

ASSET PURCHASE AGREEMENT

This Agreement, dated as of March 15 2002, is by and between WABQ, Inc., an Ohio corporation (“*Seller*”), and D and E Communications Corporation of Ohio, an Ohio corporation (“*Buyer*”).

Seller owns and operates and is the Federal Communications Commission (the “*FCC*”) licensee of radio station WABQ(AM), Cleveland, Ohio (Facility ID #70659) (the “*Station*”). Seller desires to sell and Buyer desires to acquire certain of the assets used or useful in the operation of the Station on the terms and subject to the conditions set forth in this Agreement.

Article 13 contains a glossary of capitalized terms used in this Agreement.

Therefore, the parties agree as follows:

ARTICLE 1 ASSETS TO BE CONVEYED

1.1. Closing. Subject to **Article 10** (Termination Rights), the closing (the “*Closing*”) of the sale and purchase of the Station Assets, as defined below, shall take place in the offices of Leventhal, Senter & Lerman P.L.L.C., 2000 K Street, N.W., Suite 600, Washington, D.C., at 10:00 a.m., local time, on the fifth business day following the satisfaction or waiver by the party entitled to waive the conditions set forth at Article 7, or at such other place, time or date as Buyer and Seller may agree in writing.

1.2. Station Assets. At the Closing, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase from Seller, all of the assets, properties and business (other than the Excluded Assets), of every type and description, real, personal and mixed, tangible and intangible, including the business of the Station as a going concern, used or held for use in the conduct of the business and operation of the Station (the “*Station Assets*”), and specifically including the following:

(a) the FCC licenses, permits and other authorizations identified on Schedule 1.2(a), and any other license, permit, or other authorization, including any temporary waiver or special temporary authorization, issued by the FCC for use in the operation of the Station, including any renewals thereof or any pending applications therefor, and all of Seller’s right, title and interest in the call letters “WABQ” (collectively, the “*FCC Licenses*”);

(b) all equipment, furniture, fixtures and other items of tangible personal property used in the operation of the Station, including those items identified on Schedule 1.2(b) (the “*Personal Property*”);

(c) all of Seller’s rights under, interest in and the going-concern value of all Contracts relating to the conduct of the business and operations of the Station (“*Station Contracts*”), including the Station Contracts identified on Schedule 1.2(c);

(d) all of Seller's rights, title and interest in and to all trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos, slogans, internet domain names, internet web sites and related agreements, content and databases used or held for use in the conduct of the business and operation of the Station, including those items identified on Schedule 1.2(d) (the "*Intellectual Property*");

(e) all of Seller's right, title and interest in all programs and programming materials of whatever form or nature used or intended for use on or by the Station;

(f) all documents in the Station's public inspection file, all FCC logs and other FCC-required records;

(g) all computer software and programs, to the extent assignable, used or held for use in the operation of the Station;

(h) all prepaid expenses and deposits relating to the Station; and

(i) all of Seller's rights under manufacturers' and vendors' warranties relating to items included in the Station Assets and all similar rights against third parties relating to items included in the Station Assets to the extent contractually assignable.

The Station Assets shall be conveyed to Buyer free and clear of all Liens.

1.3. Excluded Assets. The Station Assets shall not include the following items (the "*Excluded Assets*");

(a) Seller's books and records as pertain to the organization, existence or capitalization of Seller;

(b) duplicate copies of such records as are necessary to enable Seller to file tax returns and reports;

(c) all cash and cash equivalents as of the Effective Time, including bank accounts, certificates of deposit, and marketable securities;

(d) all cash accounts receivable of the Station accrued as of the Effective Time in accordance with GAAP for services performed or provided prior to the Effective Time (the "*Accounts Receivable*");

(e) all pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and any other employee benefit plan or arrangement;

(f) insurance policies relating to the Station and the rights to proceeds thereunder, except for any rights that may be assigned pursuant to **Section 6.11** (Risk of Loss); and

(g) all real property, including land, leasehold interests, easements, buildings, improvements and fixtures used or held for use in the conduct of the business and the operation of the Station (the “*Real Property*”). At the Closing, Seller shall provide Buyer with a lease for the use of the Real Property substantially in the form attached hereto as Exhibit 1.3(g) (the “*Real Property Lease*”).

1.4. Assumption of Liabilities and Obligations. To the extent not already assumed by Buyer under the LMA, at the Closing, Buyer shall assume and undertake to pay, satisfy or discharge the liabilities and obligations of Seller arising and accruing exclusively with respect to the period beginning on the Closing Date under (a) the FCC Licenses, (b) the Station Contracts, (ii) any Time Sales Agreements entered into in the ordinary course of business consistent with past practice, or (iii) Station Contracts that Seller enters into between the date of this Agreement and the Closing Date in accordance with the provisions of **Section 6.1** (the “*Assumed Liabilities*”).

1.5. Retained Liabilities. Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities or obligations of Seller other than the Assumed Liabilities (the “*Retained Liabilities*”).

ARTICLE 2 **PURCHASE PRICE**

2.1. Purchase Price. As consideration for the Station Assets, Buyer shall pay to Seller Three Million Dollars (\$3,000,000) (the “*Purchase Price*”), subject to adjustment as provided in **Section 2.3**.

2.2. Payment of Purchase Price. The Purchase Price will be payable as follows:

(a) Upon the execution of this Agreement, Buyer shall pay to Seller a deposit in the amount of One Hundred Fifty Thousand Dollars (\$150,000) by wire transfer of immediately available federal funds to an account at a bank or financial institution located in the United States pursuant to wire instructions that Seller shall deliver to Buyer (the “*Deposit*”).

(b) At the Closing, Buyer shall pay the Purchase Price and any adjustments under **Section 2.3** that the parties agree to prior to the Closing, less the Deposit, by wire transfer of immediately available federal funds to an account at a bank or financial institution located in the United States pursuant to wire instructions that Seller shall deliver to Buyer at least two business days prior to the Closing Date.

2.3. Prorations. The Purchase Price shall be subject to adjustment as follows:

(a) To the extent not prorated pursuant to the LMA, all income and expenses arising from the use and ownership of the Station Assets shall be prorated between Buyer and Seller as of 12:01 a.m. local Cleveland, Ohio time, on the Closing Date (the “*Effective Time*”) in accordance with GAAP. Such prorations shall be based upon the principle that Seller shall be entitled to all income earned and shall be responsible for all liabilities and obligations accruing from the operation of the Station prior to the Effective Time, and Buyer shall be entitled to all income earned and be responsible for liabilities accruing from its operation of the Station thereafter. Such prorations shall include, without limitation, all ad valorem and other property taxes (but shall exclude taxes arising by reason of the transfer of the Station Assets, which shall be paid as set forth in **Section 12.1** of this Agreement), business and license fees, including FCC regulatory fees, music licensing and program license fees (including any retroactive adjustments thereof), security deposits, prepaid expenses, utility expenses, rents, liabilities and obligations under Station Contracts assumed by Buyer pursuant to **Section 1.4**, and similar prepaid and deferred items and all other expenses attributable to the ownership and operation of the Station Assets. Trade Agreements shall be prorated only to the extent provided in **Section 2.3(b)**.

(b) To the extent not prorated pursuant to the LMA, liabilities and obligations under Trade Agreements shall be prorated (i) in favor of Buyer to the extent that the liability of the Station for air time under such agreements as of the Effective Time exceeds the fair market value of the property to be received by Buyer with respect to the Station after the Closing under such agreements; and (ii) in favor of Seller to the extent that the liability of the Station for air time under such agreements as of the Effective Time is less than the fair market value of the property to be received by Buyer with respect to the Station after the Closing under such agreements. The liability of the Station for unperformed time as of the Effective Time shall be valued according to the Station’s rate card as of the date of this Agreement.

(c) Three business days prior to the Closing, Seller shall deliver to Buyer a preliminary statement of any items to be prorated pursuant to this **Section 2.3** and, to the extent feasible, such prorations and adjustments shall be mutually agreed upon by Seller and Buyer and made at the Closing. The preliminary statement will contain all information reasonably necessary to determine the prorations under this **Section 2.3**, including appropriate supporting documentation and such other information as may be reasonably requested by Buyer. In the event Buyer and Seller do not reach a final agreement on such prorations and adjustments at the Closing, Buyer and Seller shall attempt to complete the proration process within 45 days after the Closing. In the event Buyer and Seller do not reach a final agreement on such prorations and adjustments within such 45-day period, Buyer shall deliver to Seller a schedule of its proposed prorations and adjustments (the “*Proration Schedule*”) no later than 60 days after the Closing Date. The Proration Schedule shall be conclusive and binding upon Seller unless Seller provides Buyer with written notice of objection (the “*Notice of Disagreement*”) within 10 days after Seller’s receipt of the Proration Schedule, which notice shall state the prorations of expenses proposed by Seller (the “*Seller’s Proration Amount*”). Buyer shall have 10 days from receipt of a Notice of Disagreement to accept or reject Seller’s Proration Amount. If Buyer rejects Seller’s Proration Amount, and the amount in dispute exceeds \$5,000, the dispute shall be submitted for resolution to the Cleveland, Ohio office of a mutually-agreed upon accounting firm not

associated with either party (the “*Referee*”), such resolution to be final, conclusive and binding on Seller and Buyer. Buyer and Seller agree to share equally the cost and expenses of the Referee, but each party shall bear its own legal and other expenses, if any. If the amount in dispute is equal to or less than \$5,000, such amount shall be divided equally between Buyer and Seller. Payment by Buyer or Seller, as the case may be, of the proration amounts determined pursuant to this **Section 2.3** shall be due five (5) days after the last to occur of (i) Seller’s acceptance of the Proration Schedule or failure to give Buyer a timely Notice of Disagreement; (ii) Buyer’s acceptance of Seller’s Proration Amount or failure to reject Seller’s Proration Amount within ten (10) days of receipt of a Notice of Disagreement; (iii) Buyer’s rejection of Seller’s Proration Amount in the event the amount in dispute equals or is less than \$5,000; and (iv) notice to Seller and Buyer of the resolution of the dispute amount by the Referee in the event that the amount in dispute exceeds \$5,000. If either Buyer or Seller fails to pay when due any amount under this **Section 2.3**, interest on such amount will accrue from the date payment was due to the date such payment is made at per annum rate equal to eight percent (8%), and such interest shall be payable upon demand.

2.4. Allocation. The Purchase Price shall be allocated among the Station Assets based upon an appraisal of the fair market value of the Station Assets to be prepared by such appraisal firm as Seller and Buyer agree. The cost of such appraisal shall borne by Buyer. The parties hereby agree that the allocations based on such appraisal shall be conclusive and binding on each of them for purposes of federal and, where applicable, state and local tax returns.

2.5. Accounts Receivable. To the extent not assigned pursuant to the LMA, on the Closing Date, Seller will assign the Accounts Receivable to Buyer for purposes of collection only. Buyer will collect the Accounts Receivable as Seller’s agent in the same manner and with the same diligence that Buyer uses to collect its own accounts receivable for a period of 120 days following the Closing Date (the “*Collection Period*”); provided, that Buyer shall not be obligated to institute litigation, employ any collection agency, legal counsel or other third party, or take any other extraordinary means of collection. Any client payment received by Buyer shall be attributed to the oldest invoice with respect to such client. Within fifteen business days after the Closing Date, Seller shall deliver to Buyer a complete and detailed statement of each Accounts Receivable, including a statement showing all commissions owing with respect to such receivables, if any (the “*Receivable Statement*”). By the fifteenth day of each month during the Collection Period, Buyer shall pay to Seller all amounts collected by Buyer on the Accounts Receivable during the previous calendar month. If during the Collection Period an account debtor disputes an account included among the Accounts Receivable, Buyer may return that account to Seller for collection. At the conclusion of the Collection Period, any remaining Accounts Rccivable shall be reassigned to Seller and thereafter Buyer shall have no further obligation with respect to the Accounts Receivable.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

3.1. Organization and Standing. Seller is a corporation duly formed, validly existing and in good standing under the laws of the State of Ohio. Seller is qualified to do business and is in good standing in the State of Ohio. Seller has all necessary power and authority to own, lease and operate the Station Assets and to carry on the business of the Station as now conducted.

3.2. Authorization and Binding Obligation. Seller has all necessary power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and constitutes its valid and binding obligation enforceable against Seller in accordance with its terms.

3.3. Absence of Conflicting Agreements; Governmental Authorizations; Required Consents. The execution, delivery and performance of this Agreement by Seller: (a) do not and will not violate any provisions of Seller's organizational documents; (b) do not and will not require the approval of or any filing with any governmental authority other than the FCC as contemplated by **Section 5.1**; (c) do not and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; (d) do not and will not require notice to or the consent of any third party except with respect to those Station Contracts identified by an asterisk on Schedule 1.2(c); (e) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination or acceleration of or result in a breach of the terms, conditions or provisions of, or constitute a default under any Contract, instrument, license or permit to which Seller is a party or by which Seller is bound; and (f) do not and will not result in the creation of any Lien on any of the Station Assets.

3.4. Compliance with Laws; Absence of Litigation.

(a) Seller has complied in all material respects with, and is not in violation of, any federal, state or local laws, regulations or orders relating to the operation of the Station.

(b) There is no claim, action, suit, litigation, arbitration, proceeding, inquiry or investigation pending or, to Seller's knowledge, threatened, before or by any court, governmental authority or arbitrator that seeks to enjoin or prohibit, that questions the validity of, that might materially hinder or impair Seller's performance of its obligations under this Agreement.

3.5. Title to Assets.

(a) Seller has good title to or valid leasehold interests in all of the Station Assets, which, at the Closing, will be free and clear of all Liens.

(b) Schedule 3.5 identifies all Station Assets held pursuant to leases, except for the Excluded Assets, and all such leases are disclosed in Schedule 1.2(c).

3.6. FCC Authorizations.

(a) Schedule 1.2(a) contains a true and complete list of the FCC Licenses, and there are no other licenses, permits or other authorizations from the FCC required for the lawful operation of the Station in the manner now operated. The FCC Licenses are in full force and effect. Seller has delivered to Buyer true and complete copies of the FCC Licenses. Seller has filed or made all applications, reports, and other disclosures required by the FCC to be filed or made by Seller with respect to the Station. The FCC Licenses have been issued for the full terms customarily issued to radio broadcast stations in the State of Ohio, and the FCC Licenses are not subject to any condition except for conditions applicable to radio broadcast licenses generally.

(b) Seller has no applications pending before the FCC with respect to the Station. To Seller's knowledge, there are no applications, petitions, complaints, proceedings or other actions pending or threatened before the FCC relating to the Station, other than proceedings affecting the radio broadcasting industry generally.

3.7. Personal Property. Schedule 1.2(b) contains an inventory of all material items of Personal Property. Except as described in Schedule 1.2(b), Seller has good and marketable title to all Personal Property (other than those subject to lease) free and clear of all Liens. Prior to entering into this Agreement, Buyer has inspected the Personal Property and is satisfied with its present condition. At the Closing, the Personal Property will be in the same or better condition and the operation of the Personal Property will be in material compliance with the rules and regulations of the FCC and all other applicable federal, state or local laws.

3.8. Contracts.

(a) Schedule 1.2(c) contains a list of all Station Contracts (including Trade Agreements and leases for Real Property) as of the date of this Agreement, except for Time Sales Agreements entered into in the ordinary course of business.

(b) All Station Contracts are valid, binding and enforceable by Seller in accordance with their respective terms, except as limited by laws affecting creditors' rights or equitable principles generally. Seller is not in default under any of the Station Contracts. Seller has not granted or been granted any waiver or forbearance with respect to any of the Station Contracts. To the best of Seller's knowledge, no other contracting party is in default under any of the Station Contracts. Except as set forth in Schedule 1.2(c), Seller has full legal power and authority to assign its rights under the Station Contracts to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and

such assignment will not require the consent of any third party or affect the validity, enforceability or continuity of any of the Station Contracts.

3.9. Intellectual Property. Seller either owns or holds adequate and assignable rights, licenses and authority to use the Intellectual Property. There is no pending or threatened proceeding, administrative proceeding or litigation affecting or with respect to the Intellectual Property or the application or registration thereof. Seller has received no notice and has no knowledge of any infringement or unlawful use of such property. Schedule 1.2(d) contains a list of description of all Intellectual Property registered or filed with any governmental authority.

3.10. Personnel Information.

(a) Schedule 3.10 contains a list, by department, of all persons employed at the Station, each employee's job title or a description of the capacity in which such employee is employed, whether such employee is full-time or part-time, and such employee's annual base salary and other compensation (including anticipated annual bonus, commissions, prerequisites and other items of compensation), all as of the date of this Agreement. Except as indicated on Schedule 3.10, no employee of Seller at the Station is on paid or unpaid leave. Seller is not a party to any agreement, written or oral, with salaried or non-salaried employees except as described on Schedule 1.2(c). Seller has no knowledge that any person employed at the Station currently plans to terminate employment, whether by reason of the transactions contemplated by this Agreement or otherwise.

(b) Seller is not a party to any agreement with any labor organization, nor has Seller agreed to recognize any union or other collective bargaining unit, nor has any union or other collective bargaining unit been certified as representing any of Seller's employees at the Station. Seller has no knowledge of any organizational effort currently being made or threatened by or on behalf of any labor union with respect to the employees of Seller at the Station.

(c) Except as set forth in Schedule 3.10, Seller is not a party to or bound by any employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not such plan is otherwise exempt from the provisions of ERISA, and no employee or spouse of an employee is entitled to any benefits that would be payable pursuant to any such plan. To Seller's knowledge, Seller has complied with all laws relating to the employment of labor, including, without limitation, ERISA and those laws relating to safety, health, wages, hours, collective bargaining, unemployment insurance, workers' compensation, equal employment opportunity and payment and withholding of taxes.

3.11. Financial Statements. Seller has provided to Buyer true and complete copies of the Financial Statements. The Financial Statements accurately reflect and present fairly the financial position and the results of the operations of the Station as of the dates and for the periods indicated.

3.12. Taxes. Seller has timely filed or caused to be filed all federal income tax returns and all other federal, state, county, local or city tax returns which are required to be filed, and

Seller has timely paid or caused to be paid all taxes as shown on those returns or on any tax assessment received by Seller to the extent that such taxes have become due, except for any assessment that Seller is contesting in good faith for which Seller has established adequate reserves (segregated to the extent required by GAAP).

3.13. UCC Financing Statements. All deeds of trust, mortgages, UCC financing statements or other Liens filed or recorded by any party with respect to the Station Assets are listed in Schedule 3.13.

3.14. Insurance. The business, properties (including the Station Assets) and employees of the Station are insured against loss, damage, or injury in amounts customary in the radio broadcast industry.

3.15. Bankruptcy. No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Station Assets, are pending or threatened, and Seller has not made any assignment for the benefit of creditors or taken any action in contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

3.16. Broker's Fees. Neither Seller nor any person or entity acting on Seller's behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

4.1. Organization and Standing. Buyer is a corporation duly formed, validly existing and in good standing under the laws of the State of Ohio; (b) is, and as of the Closing, will be in good standing in the State of Ohio; and (c) has all necessary corporate power and authority to own, lease and operate the Station Assets on and after the Closing Date.

4.2. Authorization and Binding Obligation. Buyer has all necessary power and authority to enter into and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and constitutes its valid and binding obligation enforceable against Buyer in accordance with its terms.

4.3. Absence of Conflicting Agreements or Required Consents. The execution, delivery and performance of this Agreement by Buyer: (a) do not and will not violate any provision of Buyer's organizational documents; (b) do not and will not require the approval of or filing with any governmental authority other than the FCC as contemplated by **Section 5.1**; (c) do not and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; (d) do not and will not require notice to or

the consent of any third party, except such consents as may be required to assign the Station Contracts to Buyer; and (e) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination or acceleration of or result in a breach of the terms, conditions or provisions of, or constitute a default under any Contract.

4.4. Absence of Litigation. There is no claim, action, suit, litigation, arbitration, proceeding, inquiry or investigation pending, or to the Buyer's knowledge, threatened, before or by any court, governmental authority or arbitrator, that seeks to enjoin or prohibit, that questions the validity of, or that might materially hinder or impair Buyer's performance of its obligations under this Agreement.

4.5 FCC Qualifications. Buyer is qualified under the Communications Act of 1934, as amended, and the published rules and regulations of the FCC in effect on the date of this Agreement to be the assignee of the FCC Licenses.

4.6. Broker's Fees. Neither Buyer nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity.

ARTICLE 5

GOVERNMENTAL CONSENTS

5.1. FCC Application.

(a) The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC. Between the date of this Agreement and the Closing, Buyer shall not directly or indirectly control the operation of the Station.

(b) No later than 5 business days after the date of this Agreement, Buyer and Seller shall each prepare and jointly file the FCC Application. Seller and Buyer shall thereafter prosecute the FCC Application in good faith and with all reasonable diligence and otherwise use reasonable efforts to obtain the grant of the FCC Application as expeditiously as practicable. If reconsideration or judicial review is sought with respect to the FCC Consent, the party or parties affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to **Article 10**.

(c) All FCC filing or grant fees shall be shared equally by Buyer and Seller. Each party shall otherwise bear its own costs and expenses (including the fees and disbursements of its counsel) in connection with the preparation of the portion of the FCC Application to be prepared by it and in connection with the processing and defense of the FCC Application.

ARTICLE 6
COVENANTS

6.1. Conduct of Business. Between the date of this Agreement and the Closing Date, except as expressly permitted by this Agreement or with the prior written consent of Buyer, or as otherwise provided in the LMA, Seller shall:

- (a) conduct the business and operation of the Station solely in the ordinary course of business consistent with past practices;
- (b) use commercially reasonable efforts to preserve the ongoing operations, business and assets of the Station, including the relationships with customers, employees, suppliers and others with whom Seller deals;
- (c) take all necessary actions to maintain the FCC Licenses in full force and effect;
- (d) operate in substantial compliance with all applicable laws, rules and regulations;
- (e) not sell, assign, lease or otherwise transfer or dispose of any material item of the Station Assets;
- (f) not create, assume or permit to exist any Lien upon the Station Assets;
- (g) use commercially reasonable efforts to maintain the Station Assets in their current condition, except for ordinary wear and tear and damage governed by Section 6.8 and to repair or replace any of the material Station Assets consisting of the technical equipment in accordance with its past practices;
- (h) not waive any material right relating to the Station Assets;
- (i) maintain all existing insurance policies on the Station Assets;
- (j) timely make all payments required to be paid when due and otherwise pay all liabilities and satisfy all of Seller's obligations relating to the Station when such liabilities and obligations become due;
- (k) not take any action that is inconsistent with its obligations under this Agreement or that could unreasonably hinder or delay the consummation of the transactions contemplated by this Agreement.

6.2 Access. Between the date hereof and the Closing Date, Seller shall give, upon prior reasonable notice, Buyer or representatives of Buyer (including consultants and advisors) reasonable access, in the presence of Seller's President, John R. Linn, to the Station and the

Station Assets. It is expressly understood that, pursuant to this **Section 6.2**, Buyer, at its sole expense, shall be entitled, upon prior reasonable notice to John R. Linn, to make reasonable engineering and other inspections of the Station Assets in the presence of John R. Linn, so long as such inspection does not unreasonably interfere with Seller's operation of the Station in Seller's reasonable judgment.

6.3. Notification. Between the date of this Agreement and the Closing Date, Seller shall promptly notify Buyer (a) of the occurrence of any event that would cause any of Seller's representations or warranties to be materially untrue, (b) of any pending or, to its knowledge, threatened litigation, arbitration or administrative proceeding that seeks to revoke, cancel, rescind, modify or fail to renew in the ordinary course any of the FCC Licenses or that challenges the transactions contemplated hereby, including any challenges to the FCC Application; (c) of the issuance of any order to show cause, notice of violation, notice of apparent liability or notice of forfeiture with respect to the Station; (d) of the submission, to Seller's knowledge, of any material complaint against the Station or Seller with respect to the Station; and (e) if the regular broadcast transmissions of either of the Station from its main broadcasting antenna at full authorized effective radiated power is interrupted or impaired for more than three consecutive hours or an aggregate of twelve hours in any continuous two-day period or 24 hours in any single 30-day period.

6.4. Third-Party Consents. Between the date of the Agreement and the Closing Date, Seller shall use commercially reasonable efforts to obtain at its own expense the consent of any third parties necessary for the assignment to Buyer of any Station Contract to be assigned hereunder. To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant hereto shall not constitute an assignment thereof, but to the extent permitted by law shall constitute an equitable assignment by Seller and assumption by Buyer of Seller's rights and obligations under the applicable Station Contract, with Seller making available to Buyer the benefits thereof and Buyer performing the obligations thereunder on Seller's behalf to the extent and only to the extent that such obligations would have been included in the Assumed Liabilities if such consent had been received.

6.5. Payment of Indebtedness; Financing Statements. At or prior to the Closing, Seller shall secure the release of all Liens on the Station Assets except for Liens securing liabilities and obligations to be assumed by Buyer under **Section 1.4** hereof.

6.6. Risk of Loss. The risk of loss or damage to the Station Assets prior to the Effective Time shall be upon Seller. Seller shall repair, replace and restore any damaged or lost material Station Asset to its prior condition as soon as possible and in no event later than the Effective Time unless such item was obsolete and unnecessary for the continued operation of the Station consistent with past practice. If Seller is unable or fails to repair, restore or replace a lost or damaged item required to be repaired or replaced by Seller prior to the Closing, Buyer, at its option, may elect to (a) postpone the Closing until such time as the property has been completely repaired or restored (and, if necessary, Seller shall join Buyer in requesting from the FCC any extensions of time in which to consummate the transaction); (b) consummate the transaction and accept the property in its then condition, in which event Seller shall pay or assign to Buyer the

amount of any insurance proceeds and pay to Buyer the amount of any deductible under such insurance policies; or (c) in the event the Station has been off the air for fifteen consecutive days as a result of such damage, terminate this Agreement.

6.7. Station Employees.

(a) Seller shall terminate all of its employees at the Station effective as of the Closing Date and Buyer shall not assume or have any obligations or liabilities with respect to such employees or such terminations. Buyer acknowledges that it may not, at any time prior to the Effective Time, interview or discuss employment terms and issues with the Station's employees, except with the express permission of, and in the presence of Seller's President, John R. Linn, which such permission may be withheld by Mr. Linn for any reason.

(b) Seller acknowledges and agrees that Buyer shall not acquire any rights or interests of Seller in, or assume or have any obligations or liabilities of Seller under, any benefit plans maintained by, or for the benefit of any employee of Seller prior to the Closing Date, including obligations, if any, for severance or vacation accrued but not taken as of the Closing Date.

6.8. Local Marketing Agreement. On the date hereof, Buyer and Seller shall enter into a mutually-agreeable local marketing agreement (the "*LMA*") pursuant to which Buyer will commence programming the Station.

6.9. Confidentiality. Buyer and Seller shall each keep confidential all information obtained by it with respect to the other in connection with this Agreement, except where such information is known or available through other lawful sources or where its disclosure is required in accordance with applicable law. If the transactions contemplated hereby are not consummated for any reason, Buyer and Seller shall return upon request to the other, without retaining a copy thereof, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby.

6.10. Real Property Lease. At the Closing, Seller shall deliver, or shall cause to be delivered to Buyer, the executed Real Property Lease.

ARTICLE 7
CONDITIONS PRECEDENT

7.1. To Buyer's Obligations. The obligations of Buyer hereunder are, at its option, subject to satisfaction, at or prior to the Closing, of each of the following conditions:

(a) **Representations and Warranties.** All representations and warranties made by Seller in this Agreement shall be true and complete in all material respects on and as of the Closing (except to the extent they expressly relate to an earlier time, in which case they shall have been true and correct only as of such earlier time) as if made on and as of that date.

(b) **Performance of Covenants.** All of the terms, covenants and conditions to be complied with or performed by Seller under this Agreement on or prior to the Closing shall have been complied with or performed in all material respects.

(c) **Governmental Consents.** The FCC Consent shall have been obtained and shall be effective.

(d) **No Injunction.** No proceeding shall be pending that seeks to restrain or prohibit, and no order of any court or administrative agency shall be in effect that restrains or prohibits, the transactions contemplated by this Agreement in accordance with its terms.

(e) **Deliveries.** Seller shall have made or stand willing to make all deliveries required under **Section 8.1**.

7.2 To Seller's Obligations. The obligations of Seller hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

(a) **Representations and Warranties.** All representations and warranties made by Buyer in this Agreement shall be true and complete in all material respects on and as of the Closing Date (except to the extent they expressly relate to an earlier time, in which case they shall have been true and correct only as of such earlier time) as if made on and as of that date.

(b) **Performance of Covenants.** All of the terms, covenants and conditions to be complied with and performed by Buyer under this Agreement on or prior to the Closing Date shall have been complied with or performed in all material respects.

(c) **FCC Consent.** The FCC Consent shall have been obtained and shall be effective.

(d) **No Injunction.** No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated by this Agreement in accordance with its terms.

(e) **Deliveries.** Buyer shall have made or stand willing to make all the deliveries required under **Section 8.2** and shall have paid or stand willing to pay the Purchase Price as provided in **Section 2.2**.

ARTICLE 8

DOCUMENTS TO BE DELIVERED AT THE CLOSING

8.1. Documents to be Delivered by Seller. At the Closing, Seller shall deliver to Buyer the following:

(a) a copy of the resolutions of Seller, certified by an authorized officer of Seller, authorizing the execution, delivery and performance of this Agreement;

(b) a certificate, dated as of the Closing Date, executed on behalf of Seller by an officer, certifying (i) that all representations and warranties by Seller contained in this Agreement are true and complete in all material respects on and as of the Closing Date (except to the extent that they expressly relate to an earlier time, in which case they shall have been true and correct only as of such earlier time) as if made on and as of that date, and (ii) that Seller has complied with or performed in all material respects all of the terms, covenants and conditions to be complied with or performed by Seller under this Agreement;

(c) the consents of all third parties to the assignment of the Contracts marked with an asterisk on Schedule 1.2(d) to Buyer that have been obtained as of the Closing Date;

(d) instruments of conveyance and transfer, in form and substance reasonably satisfactory to counsel to Buyer, effecting the sale, transfer, assignment and conveyance of the Station Assets to Buyer, including, but not limited to, the following:

(i) assignments of the FCC Licenses;

(ii) bills of sale for all Personal Property;

(iii) assignments of the Station Contracts;

(iv) assignments of all Intellectual Property, books, records, logs and similar assets;

(e) the Real Property Lease; and

(f) such other documents as may reasonably be requested by Buyer's counsel.

8.2. Documents to be Delivered by Buyer. At the Closing, Buyer shall deliver to Seller the following:

(a) a copy of the resolutions of Buyer, certified by an authorized officer of Buyer, authorizing the execution, delivery and performance of this Agreement;

(b) a certificate, dated as of the Closing Date, executed on behalf of Buyer by an officer, certifying (i) that all representations and warranties by Buyer contained in this Agreement are true and complete in all material respects on and as of the Closing Date (except to the extent that they expressly relate to an earlier time, in which case they shall have been true and correct only as of such earlier time) as if made on and as of that date, and (ii) that Buyer has complied with or performed in all material respects all of the terms, covenants and conditions to be complied with or performed by Buyer under this Agreement;

(c) an instrument, in form and substance reasonably satisfactory to Seller and its counsel, pursuant to which Buyer assumes the Assumed Liabilities as provided in **Section 1.4**;

- Section 2.2;**
- (d) immediately available wire transferred federal funds as provided in
 - (e) the Real Property Lease; and
 - (f) such other documents as may reasonably be requested by Seller's counsel.

ARTICLE 9
INDEMNIFICATION, SURVIVAL

9.1. Seller's Indemnities. From and after the Closing, Seller shall indemnify, defend, and hold harmless Buyer and its Affiliates and their respective directors, officers, employees, and representatives, and the successors and assigns of any of them, from and against, and reimburse them for, all claims, damages, costs and expenses ("*Losses*"), including, without limitation, interest, penalties, court costs and reasonable attorneys' fees and expenses, arising out of, based upon or resulting from:

- (a) any materially inaccurate representation, or any breach of warranty, made by Seller in this Agreement or in any certificate, document, or instrument delivered to Buyer hereunder;
- (b) any failure by Seller to perform any of its obligations under this Agreement or any certificate, document or instrument delivered to Buyer hereunder;
- (c) Seller's ownership or operation of the Station prior to the Closing Date;
- (d) any litigation, proceeding or claim by any third party relating to the business or operations of the Station or the Station Assets prior to the Closing Date no matter when brought or made;
- (e) the Retained Liabilities;
- (f) any failure to comply with any bulk sales or similar laws applicable to the sale of the Station Assets hereunder; or
- (g) any and all actions, suits, proceedings, claims, demands, assessments, judgments, cost and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity, subject to the notice and opportunity to remedy requirements of **Section 9.3** hereof.

9.2. Buyer's Indemnities. From and after the Closing, Buyer shall indemnify, defend and hold harmless Seller and its Affiliates and their respective directors, officers, employees, and representatives, and the successors and assigns of any of them, from and against, and reimburse them for, all Losses arising out of, based upon or resulting from

- (a) any materially inaccurate representation, or any breach of warranty, made by Buyer in this Agreement or in any certificate, document, or instrument delivered to Seller hereunder;
- (b) any failure by Buyer to perform any of its obligations under this Agreement or any certificate, document or instrument delivered to Seller hereunder;
- (c) Buyer's ownership or operation of the Station Assets from and after the Closing Date;
- (d) the Assumed Liabilities; or
- (e) any and all actions, suits, proceedings, claims, demands, assessments, judgments, cost and expenses, including reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid the same or to oppose the imposition thereof, or in enforcing this indemnity, subject to the notice and opportunity to remedy requirements of **Section 9.3** hereof.

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

(a) The party seeking indemnification under this **Article 9** (the "*Claimant*") shall give notice to the party from whom indemnification is sought (the "*Indemnitor*") of any claim, whether solely between the parties or brought by a third party, reasonably specifying (i) the factual basis for the claim, and (ii) the amount of the claim if then known. If the claim relates to an action, suit or proceeding filed by a third party against Claimant, notice shall be given by Claimant within 15 days after written notice of the action, suit or proceeding was given to Claimant. In all other circumstances, notice shall be given by Claimant within 30 days after Claimant becomes, or should have become, aware of the facts giving rise to the claim. Notwithstanding the foregoing, Claimant's failure to give Indemnitor timely notice shall not preclude Claimant from seeking indemnification from Indemnitor if Claimant's failure has not materially prejudiced Indemnitor's ability to defend the claim or litigation.

(b) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have 30 days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purposes of this investigation, the Claimant agrees to make available to the Indemnitor and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate legal remedy.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification hereunder, the Indemnitor shall have the right at its own expense to participate in or assume control of the defense of the claim with counsel reasonably acceptable to Claimant, and the Claimant shall cooperate fully with the Indemnitor, subject to reimbursement

for reasonable expenses incurred by the Claimant as the result of a request by the Indemnitor. If the Indemnitor elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of the claim at its own expense. If the Indemnitor does not elect to assume control or otherwise participate in the defense of any third party claim, Claimant may, but shall have no obligation to, defend or settle such claim or litigation in such a manner as it deems appropriate, and in any event Indemnitor shall be bound by the results obtained by the Claimant with respect to the claim (by default or otherwise) and shall promptly reimburse Claimant for the amount of all expenses (including the amount of any judgment rendered), legal or otherwise, incurred in connection with such claim or litigation. The Indemnitor shall be subrogated to all rights of the Claimant against any third party with respect to any claim for which indemnity was paid.

9.4. Survival. All representations, warranties, covenants, indemnities, and agreements contained in this Agreement or in any certificate delivered pursuant to this Agreement are and will be deemed and construed to be continuing representation, warranties, covenants and agreements and shall survive the Closing for a period of six months (the “*Survival Period*”). Any representation or warranty or covenant that is the subject of a claim that is asserted prior to the expiration of the Survival Period shall survive until such claim or dispute is finally resolved and any obligations with respect thereto are fully satisfied. No claim may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the Survival Period.

ARTICLE 10 **TERMINATION RIGHTS**

10.1. Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by either Buyer or Seller upon written notice to the other, upon the occurrence of any of the following:

(i) if the non-terminating party is in material breach of this Agreement, provided that the party seeking to terminate is not in material breach or default of this Agreement;

(ii) if there shall be in effect any law or rule or final judgment, decree or order that would prevent or make unlawful the Closing;

(iii) if the FCC shall have denied the FCC Application in an order that has become a final order;

(iv) if the Closing has not occurred by reason of the non-terminating party's failure to satisfy a condition to terminating party's obligation to consummate the Closing and the party seeking to terminate is not in material breach or default of this Agreement; or

(v) if the Closing has not occurred by a date that is 12 months from the date of this Agreement (the “*Upset Date*”).

(b) This Agreement may be terminated by mutual written consent of Buyer and Seller. Notwithstanding anything to the contrary in this **Section 10.1**, a party shall not have the right to terminate this Agreement if such party’s failure to fulfill any obligation under this Agreement has been the cause of such termination event.

(c) If either party believes the other to be in breach or default of this Agreement, the non-defaulting party shall, prior to exercising its right to terminate under **Section 10.1(a)(i)**, provide the defaulting party with notice specifying in reasonable detail the nature of such breach or default. The defaulting party shall have ten days from receipt of such notice to cure such default; provided, that if the breach or default is due to no fault of the defaulting party and is incapable of cure within such 10-day period, the cure period shall be extended as long as the defaulting party is diligently and in good faith attempting to effectuate a cure. Nothing in this **Section 10.1(c)** shall be interpreted to extend the *Upset Date*.

10.2. Effect of Termination. In the event of termination of this Agreement pursuant to **Section 10.1**, this Agreement shall forthwith become null and void, and no party hereto (nor any of their respective Affiliates, directors, officers or employees) shall have any liability or further obligation, except as provided in this **Article 10** and in **Article 11**; provided, that nothing in this **Section 10.2** shall relieve any party from liability for any breach of this Agreement prior to termination.

ARTICLE 11 **REMEDIES UPON DEFAULT**

11.1. Default by Seller. If Seller breaches or defaults in its obligations under this Agreement, Buyer may pursue any legal or equitable remedies available to it.

11.2. Default by Buyer. If the parties fail to consummate this Agreement on the Closing Date due to Buyer’s material breach of this Agreement, and Seller is not at that time in material breach hereof, Seller may terminate this Agreement and receive liquidated damages in the amount of \$150,000 (the “*Liquidated Damages Amount*”). The payment of the Liquidated Damages Amount shall be Seller’s sole and exclusive remedy against Buyer for failure to consummate this Agreement and shall be in lieu of all other relief. It is understood and agreed that the Liquidated Damages Amount represents Buyer’s and Seller’s reasonable estimate of actual damages and does not constitute a penalty. As a condition to its entitlement to the Liquidated Damages Amount, Seller shall not be required to have tendered the Station Assets, but shall be required that it is ready, willing and able to do so and to perform all its other closing obligations prior to the *Upset Date*.

ARTICLE 12
OTHER PROVISIONS

12.1. Transfer Taxes and Expenses. All recordation, documentary, excise, sales or use taxes or fees imposed on this transaction shall be shared equally by Buyer and Seller. Except as otherwise provided in this Agreement, each party shall be solely responsible for and shall pay all other costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

12.2. Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12.3. Entire Agreement; Amendment; Waiver. This Agreement, and any exhibits and schedules hereto, embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought. No failure or delay on the part of Buyer or Seller in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

12.4. Headings. The headings set forth in this Agreement are for convenience only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12.5. Computation of Time. If after making computations of time provided for in this Agreement, a time for action or notice falls on Saturday, Sunday or a Federal holiday, then such time shall be extended to the next business day.

12.6. Governing Law; Waiver of Jury Trial. The construction and performance of this Agreement shall be governed by the law of the State of Ohio without regard to its principles of conflict of law, and the federal or state courts of Ohio shall have exclusive jurisdiction over any dispute arising out of or relating in any way from this Agreement, except as provided in **Section 2.3. BUYER AND SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE IN CUYAHOGA COUNTY, OHIO.** Buyer and Seller hereby acknowledge that they are experienced in the ownership and operation of radio broadcast stations and in the negotiation, execution and delivery of agreements involving the sale and purchase of radio broadcast stations, and that they have each had the opportunity to individually seek the advice of counsel to fully explain the meaning of this Agreement, including in particular the jury-trial waiver. Any

question of doubtful interpretation shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the drafter of this Agreement.

12.7. Attorneys' Fees. In the event of any dispute between the parties to this Agreement, Seller or Buyer, as the case may be, shall reimburse the prevailing party for its reasonable attorneys' fees and other costs incurred in enforcing its rights or exercising its remedies under this Agreement. Such right of reimbursement shall be in addition to any other right or remedy that the prevailing party may have under this Agreement.

12.8. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.9. Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request:

If to Seller:

WABQ, Inc.
15710 Pipers Glen
Ft. Myers, FL 33912
Attention: Mr. John R. Linn
Telephone: (941) 561-8110
Facsimile: (941) 561-8111

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

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, DC 20006-1809
Attention: Sally A. Buckman, Esq.
Telephone: (202) 429-8970
Facsimile: (202) 293-7783

If to Buyer:

D and E Communications Corporation of Ohio
3691 Concord Drive
Beachwood Hts., OH 44122
Telephone: (216) 387-2433
Facsimile: (216) 561-7776

Any such notice, demand or request shall be deemed to have been duly delivered and received (a) on the date of personal delivery, or (b) on the next business day following the date of transmission, if sent by facsimile (but only if a hard copy is also sent by overnight courier), or (c) on the date of receipt, if mailed by registered or certified mail, postage prepaid and return receipt requested, or (d) on the date of a receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

12.10. Counterparts; Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. This Agreement shall become binding when one or more counterparts, individually or taken together, bear the signatures of all parties. A facsimile copy of any signature shall be deemed an original for all purposes, provided, however, that the parties agree to deliver original signatures as soon as possible.

12.11. Further Assurances. After the Closing, Seller shall from time to time, at the request of and without further cost or expense to Buyer, execute and deliver such other instruments of conveyance and transfer and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby to vest in Buyer good title to the Station Assets, and Buyer shall from time to time, at the request of and without further cost or expense to Seller, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively relieve Seller of any obligations assumed by Buyer hereunder.

ARTICLE 13 **DEFINITIONS**

13.1. Defined Terms. Unless otherwise stated in this Agreement, the following terms when used herein shall have the meanings assigned to them below (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“*Accounts Receivable*” shall have the meaning set forth in **Section 1.3**. For the avoidance of doubt, Accounts Receivable shall not include any accounts receivable under Trade Agreements or other barter or similar arrangements.

“*Affiliate*” shall mean, with respect to any specified person or entity, any other person or entity who or which, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity.

“*Agreement*” shall mean this Asset Purchase Agreement.

“*Buyer*” shall have the meaning set forth in the preamble to this Agreement.

“*Claimant*” shall have the meaning set forth in **Section 9.3**.

“*Closing*” shall have the meaning set forth in **Section 1.1**.

“*Collection Period*” shall have the meaning set forth in **Section 2.5**.

“*Contracts*” shall mean contracts, agreements, employment agreements, leases, including Real Property leases, licenses, commitments and understandings, options, rights of interests, written or oral.

“*Closing Date*” shall mean the date on which the Closing is completed.

“*Effective Time*” shall have the meaning set forth in **Section 2.3**.

“*Excluded Assets*” shall have the meaning set forth in **Section 1.3**.

“*FCC*” shall have the meaning set forth in the preamble to this Agreement.

“*FCC Application*” shall mean the application that Seller and Buyer must file with the FCC requesting its consent to the assignment of the FCC Licenses from Seller to Buyer.

“*FCC Consent*” shall mean the action by the FCC granting the FCC Application.

“*FCC Licenses*” shall have the meaning set forth in **Section 1.2**.

“*Final Order*” shall mean action by the FCC (i) that has not been vacated, reversed, stayed, or suspended; (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending; and (iii) as to which the time for filing any such appeal request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the rules and regulations of the FCC, has expired.

“*Financial Statements*” shall mean (i) the unaudited statements of income and expenses of the Station for the 12 months ended December 31, 2001; (ii) the unaudited statements of income and expenses for the months of January through December, 2001, and (iii) the financial statements to be furnished pursuant to **Section 6.4**.

“*GAAP*” shall mean generally accepted accounting practices consistently applied.

“*Indemnitor*” shall have the meaning set forth in **Section 9.3**.

“*Intellectual Property*” shall have the meaning set forth in **Section 1.2**.

“*Liens*” shall mean mortgages, deeds of trust, liens, security interests, pledges, collateral assignments, conditional sales agreements, leases, encumbrances, claims, or other defects of title, but shall not include (i) liens for current taxes not yet due and payable, (ii) other inchoate liens imposed by law (such as materialman’s, mechanic’s, carrier’s, worker’s and repairman’s liens) arising in the ordinary course of business (provided that such liens are not recorded or enforced against the Station Assets or do not interfere in any material respect with the use of the Station Assets as currently used and that Seller remains liable for paying such liens), and (iii) defects in title or other matters that do not materially adversely affect Buyer’s use of the Station Assets individually or in the aggregate as presently contemplated or the value of the Station Assets.

“*Liquidated Damages Amount*” shall have the meaning set forth in **Section 11.2**.

“*LMA*” shall have the meaning set forth in **Section 6.8**.

“*Losses*” shall have the meaning set forth in **Section 9.1**.

“*Notice of Disagreement*” shall have the meaning set forth in **Section 2.3**.

“*Personal Property*” shall have the meaning set forth in **Section 1.2**.

“*Proration Schedule*” shall have the meaning set forth in **Section 2.3**.

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

“*Real Property*” shall have the meaning set forth in **Section 1.3**.

“*Real Property Lease*” shall have the meaning set forth in **Section 1.3**.

“*Receivable Statement*” shall have the meaning set forth in **Section 2.5**.

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

“*Retained Liabilities*” shall have the meaning set forth in **Section 1.5**.

“*Seller*” shall have the meaning set forth in the preamble to this Agreement.

“*Seller’s Proration Amount*” shall have the meaning set forth in **Section 2.3**.

“*Station*” shall have the meaning set forth in the preamble to this Agreement.

“*Station Assets*” shall mean the assets to be transferred to Buyer hereunder, as more fully specified in **Section 1.2**.

“*Station Contracts*” shall have the meaning set forth in **Section 1.2**.

“*Survival Period*” shall have the meaning set forth in **Section 9.4**.

“*Time Sales Agreements*” shall mean contracts for the sale of time on the Station for cash.

“*Trade Agreements*” shall mean Contracts for the sale of advertising time for consideration other than cash.

“*Upset Date*” shall have the meaning set forth in **Section 10.1**.

13.2. Miscellaneous Terms. The term “*or*” is disjunctive; the term “*and*” is conjunctive. The term “*shall*” is mandatory; the term “*may*” is permissive. Masculine terms apply to females; feminine terms apply to males. The term “*includes*” or “*including*” is by way of example and not limitation.

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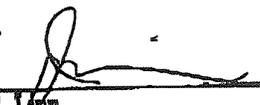
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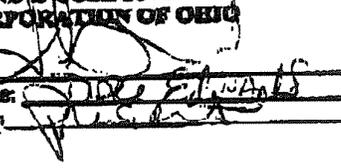
Apr. 26 2001 05:21PM P28
7-546 P.027/086 P-067

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be duly executed as of the date first written above.

WABQ, INC.

By: 
Name: John R. Loran
Title: President

D AND E COMMUNICATIONS
CORPORATION OF OHIO

By: 
Name: D. Edwards
Title: 

LOCAL MARKETING AGREEMENT

This Local Marketing Agreement (the "*Agreement*"), made as of the 15th day of March, 2002, is between WABQ, Inc., a _____ corporation ("*Licensee*"), and D and E Communications Corporation of Ohio, an Ohio corporation ("*Broker*").

RECITALS

Licensee is the licensee of radio station WABQ(AM), Facility ID No. 70659, Cleveland, Ohio (the "*Station*").

Licensee has broadcast time available for sale on the Station and desires that Broker provide radio programming responsive to the needs, interests, issues and desires of the Station's community of license and service area.

Broker has experience in radio programming.

Broker desires to purchase time on the Station to present its programming on the Station and to sell advertising time for inclusion in such programming, and is willing to purchase such broadcast time, subject to the limitations set forth herein and in accordance with the rules, regulations and policies of the FCC.

Therefore, for and in consideration of the mutual covenants herein contained, the parties agree as follows:

1. SALE OF TIME

1.1. **Broadcast of Programming.** During the Term (as defined below) of this Agreement, Licensee shall make available broadcast time on the Station for the broadcast of Broker's programs (the "*Programming*") for up to 168 hours a week except for: (i) downtime occasioned by routine maintenance consistent with Section 2.1.4 herein; (ii) up to one hour per week between 7:00 A.M. and 9:00 A.M. on Sunday mornings for the broadcast of public affairs programming produced or acquired by Licensee; and (iii) times when Broker's programs are not accepted or are preempted by Licensee in accordance with this Agreement.

1.2. **Advertising and Programming Revenues.** During the Programming it delivers to the Station, and as provided in Section 1.1 above, Broker shall have full authority to sell for its own account commercial time on the Station and to retain all revenues from the sale of such advertising. Unless otherwise agreed between the parties, Licensee shall retain all revenues from the sale of the Station's advertising during any hours each week in which the Licensee airs its own public affairs programming on the Station pursuant to Section 2.1.3 hereof.

1.3. **Force Majeure.** Any failure or impairment of facilities or any delay or interruption in broadcasting the Programming, or failure at any time to furnish the facilities, in whole or in part, for broadcasting, due to acts of God, strikes or threats thereof, force majeure or

any other causes beyond the control of Licensee, shall not constitute a breach of this Agreement by Licensee.

1.4. **Access to Studio Facilities.** To enable Broker to fulfill its obligations hereunder, Licensee shall make its main studio facilities (the “*Main Studio*”) and studio equipment available to Broker for its use for the production of Programming under this Agreement, and Broker accepts complete and full responsibility for the care and maintenance of such equipment, during the term of this Agreement. If Broker originates the Programming from any place other than the Main Studio, Broker shall be responsible for delivering the Programming to the Main Studio for broadcast by Licensee on the Station.

1.5. **Payments.** Broker shall pay to Licensee the fees set forth on Schedule 1.5 hereto for the rights granted under this Agreement.

1.6. **Term.** The term of this Agreement (the “*Term*”) shall be for a period of up to one year, commencing on 3/15, 2002 (the “*Commencement Date*”) and ending at the earlier of 11:59 p.m. Cleveland, Ohio time on 3/14, 2003, or upon termination of this Agreement pursuant to Section 8 hereof. This Agreement may be extended beyond the Term only upon the mutual written agreement of Licensee and Broker.

1.7. **License to Use Call Sign and Trademarks.** Licensee hereby grants Broker a license to use Licensee’s call sign “WABQ” and trademarks and names relating to the Station (the “*Marks*”) for the Programming during the Term.

2. **PROGRAMMING AND OPERATING STANDARDS**

2.1. **Obligations and Rights of Licensee.** Licensee shall be responsible for the control of the day-to-day operations of the Station in conformance with its FCC licenses, permits and authorizations. Without limiting the generality of the foregoing, Licensee shall have the following rights and obligations with respect to programming and technical operations of the Station, provided, however, that Licensee expressly agrees that its right of preemption under Sections 2.1.1, 2.1.2 and 2.1.3 below shall not be exercised in an arbitrary manner or for the commercial advantage of Licensee, and shall be exercised only to the extent that Licensee deems necessary to carry out its obligations as an FCC licensee:

2.1.1. **Licensee's Absolute Right to Reject Programming.** Licensee shall retain the absolute right to reject any Programming (including advertisements) that Licensee in its sole discretion deems contrary to the public interest.

2.1.2. **Licensee's Right to Preempt Programming for Special Events.** Licensee shall have the right, in its sole discretion, to preempt Programming in order to broadcast a program deemed by Licensee to be of greater national, regional, or local interest, and to use part or all of the hours of operation of the Station for the broadcast of events of special importance. In all such cases, Licensee will use its best efforts to give Broker reasonable advance notice of its intention to preempt any regularly scheduled programming.

2.1.3. **FCC Public Interest Requirements.** The parties agree that Licensee may broadcast its own public service programming as set forth in Section 1.1 hereof and such other public service programming at such other times as the parties may agree. The parties acknowledge that Licensee is ultimately responsible for complying with the FCC's rules and regulations with respect to (a) the carriage of political advertisements and programming (including, without limitation, the rights of candidates and, as appropriate, others to equal opportunities, lowest unit charge and reasonable access); (b) the broadcast and nature of public service programming; (c) the maintenance of political and public inspection files and the Station's logs; (d) the ascertainment of issues of community concern; and (e) the preparation of all quarterly issues/programs lists. Licensee reserves the right to refuse to broadcast any program containing matter that Licensee reasonably and in good faith believes to be, or that Licensee reasonably and in good faith believes is likely to be determined by the FCC or any court or other regulatory body with authority over Licensee or the Station to be, violative of any right of any third party or indecent or obscene. Licensee shall further have the right to take any other actions necessary for compliance with the laws of the United States, the State of Ohio, the rules, regulations and policies of the FCC (including the prohibition on unauthorized transfers of control), and the rules, regulations and policies of other federal government authorities, including the Federal Trade Commission and the Department of Justice.

2.1.4. **Maintenance and Repair of Transmission Facilities.** Subject to Licensee's supervision and to Schedule 1.5 hereto, Broker shall maintain the Station's transmission equipment and facilities, including the antennas, transmitters and transmission lines. Subject to Schedule 1.5 hereto, Licensee shall provide for the delivery of electrical power to the Station's transmitting facilities. Broker shall at all times obtain Licensee's consent in advance of performing any maintenance work affecting the operation of the Station. Licensee shall supervise Broker in Broker's undertaking such repairs as are necessary to maintain full-time operation of the Station with its maximum authorized facilities as expeditiously as possible following the occurrence of any such loss or damage. Broker agrees that Licensee shall not be liable under this Agreement for any failure of the Station's transmission equipment or facilities that interferes with or prevents the broadcast of the Programming.

2.1.5. **Studio Location.** Licensee shall maintain and staff a main studio for the Station as required under the FCC's rules and regulations.

2.1.6. **Compliance with FCC Technical Rules.** Licensee shall retain, on a full time or part time basis, a qualified engineer who shall be responsible for supervising the transmission facilities of the Station. Licensee shall also designate and retain or employ a Chief Operator, as that term is defined by the rules and regulations of the FCC, who shall be responsible for ensuring compliance by the Station with the technical operating and reporting requirements established by the FCC.

2.1.7. **Maintain Insurance.** Licensee shall maintain insurance coverage on its equipment and broadcast facilities during the Term in amounts not less than the maximum coverage which Licensee has maintained during the current fiscal year, and shall name Broker as an additional named insured on such policies.

2.2. **Obligations and Rights of Broker.** Broker shall not knowingly take any action, or omit to take any action, inconsistent with Licensee's obligations under law to retain ultimate responsibility for the programming and technical operations of the Station. Without limiting the generality of the foregoing, Broker agrees as follows:

2.2.1. **Compliance with Laws and Station Policies.** All Programming shall conform in all material respects to all applicable rules, regulations and policies of the FCC, and all other laws or regulations applicable to the broadcast of programming by the Station. All Programming shall be prepared and presented in conformity with the regulations prescribed in Schedule 2.2.1 hereto.

2.2.2. **Cooperation with Licensee.** Broker, on behalf of Licensee, shall furnish within the Programming all station identification announcements required by the FCC's rules, and shall, upon request by Licensee, provide information with respect to any of the Programming which is responsive to the public needs and interests of the area served by the Station so as to assist Licensee in the preparation of any required programming reports, and will provide upon request other information to enable Licensee to prepare other records, reports and logs required by the FCC or other local, state or federal governmental agencies. Broker shall maintain and deliver to Licensee all records and information required by the FCC to be placed in the public inspection files of the Station pertaining to the broadcast of political programming and advertisements, in accordance with the provisions of Sections 73.1943 and 73.3526 of the FCC's rules, and agrees that broadcasts of sponsored programming addressing political issues or controversial subjects of public importance will comply with the provisions of Section 73.1212 of the FCC's rules. Broker shall cooperate with Licensee to ensure compliance with the FCC's rules regarding Emergency Alert System tests and alerts.

2.2.3. **Payola and Plugola.** Broker shall provide to Licensee in advance any information known to Broker regarding any money or other consideration which has been paid or accepted, or has been promised to be paid or to be accepted, for the inclusion of any matter as a part of any programming or commercial material to be supplied to Licensee by Broker for broadcast on the Station, unless the party making or accepting such payment is identified in the program as having paid for or furnished such consideration in accordance with FCC requirements. Commercial matter with obvious sponsorship identification will not require disclosure beyond the sponsorship identification contained in the commercial copy. Broker shall at all times endeavor to proceed in good faith to comply with the requirements of Sections 317 and 507 of the Communications Act of 1934, as amended, and the related rules and regulations of the FCC.

2.2.4. **Handling of Mail.** Broker shall provide Licensee with the original or a copy of any correspondence from a member of the public relating to the Programming to enable Licensee to comply with FCC rules and policies, including those regarding the maintenance of the public inspection file. Licensee shall not be required to receive or handle mail, facsimiles, emails or telephone calls in connection with the Programming unless Licensee has agreed to do so in writing. Licensee shall promptly forward to Broker all correspondence, payments, communications or other information and/or documents which it receives and which relate to the

Programming, including without limitation, invoices, billing inquiries, checks, money orders, wire transfers, or other payments for services or advertising.

2.2.5. **Compliance with Copyright Act.** Broker shall not broadcast any material on the Station in violation of the Copyright Act or the rights of any person. All music supplied by Broker shall be (a) licensed by a music licensing agent such as ASCAP, BMI, or SESAC; (b) in the public domain; or (c) cleared at the source by Broker. Licensee shall not be obligated to pay any music licensing fees or other similar expenses required in connection with the material broadcast by Broker on the Station. Licensee, to the extent the material is not covered by licenses Broker has acquired, shall be obligated to pay any music licensing fees and other similar expenses required in connection with material broadcast by Licensee in accordance with Section 1.1 of this Agreement.

3. RESPONSIBILITY FOR EMPLOYEES AND EXPENSES

3.1. On the Commencement Date, Licensee shall terminate the Station's employees, provided, however, that Licensee shall employ at least one full-time management-level employee for the Station, who shall report and be solely accountable to Licensee and shall be responsible for the operation of the Station, and at least one staff-level employee who shall report to and assist the manager in the performance of his duties. The employees to be terminated shall be referred to as the "Terminated Employees," and the management and staff-level employees retained by Licensee shall be referred to as the "Licensee's Employees." Subject to Schedule 1.5, Licensee will be responsible for all costs associated with the Licensee's Employees, including salaries, taxes, insurance, and related costs.

3.2. Broker acknowledges that it may not, at any time prior to the Commencement Date, interview or discuss employment terms and issues with the Terminated employees, except with the express permission of, and in the presence of Licensee's President, John R. Linn, which such permission may be withheld by Mr. Linn for any reason. Broker may not solicit the Licensee's Employees for employment. Whenever at the Station's studios or otherwise on the Station's premises, all of Broker's personnel shall be subject to the supervision and direction of the Licensee's Employees.

3.3 Licensee acknowledges and agrees that Broker shall not have any rights or interests of Licensee in, or assume or have any obligations or liabilities of Licensee under, any benefit plans maintained by, or for the benefit of any employee of Licensee prior to the Commencement Date, including obligations, if any, for severance or vacation accrued but not taken as of the Commencement Date.

3.4 Broker shall be responsible for the artistic personnel and material for the production of the Programming to be provided under this Agreement. Broker shall provide any transmitter duty operators required for the operation of the Station during any period when the Programming is being broadcast. Broker shall employ and be responsible for the salaries, taxes, insurance and related costs for all of its own personnel and facilities used in fulfillment of its rights and obligations under this Agreement and for maintenance and repair costs that are Broker's responsibility under Section 2.1.4 of this Agreement. Broker shall pay for all costs

associated with production and listener responses, including telephone costs, fees to ASCAP, BMI and SESAC, any other copyright fees, and all other costs or expenses attributable to the Programming that is delivered by Broker for broadcast on the Station. Broker shall maintain at its expense and with reputable insurance companies reasonably acceptable to Licensee, commercially reasonable coverage for broadcaster's liability insurance, worker's compensation insurance and commercial general liability insurance. Licensee shall be named as an additional insured on such policies, and such policies shall not be terminable without notice to Licensee and an opportunity to cure any default thereunder. Broker shall deliver to Licensee on or before the Commencement Date, and thereafter upon request, current certificates establishing that such insurance is in effect.

3.5 Subject to Schedule 1.5 hereto, Licensee shall be responsible for timely paying: (a) all expenses for the transmitter and Main Studio sites; (b) all FCC regulatory or filing fees; (c) all real and personal property taxes relating to the Main Studio and the transmitter sites; (d) all utility costs (telephone, electricity, etc.) relating to the Main Studio and the transmitter sites; (e) insurance payments on facilities; (f) consulting engineer fees; and (g) the salaries, taxes, insurance and related costs for Licensee's Employees (the "Station Expenses").

4. **ASSIGNMENT AND ASSUMPTION OF CERTAIN AGREEMENTS, RIGHTS AND OBLIGATIONS**

4.1. **Assignment and Assumption.** As of the Commencement Date, and except as set forth in Schedule 4.1 attached hereto, Licensee shall assign to Broker all of Licensee's right, title and interest in the contracts listed on Schedule 4.1 hereto in existence on the Commencement Date as they relate to the Station (the "*Assumed Contracts*"). As of the Commencement Date, Broker shall assume and undertake to pay, satisfy or discharge the liabilities, obligations and commitments of Licensee arising or accruing on or after the Commencement Date under the Assumed Contracts.

4.2. **Limitation.** Except as set forth in Section 4.1, Broker expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations or commitments of Licensee of any nature whatsoever.

4.3. **Third-Party Consents.** Licensee shall use its reasonable efforts to obtain the consent of any third party necessary for the assignment to Broker of any of the Assumed Contracts. To the extent a required consent has not been obtained, Licensee shall use its reasonable efforts to provide Broker with the benefits of any such Assumed Contract (including, without limitation, permitting Broker to enforce any rights of Licensee under such Assumed Contract), and Broker shall not be deemed to have assumed such contract and Licensee shall not be deemed to have transferred such contract, provided, however, that Broker and Licensee shall work together in good faith to find, if possible, reasonable alternatives to obtaining such consent, to the end that Licensee and Broker are put in the same economic position they would have been in had such consent been obtained.

5. PRORATIONS; ACCOUNTS RECEIVABLE

5.1. **Proration of Income and Expenses.** Other than with respect to Station Expenses and income and expenses under any contract retained by Licensee (a “*Retained Contract*”), all income and expenses arising from the conduct of the business and operation of the Station shall be prorated between Broker and Licensee as of 12:01 a.m. on the Commencement Date. Such prorations shall be based upon the principle that Licensee shall be entitled to all income earned and shall be responsible for all liabilities and obligations accruing in connection with the operation of the Station until the Commencement Date, and that, other than with respect to Station Expenses and Retained Contracts, Broker shall be entitled to all income earned and (subject to Section 4.2 above) be responsible for such liabilities and obligations accruing thereafter until the expiration of the Term. Such prorations shall include music and other license fees, wages and salaries of Transferred Employees (excluding accruals up to the Commencement Date for vacation, bonuses, commissions, and related payroll taxes), deposits, liabilities and obligations under all Assumed Contracts, and similar prepaid and deferred items and all other expenses attributable to the operation of the Station except for income and expenses under the Retained Contracts. Contracts for the sale of advertising time on the Station in exchange for goods and services (“*Trade Agreements*”) shall be prorated to the extent provided in Section 5.2 of this Agreement.

5.2. **Trade Agreements.** Broker shall make a proration in favor of Licensee with respect to Trade Agreements in the event that the aggregate fair market value of property to be received by Broker exceeds the aggregate liability for air time.

5.3 **Payment of Proration Items.** To the extent practicable, prior to the Commencement Date, Licensee shall deliver to Broker a preliminary list of any items to be prorated pursuant to Section 5.1, and, to the extent feasible, such prorations and adjustments shall be settled at the Commencement Date. As soon as practicable, but in no event later than 45 days after the Commencement Date, Broker shall deliver to Licensee a schedule of its proposed prorations and adjustments pursuant to Sections 5.1 and 5.2 (which shall set forth in reasonable detail the basis for those determinations) (the “Proration Schedule”). The Proration Schedule shall be conclusive and binding upon Licensee unless Licensee provides Broker with written notice of objection (the “Notice of Disagreement”) within 30 days after Licensee's receipt of the Proration Schedule, which notice shall state the prorations of expenses proposed by Licensee (the “Licensee’s Proration Amount”). Broker shall have 20 days from receipt of a Notice of Disagreement to accept or reject Licensee's Proration Amount. If Broker rejects Licensee’s Proration Amount, the dispute shall be submitted within 10 days to a disinterested accounting firm selected by counsel for Broker and Licensee (the “Referee”) for resolution of the dispute, such resolution to be made within 30 days after submission to the Referee and to be final, conclusive and binding on Licensee and Broker. Broker and Licensee agree to share equally the cost and expenses of the Referee, but each party shall bear its own legal and other expenses, if any. Payment by Broker or Licensee, as the case may be, for the proration amounts determined pursuant to this Section 5.3 shall be due 15 days after the last to occur of (a) Licensee's acceptance of the Proration Schedule or failure to give Broker a timely Notice of Disagreement; (b) Broker's acceptance of Licensee's Proration Amount or failure to reject Licensee's Proration

Amount within 20 days of receipt of a Notice of Disagreement; or (c) notice to Licensee and Broker of the resolution of the disputed amount by the Referee.

5.4. **Accounts Receivable.** Licensee shall retain all right, title and interest to all accounts receivables for cash for services performed or provided by the Station prior to the Commencement Date (the “*Accounts Receivable*”). On the Commencement Date, Licensee will assign the Accounts Receivable to Broker for purposes of collection only. Broker will collect the Accounts Receivable as Licensee’s agent in the same manner and with the same diligence that Broker uses to collect its own accounts receivable for a period of 120 days following the Commencement Date (the “*Collection Period*”); provided, that Broker shall not be obligated to institute litigation, employ any collection agency, legal counsel or other third party, or take any other extraordinary means of collection. Any client payment received by Broker shall be attributed to the oldest invoice with respect to such client. Within fifteen business days after the Commencement Date, Licensee shall deliver to Broker a complete and detailed statement of each Accounts Receivable, including a statement showing all commissions owing with respect to such receivables, if any (the “*Receivable Statement*”). By the fifteenth day of each month during the Collection Period, Broker shall pay to Licensee all amounts collected by Broker on the Accounts Receivable during the previous calendar month. If during the Collection Period an account debtor disputes an account included among the Accounts Receivable, Broker may return that account to Licensee for collection. At the conclusion of the Collection Period, any remaining Accounts Receivable shall be reassigned to Licensee and thereafter Broker shall have no further obligation with respect to the Accounts Receivable.

5.5. **Interest.** Subject to Section 7 and Schedule 1.5 hereto, if either Broker or Licensee fails to timely pay any amount within five (5) days of the due date under this Agreement, such amount shall bear interest at a rate equal to eight percent (8%) from the date such amount was due until the date such amount is paid.

6. **INDEMNIFICATION**

6.1. **Broker Indemnification.** Broker shall indemnify and hold Licensee and its officers, directors, shareholders, members, partners, agents, and employees harmless against any and all claims, damages, liabilities, costs, and expenses (including by way of example and without limitation, reasonable attorneys’ fees) (individually or collectively “*Damages*”) arising out of: (a) libel, slander, illegal competition or trade practice, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights or proprietary rights and any other violations of the rights of any third party, resulting from the broadcast of the Programming; or (b) any action taken by Broker or its employees or agents with respect to the Station, or any failure by Broker or its employees or agents to take any action with respect to the Station, including but not limited to Broker’s payment and performance of obligations and liabilities, unless resulting from a failure by Licensee to perform hereunder; or (c) Broker’s breach of any of its representations, warranties or covenants set forth in this Agreement. Broker’s obligation to hold Licensee harmless under this Section shall survive a termination of this Agreement until the expiration of all applicable statutes of limitations.

6.2. **Licensee Indemnification.** Licensee shall indemnify and hold Broker and its officers, directors, shareholders, members, partners, agents and employees harmless against any and all Damages arising out of: (a) libel, slander, illegal competition or trade practice, infringement of trademarks, trade names, or program titles, violation of rights of privacy, and infringement of copyrights or proprietary rights and any other violations of the rights of any third party, resulting from Licensee's broadcast of programs other than the Programming; or (b) any action taken or omission by Licensee or its employees or agents with respect to the Station, or any failure by Licensee or its employees or agents to take any action with respect to the Station, including but not limited to Licensee's payment and performance obligations and liabilities, unless resulting from a failure by Broker to perform hereunder; or (c) Licensee's breach of any of its representations, warranties or covenants set forth in this Agreement. Licensee's obligation to hold Broker harmless under this Agreement shall survive any termination of this Agreement until the expiration of all applicable statutes of limitations.

6.3. **Procedure for Indemnification and Limitations.** (a) Promptly after the receipt by the indemnified party of notice of (i) any claim or (ii) the commencement of any action or proceeding which may entitle the indemnified party to indemnification under this Section 5, the indemnified party shall give the indemnifying party written notice of such claim or the commencement of such action or proceeding and shall permit, but not require, the indemnifying party to assume the defense of any such claim or any litigation resulting from such claim. The indemnified party's failure to give the indemnifying party timely notice shall not preclude the indemnified party from seeking indemnification from the indemnifying party unless the indemnified party's failure has materially prejudiced the indemnifying party's ability to defend the claim or litigation.

(b) If the indemnifying party assumes the defense of any such claim or litigation resulting therefrom, the obligations of the indemnifying party as to such claim shall be limited to taking all steps necessary in the defense or settlement of such claim or litigation resulting therefrom and to holding the indemnified party harmless from and against any losses and liabilities caused by or arising out of any settlement approved by the indemnifying party or any judgment in connection with such claim or litigation. The indemnified party shall cooperate and make available all books and records reasonably necessary and useful in connection with the defense.

(c) In the event the indemnified party properly tenders its right to defend to the indemnifying party and if the indemnifying party either does not acknowledge its indemnity obligations or accept the defense within thirty (30) days of such notice, the indemnified party may retain its own counsel and defend or reasonably settle the claim at the expense of the indemnifying party.

7. **EVENTS OF DEFAULT AND CURE PERIODS**

7.1. **Events of Default.** The following shall, after the expiration of the applicable cure periods as set forth in Section 7.2, each constitute an Event of Default under this Agreement:

7.1.1. **Non-Payment.** Broker's failure to pay when due the fees payable under Section 1.5 of this Agreement;

7.1.2. **Default in Covenants or Adverse Legal Action.** Either party (a) defaults in the performance of any material covenant, condition or undertaking contained in this Agreement, (b) makes a general assignment for the benefit of creditors, or (c) files or has filed against it a petition for bankruptcy, for reorganization or an arrangement, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which, if filed against such party, has not been dismissed or discharged within sixty (60) days thereafter; and

7.1.3. **Breach of Representation.** Any material representation or warranty made by either party to this Agreement, or in any certificate or document furnished by either party to the other pursuant to the provisions of this Agreement, proves to have been false or misleading in any material respect as of the time made or furnished.

7.2. **Cure Periods.** Except for a default in payment as required under Section 1.5 on the date provided for in Schedule 1.5 hereto, an Event of Default shall not be deemed to have occurred until 30 days after the non-defaulting party has provided the defaulting party with written notice specifying the event or events that, if not cured, would constitute an Event of Default and specifying the actions necessary to cure the default(s) within such period. A default in payment as required under Section 1.5 on the date provided for in Schedule 1.5 hereto, shall not be deemed to have occurred until ten (10) days after such notice. This period (excluding defaults relating to the payment required under Section 1.5) may be extended for a reasonable period of time if the defaulting party is acting in good faith to cure and such delay is not materially adverse to the other party.

8. **TERMINATION**

8.1. **Termination Upon Default.** Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement, provided that it is not also in material default of this Agreement. Upon the occurrence of an Event of Default by Broker, and if Licensee shall not itself be in material default of this Agreement, then all amounts accrued or payable to Licensee up to the date of termination which have not been paid shall immediately become due and payable, and Licensee shall be under no further obligation to make available to Broker any broadcast time or broadcast transmission facilities on the Station.

8.2. **Termination for Change in FCC Rules or Policies.** Either party may terminate this Agreement upon written notice to the other if there has been a material change in FCC rules or policies that would cause this Agreement to be in violation thereof, or in the event that the FCC determines that this Agreement does not comply with its rules, and such change in the rules or FCC determination is in effect and not the subject of an appeal or further administrative review; provided, however, that in such either event the parties shall first have negotiated in good faith and attempted to agree to an amendment to this Agreement that will provide the parties with a valid and enforceable agreement that conforms to the new FCC rules or policies.

8.3. **Termination in Connection With Asset Purchase Agreement.** This Agreement will terminate automatically upon the Closing, as such term is defined therein, or termination otherwise of that certain Asset Purchase Agreement dated as of March 15, 2002 by and between Broker and Licensee (the "*Purchase Agreement*").

8.4. **Certain Matters Upon Termination.**

8.4.1. If this Agreement is terminated for any reason:

(a) Subject to proration pursuant to Section 5.1 hereof, Broker shall assign, transfer and convey to Licensee all of Broker's rights in, to and under the Assumed Contracts that remain in effect on the date of such termination and all agreements with advertisers existing on the date of such termination (collectively the "*Reassumed Contracts*"). Broker shall use reasonable efforts to promptly obtain and deliver to Licensee, at Broker's expense, any necessary consents to the assignment of the Reassumed Contracts to Licensee.

(b) Licensee shall assume from Broker all liabilities, obligations and commitments of Broker arising or accruing on or after the date of termination pursuant to the Reassumed Contracts, and Broker shall be responsible only for those obligations under the Reassumed Contracts arising on or after the Commencement Date and prior to the termination of this Agreement.

(c) Broker shall return to Licensee any equipment or property of the Station used by Broker, its employees or agents, in substantially the same condition as such equipment existed on the date hereof, ordinary wear and tear excepted.

8.4.2. No expiration or termination of this Agreement shall terminate the obligation of each party to indemnify the other for claims of third parties under Section 6 of this Agreement or limit or impair any party's rights to receive payments due and owing hereunder on or before the date of such termination.

9. **REPRESENTATIONS AND WARRANTIES**

9.1. **Representations and Warranties of Licensee.** Licensee hereby represents and warrants that:

9.1.1. **Organization and Standing.** Licensee is a corporation duly organized, validly existing and in good standing under the laws of State of Ohio and has the necessary organizational power and authority to own, operate and carry on the business of the Station as provided under this Agreement.

9.1.2. **Authorization and Binding Obligation.** Licensee has all necessary power and authority to enter into and perform this Agreement and the transactions contemplated hereby, and Licensee's execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Licensee and constitutes its valid and binding obligation, enforceable

in accordance with its terms, except as limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

9.1.3. **Absence of Conflicting Agreements or Required Consents.** Except for consents required in connection with the assignment of certain assigned contracts, the execution, delivery and performance of this Agreement by Licensee: (a) do not require the consent of any third party, except such consents as have already been obtained; (b) will not violate any provisions of Licensee's organizational documents; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Licensee is a party; and (d) will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, instrument, license or permit to which Licensee is now subject.

9.1.4. **Litigation.** Licensee is subject to no judgment, award, order, writ, injunction, arbitration decision or decree materially adversely affecting the conduct of the business of the Station as it is now conducted, and there is no litigation, proceeding or investigation pending or, to the best of Licensee's knowledge, threatened against Licensee in any federal, state or local court, or before any administrative agency or arbitrator which would have a material adverse effect upon the Station or which seeks to enjoin or prohibit, or otherwise is reasonably likely to defeat the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

9.1.5. **Bankruptcy.** No insolvency proceedings of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Licensee are pending or threatened, and Licensee has made no assignment for the benefit of creditors or taken any action in contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

9.2. **Representations and Warranties of Broker.** Broker hereby represents and warrants that:

9.2.1. **Organization and Standing.** Broker (a) is a corporation formed, validly existing and in good standing under the laws of the State of Ohio; and (b) is qualified to do business and is in good standing in the State of Ohio.

9.2.2. **Authorization and Binding Obligation.** Broker has all necessary power and authority to enter into and perform this Agreement and the transactions contemplated hereby, and Broker's execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Broker and constitutes its valid and binding obligation enforceable against Broker in accordance with its terms.

9.2.3. **Absence of Conflicting Agreements or Required Consents.** The execution, delivery and performance of this Agreement by Broker: (a) do not and will not violate any provision of Broker's organizational documents; (b) do not and will not require the

consent of any third party or governmental authority; (c) do not and will not violate any law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; and (d) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination or acceleration of or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, lease, instrument, license or permit to which Broker is now subject.

9.2.4. **Litigation.** Broker is subject to no judgment, award, order, writ, injunction, arbitration decision or decree materially adversely affecting the conduct of the business of the Station as it is to be conducted under this Agreement, and there is no litigation, proceeding or investigation pending or, to the best of Broker's knowledge, threatened against Broker in any federal, state or local court, or before any administrative agency or arbitrator which would have a material adverse effect upon the Station or which seeks to enjoin or prohibit, or otherwise is reasonably likely to defeat the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

9.2.5. **Bankruptcy.** No insolvency proceedings of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Broker are pending or threatened, and Broker has made no assignment for the benefit of creditors or taken any action in contemplation of or which would constitute the basis for the institution of such insolvency proceedings.

10. CERTIFICATIONS

10.1. **Broker's Certification.** Broker hereby certifies that this Agreement complies with the provisions of subsections (a), (c), and (d) of Section 73.3555 of the FCC's rules and regulations.

10.2. **Licensee's Certification.** Licensee hereby certifies that it shall maintain ultimate control over the Station's facilities, including specifically control over Station finances, personnel, and programming.

11. MISCELLANEOUS

11.1. **Amendment, Modification or Waiver.** No amendment, modification or waiver of any provision of this Agreement shall be effective unless made in writing and signed by the party adversely affected, and any such waiver and consent shall be effective only in the specific instance and for the purpose for which such consent was given.

11.2. **No Waiver; Remedies Cumulative.** No failure or delay on the part of Licensee or Broker in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties to this Agreement are cumulative and are not exclusive of any right or remedies which either may otherwise have.

11.3. **Governing Law; Waiver of Jury Trial.** The construction and performance of this Agreement shall be governed by the law of the State of Ohio without regard to its principles of conflict of law. LICENSEE AND BROKER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE IN CUYAHOGA COUNTY, OHIO. The parties agree that exclusive venue for the resolution of any dispute under this Agreement shall lie with a state or federal court of competent jurisdiction in Cuyahoga County, Ohio. Licensee and Broker hereby acknowledge that they are experienced in the ownership and operation of radio broadcast stations and in the negotiation, execution and delivery of agreements involving the sale and purchase of radio broadcast stations, and that they have each had the opportunity to individually seek the advice of counsel to fully explain the meaning of this Agreement, including in particular the jury-trial waiver. Any question of doubtful interpretation shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the drafter of this Agreement.

11.4. **Attorneys' Fees.** In the event of any dispute between the parties to this Agreement, Licensee or Broker, as the case may be, shall reimburse the prevailing party for its reasonable attorneys' fees and other costs incurred in enforcing its rights or exercising its remedies under this Agreement. Such right of reimbursement shall be in addition to any other right or remedy that the prevailing party may have under this Agreement.

11.5. **No Partnership or Joint Venture.** This Agreement is not intended to be and shall not be construed as a partnership or joint venture agreement between the parties. Except as otherwise specifically provided in this Agreement, no party to this Agreement shall be authorized to act as agent of or otherwise represent any other party to this Agreement.

11.6. **Entire Agreement.** This Agreement, and the exhibits and schedules hereto, embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. Any matter that is disclosed in a schedule to this Agreement in such a way as to make its relevance to the information called for by another schedule readily apparent shall be deemed to have been included in such other schedule, notwithstanding the omission of an appropriate cross-reference.

11.7. **Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign its rights under this Agreement without the prior written consent of the other party, except to any entity under common control, provided that the assignor guarantees the assignee's performance of its obligations under this Agreement. Upon any such assignment of its rights hereunder, references to "Broker" and/or "Licensee" shall include such assignee, provided, however, that no such assignment shall relieve Broker and/or Licensee of any obligation hereunder.

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

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

11.10. **Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request.

If to Licensee:

WABQ, Inc.
15710 Pipers Glen
Ft. Myers, FL 33912
Attention: Mr. John R. Linn
Telephone: (941) 561-8110
Fax: (941) 561-8111

With a copy to:

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
Attention: Sally A. Buckman, Esq.
Telephone: 202-429-8970
Facsimile: 202-293-7783

If to Broker:

D and E Communications Corporation of Ohio
3691 Concord Drive
Beachwood Hts., OH 44122
Attention: _____
Telephone: (216) 387-2433
Facsimile: (216) 561-7776

Any such notice, demand or request shall be deemed to have been duly delivered and received (a) on the date of personal delivery, or (b) on the date of transmission, if sent by facsimile (but only if a hard copy is also sent by overnight courier), or (c) on the date of receipt, if mailed by certified mail, postage prepaid and return receipt requested, or (d) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

11.11. **Severability.** In the event that any of the provisions of this Agreement shall be held unenforceable, then the remaining provisions shall be construed as if such unenforceable provisions were not contained herein. Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions

FROM : PHONE NO. :
Mar-11-02 12:45P union mortgaga

May_03 2001 02:45PM P3

FROM : PHONE NO. :
Mar-09-02 16:16 From-Leventhal Senior Lerman

Apr. 26 2001 05:32PM P53
P-646 P.002/058 F-997

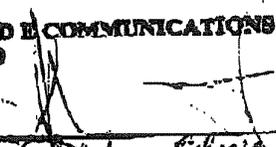
in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

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

WABQ, INC

By: 
Name: John R. Linn
Title: President

D AND H COMMUNICATIONS CORPORATION OF OHIO

By: 
Name: Dale Edwards
Title: President