplated by this Agreement or any other Smith Entities Document or the Company Documents.

**10.4. FCC Order.**

The FCC Order shall have been granted without the imposition of any conditions outside of the ordinary course and shall be in effect and shall not have been stayed, and the parties shall have complied with any conditions to the effectiveness of the FCC Order.

**10.5. WETM Closing.**

The Closing under the WETM Purchase Agreement shall have occurred in accordance with the terms of the WETM Purchase Agreement.

#### **10.6. Securities Purchase Agreement.**

The Closing under the Securities Purchase Agreement shall be occurring immediately after, and on the same day as, the Closing under this Agreement.

### **ARTICLE 11. CLOSING**

#### **11.1. Closing.**

The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall be held on the date which is two (2) Business Days after the date on which the conditions specified in Section 9.5, Section 9.6, Section 10.4 and Section 10.5 shall have been satisfied.

#### **11.2. Time and Place of Closing.**

The Closing shall be held at 10:00 A.M. local time on the date designated by the Smith Entities pursuant to Section 11.1 at the offices of Hogan & Hartson L.L.P., 8300 Greensboro Drive, Suite 1100, McLean, Virginia, or at such other time and place as the parties may agree in writing.

#### **11.3. Deliveries by the Smith Entities at Closing.**

At the Closing, the Smith Entities shall deliver to the Company the following:

##### **11.3.1. Agreements and Instruments**

The following agreements, documents and instruments of transfer duly executed by the Smith Entities:

- (a) the Assignment of FCC Licenses;
- (b) the Bill of Sale;
- (c) the Assignment of Contracts and Leases;
- (d) the Assumption Agreement;
- (e) certificates of title with respect to the Vehicles, or if any such Vehicles are leased by the Smith Entities, an assignment of the related leases;
- (f) special warranty deeds for all Real Property owned by the Smith Entities in a form reasonably acceptable to the Smith Entities and the Company;
- (g) real and personal property transfer tax forms; and

(h) all other documents, instruments and certificates required to be delivered by the Smith Entities pursuant to this Agreement or otherwise reasonably requested by the Company.

**11.3.2. Certified Resolutions.**

A copy of the approval of the boards of directors and board of managers, as the case may be, of the Smith Entities, certified as being correct and complete and then in full force and effect, authorizing the execution, delivery and performance of this Agreement and of the other Smith Entities Documents, and the consummation of the transactions contemplated hereby and thereby.

**11.3.3. Officers' Certificates.**

(a) Certificate of the Smith Entities certifying the matters set forth in Section 9.1; and

(b) Certificates of the Smith Entities as to the incumbency of the representatives of the Smith Entities executing this Agreement or any of the other Smith Entities Documents on behalf of the Smith Entities.

**11.3.4. Organizational Documents.**

Copies of the organizational documents of the Smith Entities certified by an executive officer of the Smith Entities as being correct and complete.

**11.3.5. Title Insurance Documents.**

Owner's affidavit, non-imputation affidavit and gap indemnity executed by the Smith Entities and such other customary documents and certificates executed by the Smith Entities reasonably acceptable to the Smith Entities and as may be reasonably required by the Company's title insurance company with respect to the Company's title insurance of the Real Property and Leased Property.

**11.3.6. Good Standing.**

Certificates of the Secretary of State of Delaware certifying the good standing of each Smith Entity (other than STG and STLH) and certificates of the Secretary of State of the State of Nevada certifying the good standing of STG and STLH in the State of Nevada.

**11.3.7. Opinions.**

Opinions of Hogan & Hartson L.L.P., corporate and communications regulatory counsel to the Smith Entities, each dated the Closing Date, in the forms attached hereto as Exhibit F.



#### **11.3.8. Pro Forma Balance Sheet.**

A pro forma balance sheet for the Company prepared as if the transactions contemplated by the Securities Purchase Agreement had been consummated immediately prior thereto in form and substance reasonably satisfactory to the Company.

#### **11.3.9. Credit Agreement Opinion.**

An opinion of Hogan & Hartson L.L.P., counsel to the Smith Limited Guarantors (as defined in the Bank Facility), addressed to the Credit Parties (as defined in the Bank Facility), dated the Closing Date, in the form attached to the Bank Facility.

#### **11.3.10. Equity Interests Security Agreement.**

The Equity Interests Security Agreement (as defined in the Bank Facility), dated the Closing Date, signed by the Smith Purchaser (as defined in the Bank Facility), STNY, STNYLH and SBSB and such related Uniform Commercial Code Financing Statements (as defined in the Bank Facility) delivered pursuant to Section 6.1(c)(ii) of the Bank Facility.

### **11.4. Deliveries by the Company at Closing.**

At the Closing, the Company shall deliver to the Smith Entities the following:

#### **11.4.1. The LLC Interests.**

An amendment to the Initial Company LLC Agreement pursuant to which the Smith Entities shall be admitted to the Company as members and receive the LLC Interests issuable to the Smith Entities pursuant to Section 2.3 hereof.

#### **11.4.2. Agreements and Instruments.**

The following agreements, documents and instruments duly executed by the Company:

- (a) the Assumption Agreement; and
- (b) all other documents, instruments and certificates required to be delivered by the Company pursuant to this Agreement or otherwise reasonably requested by the Smith Entities.

#### **11.4.3. Certified Resolutions.**

Copies of the resolutions of the board of representatives of the Company, certified as being correct and complete and then in full force and effect, authorizing the execution, delivery and performance of this Agreement and of the other Company Documents, and the consummation of the transactions contemplated hereby and thereby.

#### **11.4.4. Officer's Certificate.**

(a) A certificate of the Company signed by an officer of the Company certifying the matters set forth in Section 10.1; and

(b) a certificate signed by the Secretary of the Company as to the incumbency of the officers of the Company executing this Agreement or any of the other the Company Documents on behalf of the Company.

### **ARTICLE 12. SURVIVAL; INDEMNIFICATION**

#### **12.1. Survival of Representations.**

Unless otherwise set forth herein, all representations and warranties, covenants and agreements of the Smith Entities and the Company contained in or made pursuant to this Agreement or in any certificate furnished pursuant hereto shall survive the Closing Date and shall remain in full force and effect to the following extent: (a) representations and warranties of the Smith Entities and the Company shall remain in full force and effect until March 31, 2006; and (b) the covenants and agreements of the Smith Entities and the Company shall remain in full force and effect until fully discharged; provided, however, that the Smith Entities' obligations in Section 12.2(e) with respect to the matters set forth on Schedule 3.18 shall expire on March 31, 2006; provided, further, that, in all cases, any representation, warranty, covenant or agreement that is the subject of a claim which is asserted by the party seeking indemnification hereunder in a reasonably detailed writing delivered to the other party or parties, as the case may be, prior to the expiration of the applicable survival period set forth in this Section 12.1 shall survive with respect to such claim or dispute until the final resolution thereof. No claim for indemnification may be made pursuant to this Article 12 after the expiration of the applicable survival period set forth in this Section 12.1.

#### **12.2. Indemnification by the Smith Entities.**

Subject to the conditions and provisions of this Article 12, from and after the Closing Date, the Smith Entities, jointly and severally, agree to indemnify, defend and hold harmless the Company from and against and in any respect of any and all Losses, asserted against, resulting to, imposed upon or incurred by the Company, directly or indirectly, by reason of or resulting from: (a) any failure by the Smith Entities to pay, perform or discharge any Retained Liability; (b) any misrepresentation or breach of the representations or warranties of the Smith Entities contained in this Agreement; (c) any breach by the Smith Entities of any covenants of the Smith Entities contained in this Agreement; (d) any misrepresentations or breach by any party of the representations and warranties in the Bank Facility pertaining to (i) the Smith Entities and (ii) the assets, liabilities, business or operations of the Stations during the period ending on or prior to the Closing Date; or (e) the matters identified on Schedule 3.18.

### **12.3. Indemnification by the Company.**

Subject to the conditions and provisions of this Article 12, from and after the Closing Date, the Company hereby agrees to indemnify, defend and hold harmless the Smith Entities from, against and with respect of any and all Losses, asserted against, resulting to, imposed upon or incurred by the Smith Entities, directly or indirectly, by reason of or resulting from: (a) any failure by the Company to pay, perform or discharge any Assumed Liabilities, including the failure to perform any contract referenced in the second proviso of the first sentence of Section 8.5.1 hereof; (b) the business or operations of the Stations during the period from and after the Closing Date (including any matters or Liabilities with respect to the employees of the Stations and any termination of any such employee after the Closing); (c) any misrepresentation or breach of the representations, warranties and certifications of the Company contained in or made pursuant to this Agreement; (d) any breach by the Company of any covenants of the Company contained in or made pursuant to this Agreement; or (e) any misrepresentations or breach by the Company of the representations and warranties in the Bank Facility pertaining to (i) the Company and its Affiliates (other than with respect to the assets, liabilities, business or operations of the Stations during the period ending on or prior to the Closing Date) and (ii) the business or operations of the Stations during the period on or after the Closing Date.

### **12.4. Limitations on Indemnification.**

**12.4.1.** The Smith Entities shall not be liable to the Company in respect of any indemnification under Section 12.2(b), Section 12.2(d) or Section 12.2(e) except to the extent that the aggregate Losses of the Company under such Sections exceed Two Hundred Fifty Thousand Dollars (\$250,000) (the “**Basket Amount**”), and then the Company shall only be entitled to assert claims for Losses in excess of the Basket Amount. The Company shall not be liable to the Smith Entities in respect of any indemnification under Section 12.3(c) or Section 12.3(e) except to the extent that the aggregate Losses of the Smith Entities under such Sections exceed the Basket Amount, and then the Smith Entities shall only be entitled to assert claims for Losses in excess of the Basket Amount.

**12.4.2.** The Company acknowledges and agrees that the maximum aggregate liability of the Smith Entities pursuant to Section 12.2(b), Section 12.2(d) and Section 12.2(e) of this Agreement to the Company for any and all Losses, collectively, shall not exceed Ten Million Dollars (\$10,000,000). The Smith Entities acknowledge and agree that the maximum aggregate liability of the Company pursuant to Section 12.3(c) and Section 12.3(e) of this Agreement to the Smith Entities for any and all Losses, collectively, shall not exceed Ten Million Dollars (\$10,000,000).

### **12.5. Conditions of Indemnification.**

The obligations and liabilities of the Smith Entities and of the Company hereunder with respect to their respective indemnities pursuant to this Article 12, resulting from any Losses, shall be subject to the following terms and conditions:

**12.5.1.** The party seeking indemnification (the “**Indemnified Party**”) must give the other party or parties, as the case may be (the “**Indemnifying Party**”), notice of any such Losses promptly after the Indemnified Party receives notice thereof; provided that the failure to give or delay in giving such notice shall not affect the rights of the Indemnified Party hereunder except to the extent (and then only to the extent) that the Indemnifying Party shall have suffered actual damage by reason of such failure.

**12.5.2.** The Indemnifying Party shall have the right to undertake, by counsel or other representatives of its own choosing (reasonably acceptable to the Indemnified Party), the defense of such Losses at the Indemnifying Party’s risk and expense; provided, however, that as a condition to the exercise of such right to undertake defense of such Losses, the Indemnifying Party shall, as between the Indemnifying Party and the Indemnified Party, assume the liability for such Losses, without regard to the limitations set forth in Section 12.4.2.

**12.5.3.** In the event that the Indemnifying Party shall elect not to undertake such defense, or, within a reasonable time after notice from the Indemnified Party of any such Losses, shall fail to defend, the Indemnified Party (upon further written notice to the Indemnifying Party) shall have the right to undertake the defense, compromise or settlement of such Losses, by counsel or other representatives of its own choosing, on behalf of and for the account and risk of the Indemnifying Party (subject to the right of the Indemnifying Party to assume defense of such Losses at any time prior to settlement, compromise or final determination thereof (with counsel reasonably acceptable to the Indemnified Party)). In such event, the Indemnifying Party shall pay to the Indemnified Party, in addition to the other sums required to be paid hereunder, the costs and expenses incurred by the Indemnified Party in connection with such defense, compromise or settlement as and when such costs and expenses are so incurred.

**12.5.4.** Anything in this Section 12.5 to the contrary notwithstanding, (a) if any third party alleges the right to or seeks any remedy other than money damages or other money payments, the Indemnified Party shall have the right, at the cost and expense of the Indemnifying Party, to participate in and direct the defense, compromise or settlement of the Losses, (b) the Indemnifying Party shall not, without the Indemnified Party’s written consent, settle or compromise any Losses or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such Losses in form and substance reasonably satisfactory to the Indemnified Party, and (c) in the event that the Indemnifying Party undertakes defense of any Losses, the Indemnified Party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the Indemnifying Party and its counsel or other representatives concerning such Losses and the Indemnifying Party and the Indemnified Party and their respective counsel or other representatives shall cooperate with respect to such Losses, (d) in the event that the Indemnifying Party undertakes defense of any Losses, the Indemnifying Party shall have an obligation to keep the Indemnified Party informed of the status of the defense of such Losses and furnish the Indemnified Party with all documents, instruments and information that the Indemnified party shall reasonably request in connection therewith, and (e) in the event that both the Indemnified Party and the Indemnifying

Party are parties (directly or through interpleader) to any Losses giving rise to indemnification hereunder and the Indemnified Party is advised by counsel that there is or may be a conflict of interest in the representation of both the Indemnified Party and the Indemnifying Party by one firm of counsel, the Indemnified Party shall be entitled to assume, at the sole cost and expense of the Indemnifying Party, the defense, compromise and settlement (subject to clause (b) above) of such Loss with counsel (in addition to local counsel) reasonably satisfactory to the Indemnifying Party.

**12.5.5.** In the event that an Indemnified Party has a good faith basis for a claim for indemnification which does not involve a claim against it by a third party (a **“Direct Claim”**), the Indemnified Party shall notify the Indemnifying Party in writing of such Direct Claim with reasonable promptness, specifying, to the extent known, the nature, circumstances and amount of such Direct Claim (a **“Direct Claim Notice”**), including with particularity the specific representation and warranty or covenant and agreement alleged to have been breached; provided, that the failure to give or delay in giving such notice shall not affect the rights of the Indemnified Party hereunder except to the extent (and then only to the extent) that the Indemnifying Party shall have suffered actual damage by reason of such failure. If the Indemnifying Party notifies the Indemnified Party that it disputes an Indemnified Party’s right of indemnification with respect to a particular Direct Claim, the parties shall use their reasonable efforts to negotiate a resolution of such dispute promptly. Except to the extent of the limitations on indemnification set forth in this Article 12, nothing in this Section 12.5.5 shall be deemed to prevent any Indemnified Party from initiating litigation under this Agreement with respect to any Direct Claim disputed by the Indemnifying Party for the purpose of establishing the Indemnified Party’s right to indemnification hereunder.

**12.5.6.** If any Losses are covered by insurance, Company shall exhaust claims against such policies prior to seeking indemnification hereunder.

## **12.6. Remedies.**

**12.6.1.** After the Closing, except for the Company’s right of specific performance pursuant to Section 13.1, the indemnification rights provided in Article 12 of this Agreement shall be the sole and exclusive remedy available against the Smith Entities under contract, tort or any other legal theory to the Company with respect to any Losses by reason of, or resulting from, the matters described in Section 12.2, including any debts, liabilities, damages, obligations, claims, demands, judgments, and settlements, whether asserted by third parties or incurred or sustained in the absence of third-party claims, including all costs and expenses, including interest, penalties, attorneys’ fees and any amounts paid in investigation, defense or settlement of any of the foregoing incurred or sustained pursuant to or in connection with this Agreement or the transactions contemplated hereby; provided, that the foregoing shall not constitute a waiver of any rights or remedies of any party under the Operating Agreement or the Securities Purchase Agreement.

**12.6.2.** Notwithstanding anything in this Agreement to the contrary or otherwise, the Company and the Smith Entities acknowledge and agree that the Company shall

be entitled to recover any amount to which it is entitled for any claim of Losses against the Smith Entities pursuant to this Article 12 solely and exclusively from (a) any distributions previously made or due to be made to the Smith Entities or their successors pursuant to Section 4 of the Operating Agreement, reduced by Applicable Taxes and increased by Tax Benefits, or (b) as provided for in Section 8.10 of the Operating Agreement, or (c) at the sole and exclusive option of the Smith Entities, by the payment of cash; provided, however, that any claim for Losses against the Smith Entities pursuant to Section 12.2(b) and Section 12.2(d) shall be subject to the limitations set forth in Section 12.4.1 and Section 12.4.2 in accordance with their respective terms. The following terms shall have the following meanings for purposes of this Section 12.6.2:

(i) “**Applicable Taxes**” shall mean the product of (A) the Tax Rate and (B) the excess of (x) the sum of (1) the cumulative Net Profit allocated to the Smith Entities pursuant to Section 5 of the Operating Agreement after the Closing Date, and (2) the income and gain recognized by the Smith Entities under Section 731 of the Code attributable to distributions to the Smith Entities pursuant to Section 4 of the Operating Agreement after the Closing Date, over (y) the sum of the cumulative Net Loss allocated to the Smith Entities pursuant to Section 5 of the Operating Agreement after the Closing Date.

(ii) “**Tax Benefits**” shall mean the product of (A) the Tax Rate and (B) the amount of any loss or deduction claimed by the Smith Entities for federal, state and local income tax purposes attributable to their indemnification obligations hereunder.

(iii) “**Tax Rate**” shall mean the combined marginal effective rate of United States federal, state and local income and capital gain tax applicable to a U.S. corporation resident in St. Petersburg, Florida (as such rate may have changed from time to time).

## **ARTICLE 13. TERMINATION**

### **13.1. Termination by the Parties.**

This Agreement may be terminated at any time prior to the Closing as follows:

**13.1.1.** by mutual written consent of STNY and the Company;

**13.1.2.** by either STNY or the Company, by written notice of termination delivered to the other, if the Closing shall not have occurred on or prior to such date which is twelve (12) months after the date of this Agreement;

**13.1.3.** by either STNY or the Company, by written notice of termination delivered to the other, if the FCC designates any of the Assignment Applications for an evidentiary hearing;

**13.1.4.** by either STNY or the Company, by written notice of termination delivered to the other, if the WETM Purchase Agreement is terminated in accordance with the terms thereof; provided, however, that this Agreement may not be terminated by STNY if the WETM Purchase Agreement is terminated as a result of a breach or default under the WETM Purchase Agreement by any of the Smith Entities;

**13.1.5.** by the Company, by written notice of termination delivered to STNY, upon a material breach of any representation, warranty, covenant or agreement of the Smith Entities set forth in this Agreement, in any case, such that the conditions set forth in Section 9.1 would not be satisfied as a result of such breach as if the Closing Date were the date of any such determination of such breach; provided, that such breach has not been cured by the Smith Entities within thirty (30) days after STNY receives written notice of such breach from the Company; provided, that the Smith Entities shall have no such thirty (30) day cure period with respect to any breach by the Smith Entities of their obligation under this Agreement to consummate the Closing, and perform their obligations to be performed, on the Closing Date; and

**13.1.6.** by STNY, by written notice of termination delivered to the Company, upon a material breach of any representation, warranty, covenant or agreement of the Company set forth in this Agreement, in any case, such that the conditions set forth in Section 10.1 would not be satisfied as a result of such breach as if the Closing Date were the date of any such determination of such breach; provided, that such breach has not been cured by the Company within thirty (30) days after the Company receives written notice of such breach from STNY; provided, further, that the Company shall have no such thirty (30) day cure period with respect to any breach by the Company of its obligation under this Agreement to consummate the Closing, and to perform its obligations to be performed, on the Closing Date.

Notwithstanding anything to the contrary contained in this Section 13.1, (a) the Company shall not be entitled to terminate this Agreement pursuant to this Section 13.1 if the Company is, at the time of such termination in breach or default of any of its representations, warranties, covenants or agreements contained in this Agreement, such that the condition set forth in Section 10.1 would not be satisfied as a result of such breach as if the Closing Date were the date of any such determination of such breach or, in the case of a termination pursuant to Section 13.1.2, any such breach or default was the cause of the Closing not to have occurred by the date set forth in such Section 13.1.2, and (b) STNY shall not be entitled to terminate this Agreement pursuant to this Section 13.1 if any of the Smith Entities is, at the time of such termination in breach or default of any of its representations, warranties, covenants or agreements contained in this Agreement, such that the condition set forth in Section 9.1 would not be satisfied as a result of such breach as if the Closing Date were the date of any such determination of such breach, or, in the case of a termination pursuant to Section 13.1.2, any such breach or default was the cause of the Closing not to have occurred by the date set forth in such Section 13.1.2.

## **13.2. Effect of Termination.**

If this Agreement is terminated, then this Agreement, other than the provisions of this Section 13.2 and Article 14 shall be deemed null and void and of no further force and effect, the parties shall be released from all Liabilities hereunder, and the sole and exclusive rights and remedies of the parties hereto shall be those expressly provided for in the Remedies Agreement.

## **ARTICLE 14. GENERAL PROVISIONS**

### **14.1. Specific Performance.**

Each of the Smith Entities and the Company acknowledge and agree that the other party would be irreparably damaged if any of the covenants under this Agreement are not performed in accordance with their terms and that any default under or failure to perform or comply with any such covenant by such party would not be adequately compensated in all cases by monetary damages alone. Accordingly, each of the Smith Entities and the Company shall be entitled to enforce any of the covenants set forth in this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach of any of such covenants, without posting any bond or other undertaking, and each of the Smith Entities and the Company hereby waive any defense that there is an adequate remedy at law for a breach of any such covenants.

### **14.2. Additional Actions, Documents and Information.**

The Company agrees that it will, at any time, prior to, at or after the Closing Date, take or cause to be taken such further actions, and execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments and obtain such consents, as may be reasonably requested by the Smith Entities in connection with the consummation of the transactions contemplated by this Agreement. The Smith Entities agrees that they will, at any time, prior to, at or after the Closing Date, take or cause to be taken such further actions, and execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments and obtain such consents, as may be reasonably requested by the Company in connection with the consummation of the transactions contemplated by this Agreement, including in the event that any Assets are owned by any Affiliate of any of the Smith Entities, causing such Affiliate to transfer the Assets to the Company.

### **14.3. Brokers.**

The Smith Entities represent to the Company that the Smith Entities have not engaged, or incurred any unpaid liability (for any brokerage fees, finders' fees, commissions or otherwise) to, any broker, finder or agent in connection with the transactions contemplated by this Agreement, except for Daniels & Associates, LP ("**Daniels**"). The Company represents to the Smith Entities that the Company has not engaged, or incurred any unpaid liability (for any brokerage fees, finders' fees, commissions or otherwise) to, any broker, finder or agent in connection with the transactions contemplated by this Agreement, except for Evercore Partners, Inc. The Smith Entities agree to indemnify the Company, and the Company agrees to indemnify



the Smith Entities, against any claims asserted against the other parties for any such fees or commissions by any person purporting to act or to have acted for or on behalf of the indemnifying party (except for the fees of Daniels and Evercore Partners, Inc. which are payable as provided for in Section 14.4). Notwithstanding any other provision of this Agreement, this representation and warranty shall survive the Closing Date without limitation and shall not be subject to the Basket Amount contained in Section 12.4.1 or the limitations of Section 12.4.2.

#### **14.4. Expenses and Taxes.**

Subject to the obligation of the Smith Entities to contribute the Contributed Cash at Closing, each party hereto shall pay its own expenses incurred in connection with this Agreement and in the preparation for and consummation of the transactions provided for herein. Notwithstanding the foregoing, (a) the Company shall pay all sales (including bulk sales), use, documentary, stamp, gross receipts, registration, transfer, conveyance, excise, recording, license and other similar Taxes and fees ("**Transfer Taxes**") applicable to, imposed upon or arising out of the transactions contemplated hereby whether now in effect or hereinafter adopted and regardless of which party such Transfer Tax is imposed upon and (b) the Company shall pay any FCC filing fees incurred in connection with the assignment of the FCC Licenses. Each party agrees to cooperate with such other party in the timely completion, execution and filing of any documentation required by any local or state governmental agency in connection with the Transfer Taxes. Except as expressly provided in this Section 14.4 and Section 12.1 of the Operating Agreement, each of the Smith Entities and the Company shall pay its own expenses incurred in connection with this Agreement, the Operating Agreement and the Securities Agreement and the transactions contemplated hereby and thereby. Notwithstanding anything to the contrary contained herein, if this Agreement is terminated in accordance with the terms hereof, the parties' prior agreement relating to fees and expenses shall remain in full force and effect as set forth in (i) the letter agreement dated May 27, 2004, addressed to Daniels and Associates, LP relating to the preliminary expression of interest and executed by Alta Communications, Inc. and Boston Ventures Management (each as agent for the "**Investor**", as defined therein) and agreed and accepted by Smith Television Group on May 28, 2004 (the "**Initial Letter**"); (ii) the letter agreement dated July 12, 2004, addressed to certain of the Smith Entities relating to exclusivity and executed by Boston Ventures Management, Inc. and agreed and accepted by Smith Television of New York, Inc. (for and on behalf of Smith Television Group) and Smith Broadcasting of Vermont, LLC (for and on behalf of Smith Television Group) (the "**Exclusivity Letter**"); and (iii) letter agreement dated August 2, 2004, addressed to Smith Broadcasting of Vermont Holdings, LLC relating to costs and expenses contemplated by the Initial Letter and the Exclusivity Letter and executed by Boston Ventures Management, Inc. and agreed and accepted by Smith Broadcasting of Vermont Holdings, LLC.

#### **14.5. Notices.**

All notices, demands, requests, or other communications which may be or are required to be given or made by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by first-class registered or certified mail, return

receipt requested, postage prepaid, delivered by overnight air courier, or transmitted by telegram, telex, or facsimile transmission addressed as follows:

If to the Company:

Smith Media, LLC  
c/o Ian Guthrie  
1215 Cole Street  
St. Louis, Missouri 63106  
Attention: Ian Guthrie  
Telecopy No.: (314) 259-5532

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

Dow Lohnes & Albertson PLLC  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036-6802  
Attention: William S. Dudzinsky, Jr.  
Telecopy No.: (202) 776-2222

If to the Smith Entities:

Smith Television of New York, Inc.  
c/o Leslie J. Goldman  
Skadden, Arps, Slate, Meagher & Flom, LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
Telecopy No.: (202) 393-5719

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

Hogan & Hartson L.L.P.  
8300 Greensboro Drive  
Suite 1100  
McLean, Virginia 22102  
Attention: Richard T. Horan, Jr., Esq.  
Telecopy No.: (703) 610-6200

or such other address as the addressee may indicate by written notice to the other parties.

Each notice, demand, request, or communication which shall be given or made in the manner described above shall be deemed sufficiently given or made for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, the affidavit of messenger or (with respect to a telex) the answerback being deemed conclusive but not

exclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

#### **14.6. Waiver.**

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other instrument or document given in connection with or pursuant to this Agreement 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.

#### **14.7. Benefit and Assignment.**

**14.7.1.** No party hereto shall assign this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party hereto. Notwithstanding the foregoing, the Company may assign any or all of its rights to receive any of the Assets to any wholly-owned subsidiary of the Company without the consent of the Smith Entities and, to the extent such assignment is made, the assignee of the Company may assume and perform the obligations of the Company hereunder with respect to such assigned rights or Assets pursuant to a written assignment agreement reasonably acceptable to STNY; provided, that in no event shall any such assignment relieve the Company of any obligations under this Agreement or cause any delay in the Closing.

**14.7.2.** Any purported assignment contrary to the terms hereof shall be null, void and of no force and effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder. No Person, other than the parties hereto, is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder. Without limiting the foregoing, no employee of any Station and no other Person shall be a third-party beneficiary under this Agreement (including the provisions of Section 8.3), or any Smith Entities Document or the Company Documents.

#### **14.8. Entire Agreement; Amendment.**

This Agreement, including the Preamble, Schedules and Exhibits hereto and the other instruments and documents referred to herein or delivered pursuant hereto contain the entire agreement among the parties with respect to the subject matter hereof and supersede all prior oral or written agreements, commitments or understandings with respect to such matters. No amendment, modification or discharge of this Agreement shall be valid or binding unless set

forth in writing and duly executed by the party or parties against whom enforcement of the amendment, modification or discharge is sought.

**14.9. Severability.**

If any part of any provision of this Agreement or any other contract, agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of said contract, agreement, document or writing.

**14.10. Headings.**

The headings of the sections and subsections contained in this Agreement are inserted for convenience only and do not form a part or affect the meaning, construction or scope of this Agreement.

**14.11. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its choice of law rules (other than Section 5-1401 of the New York General Obligations Law).

**14.12. Signature in Counterparts.**

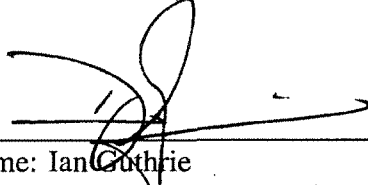
This Agreement may be executed in separate counterparts, none of which need contain the signatures of all parties, each of which shall be deemed to be an original, and all of which taken together constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

**[The remainder of this page intentionally left blank.]**

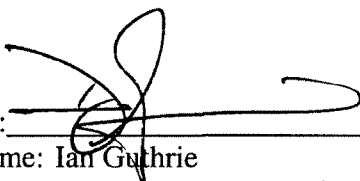
IN WITNESS WHEREOF, each of the parties hereto has executed this Contribution Agreement, or has caused this Contribution Agreement to be duly executed and delivered in its name on its behalf, all as of the day and year first above written.

**COMPANY**

**SMITH MEDIA, LLC**

By:   
Name: Ian Guthrie  
Title: Vice President, Chief Financial  
Officer & Treasurer

**SMITH MEDIA LICENSE HOLDINGS,  
LLC**

By:   
Name: Ian Guthrie  
Title: Vice President, Chief Financial  
Officer & Treasurer

**SMITH ENTITIES**

**SMITH TELEVISION OF NEW YORK,  
INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SMITH TELEVISION OF NEW YORK  
LICENSE HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, each of the parties hereto has executed this Contribution Agreement, or has caused this Contribution Agreement to be duly executed and delivered in its name on its behalf, all as of the day and year first above written.

**COMPANY**

**SMITH MEDIA, LLC**

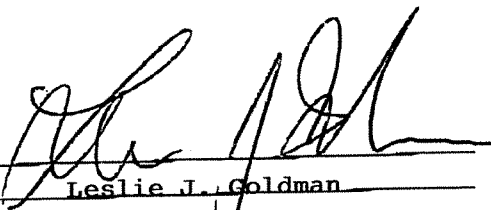
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SMITH MEDIA LICENSE HOLDINGS,  
LLC**

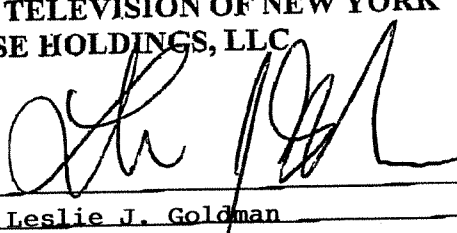
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SMITH ENTITIES**

**SMITH TELEVISION OF NEW YORK,  
INC.**

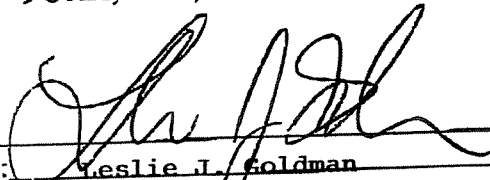
By:   
Name: Leslie J. Goldman  
Title: Manager

**SMITH TELEVISION OF NEW YORK  
LICENSE HOLDINGS, LLC**


By:   
Name: Leslie J. Goldman  
Title: President & Chief Executive Officer

**SMITH BROADCASTING OF SANTA  
BARBARA LIMITED PARTNERSHIP**

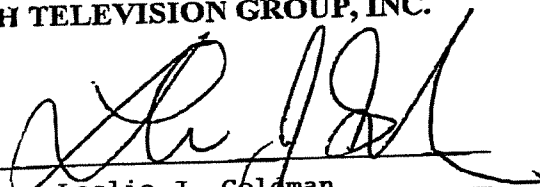
By: **SMITH TELEVISION OF NEW  
YORK, INC., its General Partner**

By:   
Name: Leslie J. Goldman  
Title: Chairman & Executive Vice President


By: **SMITH TELEVISION OF  
SANTA BARBARA, INC., its  
General Partner**

By:   
Name: Leslie J. Goldman  
Title: President & Chief Executive Officer

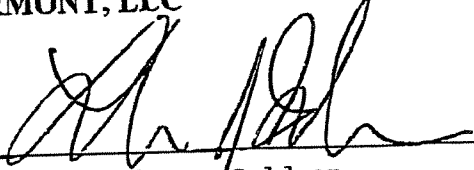
**SMITH TELEVISION GROUP, INC.**

By:   
Name: Leslie J. Goldman  
Title: President & Chief Executive Officer

**SMITH TELEVISION LICENSE  
HOLDINGS, INC.**

By:   
Name: Leslie J. Goldman  
Title: President & Chief Executive Officer

**SMITH BROADCASTING OF  
VERMONT, LLC**

By:   
Name: Leslie J. Goldman  
Title: Chief Executive Officer



## ANNEX I DEFINITIONS

**“Accounts Receivable”** means all accounts receivable of the Smith Entities accrued in accordance with GAAP with respect to the operations of the Stations in the ordinary course as of the end of the broadcast day immediately preceding the Closing Date for services to be performed or delivered at or prior to such time, including any unbilled accounts receivable.

**“Additional Agreements”** shall have the meaning set forth in Section 6.1.1.

**“Administrative Agent”** means the “Administrative Agent” as defined in the Bank Facility.

**“Affiliate”** means, with respect to any specified Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such specified Person.

**“Agreement”** shall have the meaning set forth in the Preamble.

**“Alaska Stations”** shall have the meaning set forth in the Recitals.

**“Applicable Taxes”** shall have the meaning set forth in Section 12.6.2(i).

**“Arbitrator”** shall have the meaning set forth in Section 2.5(b).

**“Assets”** shall have the meaning set forth in Section 2.1.

**“Assignment Applications”** shall have the meaning set forth in Article 5.

**“Assignment of Contracts and Leases”** means that certain Assignment of Contracts and Leases, dated as of the Closing Date and executed by the Smith Entities, in the form attached hereto as Exhibit D.

**“Assignment of FCC Licenses”** means that certain Assignment of FCC Licenses, dated as of the Closing Date and executed by the Smith Entities, in the form attached hereto as Exhibit B.

**“Assumed Liabilities”** shall have the meaning set forth in Section 2.4.1.

**“Assumption Agreement”** means that certain Assumption Agreement, dated as of the Closing Date and executed by the Company and the Smith Entities, in the form attached hereto as Exhibit E.

**“Auxiliary Facilities”** shall have the meaning set forth in Section 2.1.14.

**“Bank Facility”** means that certain Credit Agreement dated as of date hereof, by and among the Company, The Bank of New York, as Administrative Agent, the lender parties

thereto and BNY Capital Markets, Inc., as sole lead arranger and book runner, and Wells Fargo Foothill, Inc. as Syndication Agent.

**“Basket Amount”** shall have the meaning set forth in Section 12.4.1.

**“Benefit Arrangement”** means a welfare or benefit program, practice or policy providing for bonuses, incentive compensation, vacation pay, severance pay, insurance, restricted stock, stock options, employee discounts, company cars, tuition reimbursement or any other perquisite or benefit (including any fringe benefit under Section 132 of the Code) to employees, officers or independent contractors that is not a Plan.

**“Benefit Plans”** shall have the meaning set forth in Section 3.16.1.

**“Bill of Sale”** means that certain Bill of Sale and Assignment of Assets, dated as of the Closing Date and executed by the Smith Entities, in the form attached hereto as Exhibit C.

**“BV”** shall have the meaning set forth in the Recitals.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.ss.9601 et seq., as amended, and any similar or implementing state or local law.

**“Closing”** shall have the meaning set forth in Section 11.1.

**“Closing Date”** means the date on which the Closing occurs.

**“Code”** means the Internal Revenue Code of 1986, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

**“Communications Act”** means the Communications Act of 1934, as amended.

**“Communications Laws”** means the Act and the Rules, Regulations and published policies of the FCC promulgated thereunder.

**“Company”** shall have the meaning set forth in the Preamble.

**“Company Documents”** means, collectively, this Agreement, the Assumption Agreement and the closing certificates and other deliveries contemplated by Section 11.4.

**“Contributed Cash”** shall have the meaning set forth in Section 2.1.19.

**“Control”** means, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The term **“Controlled”** shall have a correlative meaning.

**“Current Balance Sheet”** shall have the meaning set forth in Section 3.5.1.

**“Daniels”** shall have the meaning set forth in Section 14.3.

**“Deposit Agreement”** shall mean the Deposit Agreement dated as of the date hereof among BV, SM Investments, STNY, SBV and the Preferred Investors.

**“Deposits”** shall have the meaning set forth in Section 2.1.18.

**“Direct Claim”** shall have the meaning set forth in Section 12.5.5.

**“Direct Claim Notice”** shall have the meaning set forth in Section 12.5.5.

**“Earnest Money Deposit”** shall have the meaning set forth in Section 2.6.

**“Employee Payment Amount”** shall have the meaning set forth in Section 2.1.22.

**“Employment Contracts”** shall have the meaning set forth in Section 2.1.9.

**“Encumbrances”** means any mortgages, pledges, liens, security interests, hypothecation and any other encumbrance materially affecting the title or current use of the Assets.

**“Environmental Affiliate”** of any Person means, with respect to any particular matter, all other Persons whose liabilities or obligations with respect to that particular matter have been assumed by, or are otherwise deemed by law to be those of, such first Person.

**“Environmental and Safety Requirements”** means all Environmental Laws and all federal, state, local and foreign statutes, regulations, ordinances and similar provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law relating to public health and safety, worker health and safety and pollution or protection of human health or the environment, including ambient air, surface water, ground water, land surface or subsurface strata, and natural resources and including all such standards of conduct and bases of obligations relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, emission, Release, threatened Release, control, or cleanup of any Hazardous Materials.

**“Environmental Claims”** means any claim, action, cause of action, investigation or notice (written or oral) by any person or entity alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (i) the presence, or Release into the environment, of any Hazardous Materials at any location, whether or not owned or operated by the Smith Entities or (ii) circumstances forming the basis of any violation, or alleged violation, of any Environmental and Safety Requirements.

**“Environmental Laws”** means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, or other requirement relating to the environment, natural resources, public, or employee health and safety, and Hazardous Materials generation, production, use, storage, treatment, transportation or disposal, and includes, but is not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (“CERCLA”) as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), 42 U.S.C. § 9601 et seq.; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq.; the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act (“CAA”), 42 U.S.C. § 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as such laws have been amended or supplemented, and the regulations promulgated pursuant thereto, and all analogous state or local statutes.

**“Environmental Lien”** means any recorded Encumbrance in favor of any governmental entity or any department, agency or political subdivision thereof relating to any liability of the Smith Entities, any subsidiary of the Smith Entities or any Environmental Affiliate of any such Person arising under any Environmental and Safety Requirement.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and all Laws promulgated pursuant thereto or in connection therewith.

**“Estimated Net Working Capital Statement”** shall have the meaning set forth in Section 2.5(a).

**“Excluded Assets”** shall have the meaning set forth in Section 2.2.

**“Excluded Assets Pre-Closing Date Records”** shall have the meaning set forth in Section 7.2.

**“Excluded Contracts”** shall have the meaning set forth in Section 2.2.10.

**“Exclusivity Letter”** shall have the meaning set forth in Section 14.4.

**“FCC”** means the Federal Communications Commission.

**“FCC Files”** shall have the meaning set forth in Section 2.1.13.

**“FCC Licenses”** shall have the meaning set forth in Section 2.1.1.

**“FCC Order”** means an order or orders of the FCC, or of the staff of the FCC, acting under delegated authority, consenting to the assignment to the Company of the FCC Licenses for the Stations.

**“Files and Records”** shall have the meaning set forth in Section 2.1.12.

**“Final Net Working Capital”** shall have the meaning set forth in Section 2.5(c).

**“Florida Lease Termination Amount”** shall have the meaning set forth in Section 2.1.23.

**“Frontyard”** shall have the meaning set forth in the Recitals.

**“GAAP”** means generally accepted accounting principles consistently applied for the periods involved.

**“Goodwill”** shall have the meaning set forth in Section 2.1.16.

**“Governmental Authority”** means any agency, board, bureau, court, commission, department, instrumentality or administration of the United States government, any state government or any local or other governmental body in a state, territory or possession of the United States or the District of Columbia.

**“Granados”** shall have the meaning set forth in the Recitals.

**“Guthrie”** shall have the meaning set forth in the Recitals.

**“Harron Redemption Agreement”** means that certain Securities Redemption and Purchase Agreement dated as of the date hereof by and between STNY and Harron Television Holdings, L.P.

**“Hazardous Materials”** means any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including substances defined as “hazardous wastes”, “hazardous substances”, “hazardous materials”, “extremely hazardous waste”, “toxic substances”, “radioactive materials”, or other similar designations in, or otherwise subject to, regulation under, any Environmental Laws; the term shall also include any other chemical substances or mixtures, pesticides, toxic chemicals, petroleum products or by-products, asbestos-containing materials, polychlorinated biphenyls (PCBs), noise, lead or lead-based paints or materials, radon, and radioactive materials.

**“Income Taxes”** means all federal, state and local income taxes and installments of estimated income taxes, income tax deficiencies and income tax withholdings imposed by any Governmental Authorities.

**“Indemnified Party”** and **“Indemnifying Party”** shall have the respective meanings set forth in Section 12.5.1.

**“Initial Company LLC Agreement”** means the Limited Liability Company Agreement of the Company in effect as of the date of this Agreement.

**“Initial Letter”** shall have the meaning set forth in Section 14.4.

**“Insurance”** shall have the meaning set forth in Section 2.2.9.

**“Intangibles”** shall have the meaning set forth in Section 2.1.4.

**“Intellectual Property”** shall have the meaning set forth in Section 2.1.4.

**“Investor”** shall have the meaning set forth in Section 14.4.

**“JPM Notes”** means the subordinated promissory notes issuable to the Preferred Investors pursuant to the Preferred Investors Redemption Agreement.

**“KATN”** shall have the meaning set forth in the Recitals.

**“KEYT”** shall have the meaning set forth in the Recitals.

**“KIMO”** shall have the meaning set forth in the Recitals.

**“KJUD”** shall have the meaning set forth in the Recitals.

**“Laws”** means any federal, state or local law, statute, code, ordinance, regulation, order, writ, injunction, judgment or decree applicable to the specified Person and to the businesses and assets thereof.

**“Leased Property”** shall have the meaning set forth in Section 3.10.2.

**“Leaseholds”** shall have the meaning set forth in Section 2.1.2(b).

**“Leases”** shall have the meaning set forth in Section 3.10.2.

**“Liabilities”** means, as to any Person, all debts, adverse claims, liabilities and obligations, direct, indirect, absolute or contingent of such Person, whether accrued, vested or otherwise, whether in contract, tort, strict liability or otherwise and whether or not actually reflected, or required by GAAP to be reflected, in such Person’s balance sheets or other books and records.

**“LLC Interests”** shall have the meaning set forth in Section 2.3.

**“Losses”** means any action, cost, damage, disbursement, expense, liability, loss, deficiency, obligation, loss of rights or settlement, penalties, reasonable legal, accounting and other professional fees and expenses actually incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that are incurred or suffered by the specified person; provided, that “Losses” shall not include consequential, incidental, exemplary or punitive damages, other special damages or lost profits, except to the extent that the

Indemnified Party is obligated pursuant to a final determination by a court or arbitrator to pay any such Losses to a third party.

**“Material Adverse Effect”** means a material adverse effect on the Assets or Liabilities of the Stations, taking all of the Stations as a whole, except for any material adverse affect resulting from (a) any change in Law or GAAP or interpretation thereof, (b) changes in general economic conditions applicable to the broadcast industry, (c) changes in general economic conditions, or (d) changes affecting the markets in which the Stations operate.

**“Net Bank Facility Proceeds”** shall have the meaning set forth in Section 2.1.19.

**“Net Working Capital”** with respect to the Stations, means the sum of (a) Accounts Receivable, including barter receivables, net of an allowance for doubtful accounts calculated in accordance with their historical practices, (b) prepaid expenses that are included in the Assets and (c) other current assets with respect to the Station Contracts that are included in the Assets; minus the sum of (i) accounts payable, including all current trade and barter payables, and (ii) current liabilities under Station Contracts and other current liabilities relating to the Stations that are Assumed Liabilities, in each case determined in accordance with GAAP; provided that there shall be excluded from Net Working Capital (A) any intercompany receivables, including those reflected on the Current Balance Sheet, and the SBG Receivable, and (B) the current portion of rights and liabilities under the Program Contracts which would otherwise be included in current assets and current liabilities, respectively, under GAAP pursuant to FASB 63.

**“Network Affiliation Agreements”** means, collectively, (i) (A) the Primary Television Affiliation Agreement dated December 14, 1995, between American Broadcasting Companies, Inc. and Smith Broadcasting Group of Alaska, L.P., as amended by the Side Letter Amendment dated June 30, 1999; Letter Agreement regarding N/AP II dated October 2, 2002; Letter dated October 2, 2002, regarding N/AP II/Affiliation Assurances (KATN); (B) the Primary Television Affiliation Agreement dated December 14, 1995, between American Broadcasting Companies, Inc. and Smith Broadcasting Group of Alaska, L.P., as amended by the Side Letter Amendment to Affiliation Agreement dated June 30, 1999 Letter Agreement regarding N/AP II dated October 2, 2002; Letter dated October 2, 2002 regarding N/AP II/Affiliation Assurances (KIMO); and (C) the Primary Television Affiliation Agreement dated December 14, 1995, between American Broadcasting Companies, Inc. and Smith Broadcasting Group of Alaska, L.P., as amended by the Side Letter Amendment dated June 30, 1999; Letter Agreement regarding N/AP II dated October 7, 2002; Letter dated October 2, 2002 regarding N/AP II/Affiliation Assurances; Letter dated October 2, 2002 regarding N/AP II/Financial Contributions (KJUD), (ii) that certain Primary Television Affiliation Agreement dated May 1, 1995, between SBSB and American Broadcasting Companies, Inc., as amended by the Letter Agreement regarding N/AP II dated October 2, 1992; Letter dated October 2, 2002, regarding N/AP II Affiliate Assurances, (iii) the Affiliation Agreement dated April 4, 1995, between National Broadcasting Company, Inc. and STNY, as amended by Letter Agreements dated April 4, 1995, and July 14, 1998, and (iv) the Station Affiliation Agreement dated May 31, 1997, by and among Fox Broadcasting

Company, Champlain Valley Telecasting, Inc. and Rollins Telecasting, Inc., as amended by the Network Nonduplication Protection Amendment dated February 10, 1999, between Fox Broadcasting Company and SBV, the News Service Agreement dated May 31, 1997, by and among Rollins Telecasting Inc., Champlain Valley Telecasting and Fox Network L.L.C., and that certain NFL Supplemental Agreement to Affiliation Agreement by and between Fox Broadcasting Company and SBV.

**“Operating Agreement”** means the Amended and Restated Limited Liability Company Agreement of the Company to be entered into in connection with the closing under the Securities Purchase Agreement among the Smith Entities, SM Investments, Frontyard, BV, Granados and Guthrie.

**“Operating Contracts”** shall have the meaning set forth in Section 2.1.10.

**“Pension Plan”** means an “employee pension benefit plan” as such term is defined in Section 3(2) of ERISA.

**“Permits”** shall have the meaning set forth in Section 2.1.15.

**“Permitted Encumbrances”** means (a) Encumbrances on Real Property which do not secure monetary liabilities of any Person and that do not interfere with the use or value of the Real Property in the operations or business of the Stations, (b) Encumbrances for Taxes not yet due and payable or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the Smith Entities’ books in accordance with GAAP, (c) statutory liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen and other similar liens imposed by Law, (d) Encumbrances which do not secure monetary liabilities of any Person and that, individually or in the aggregate, do not and would not materially detract from the value or marketability of any of the Assets or materially interfere with the current use thereof and (e) Encumbrances under, pursuant or relating to the Bank Facility.

**“Person”** or **“person”** means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, other form of business or legal entity or Governmental Authority.

**“Personnel Files”** shall have the meaning set forth in Section 2.1.20.

**“Plan”** means any plan, program or arrangement, whether or not written, that is or was an “employee benefit plan” as such term is defined in Section 3(3) of ERISA and (a) which was or is established or maintained by the Smith Entities; (b) to which the Smith Entities contributed or was obligated to contribute or to fund or provide benefits; or (c) which provides or promises benefits to any person who performs or who has performed services for the Smith Entities and because of those services is or has been (i) a participant therein or (ii) entitled to benefits thereunder.

**“Pre-Closing Date Records”** shall have the meaning set forth in Section 7.1.



**“Preferred Investors”** shall mean J.P. Morgan Partners (23A SBIC), L.L.C., J.P. Morgan Partners (BHCA), L.P. and Halyard Capital Fund, LP.

**“Preferred Investors Redemption Agreement”** means that certain Securities Redemption Agreement dated as of the date hereof by and among STNY, SBV, SMLLC and the Preferred Investors.

**“proceeding”** shall mean any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

**“Program Contracts”** shall have the meaning set forth in Section 2.1.5.

**“Qualified Plan”** means a Pension Plan that satisfies, or is intended by the Smith Entities to satisfy, the requirements for tax qualification described in Section 401 of the Code.

**“Real Property”** shall have the meaning set forth in Section 2.1.2(a).

**“Release”** has the meaning set forth in CERCLA.

**“Remedies Agreement”** means the Remedies Agreement dated as of the date hereof among the Smith Entities, the Company, BV and SM Investments.

**“Retained Liabilities”** shall have the meaning set forth in Section 2.4.2.

**“SBG Receivable”** means any and all accounts receivable or amounts owed or owing to any Smith Entity by Smith Broadcasting Group, Inc., Robert N. Smith, the estate of Robert N. Smith, Michael Smith, Jennifer Smith, Jennifer Smith’s Living Trust dated 05/27/98, Michael Smith’s Living Trust or any Affiliate of any of the foregoing.

**“SBSB”** shall have the meaning set forth in the Preamble.

**“SBV”** shall have the meaning set forth in the Preamble.

**“Schedules”** means the disclosure schedules delivered by the Smith Entities to the Company in connection herewith.

**“Securities Purchase Agreement”** shall have the meaning set forth in the Recitals.

**“SM Investments”** shall have the meaning set forth in the Recitals.

**“Smith Entities”** and **“Smith Entity”** shall have the respective meanings set forth in the Preamble.

**“Smith Entities Documents”** means, collectively, this Agreement, the Assignment of Contracts and Leases, the Bill of Sale, the Assignment of FCC Licenses, the Assumption Agreement and the closing certificates and other deliveries contemplated by Section 11.3.

**“Smith Entities Tax Returns”** means all federal, state, local, foreign and other applicable Tax returns, declarations of estimated Tax reports required to be filed by the Smith Entities (without regard to extensions of time permitted by law or otherwise).

**“SMLLC”** shall have the meaning set forth in the Preamble.

**“SMLLC License Sub”** shall have the meaning set forth in the Preamble.

**“Station(s)”** shall have the meaning set forth in the Recitals.

**“Station Contracts”** shall have the meaning set forth in Section 2.1.10.

**“Station Employees”** shall have the meaning set forth in Section 8.3.1(a).

**“STG”** shall have the meaning set forth in the Preamble.

**“STLH”** shall have the meaning set forth in the Preamble.

**“STNY”** shall have the meaning set forth in the Preamble.

**“STNYLH”** shall have the meaning set forth in the Preamble.

**“Subordination Agreement”** means that certain Subordination Agreement dated as of the date hereof by and among the Preferred Investors, SMLLC and The Bank of New York.

**“Tangible Personal Property”** shall have the meaning set forth in Section 2.1.3.

**“Tax Benefits”** shall have the meaning set forth in Section 12.6.2(ii).

**“Tax Rate”** shall have the meaning set forth in Section 12.6.2(iii).

**“Taxes”** means all federal, state and local taxes (including income, profit, franchise, sales, use, real property, personal property, ad valorem, excise, employment, social security and wage withholding taxes) and installments of estimated taxes, assessments, deficiencies, levies, imports, duties, license fees, registration fees, withholdings, or other similar charges of every kind, character or description imposed by any Governmental Authorities.

**“Time Sales Agreements”** shall have the meaning set forth in Section 2.1.7.

**“Trade-out Agreements”** shall have the meaning set forth in Section 2.1.6.

**“Transfer Taxes”** shall have the meaning set forth in Section 14.4.

**“Transferred Accounts Receivable”** shall have the meaning set forth in Section 2.1.17.

**“Transferred Employees”** shall have the meaning set forth in Section 8.3.1(b).

**“Transferred Benefit Plans”** shall have the meaning set forth in Section 2.1.21.

**“Vehicles”** shall have the meaning set forth in Section 2.1.11.

**“W/C Cash”** shall have the meaning set forth in Section 2.5(a).

**“Welfare Plan”** means an “employee welfare benefit plan” as such term is defined in Section 3(1) of ERISA.

**“Wells Fargo Amendment”** means that certain Amendment Number Two to Loan and Security Agreement, Waiver and Consent dated as of the date hereof by and among STNY, each of the Guarantors and the Third Party Pledgor listed on the signature pages thereto, and Wells Fargo Foothill, Inc.

**“WETM”** means television broadcast station WETM-TV, Elmira, New York.

**“WETM Purchase Agreement”** means that certain Asset Purchase Agreement dated as of August 13, 2004, by and among STNY, STNYLH and Central NY News, Inc. with respect to television broadcast station WETM-TV, Elmira, New York.

**“WFFF”** shall have the meaning set forth in the Recitals.

**“WKTV”** shall have the meaning set forth in the Recitals.