

## **CAPE COD TRUST AGREEMENT**

This TRUST AGREEMENT (this "Trust Agreement") is entered into as of \_\_\_\_\_, 200\_\_ by and between Quantum Communications Corporation ("Quantum") and Mark O. Hubbard (the "Trustee"). References in this Trust agreement to the Trustee shall mean the Trustee in his representative capacity as trustee of the Cape Cod Trust and not in his individual capacity (except as otherwise specifically provided herein).

### **RECITALS**

A. Pursuant to the January 31, 2005, Asset Purchase Agreement by and among Quantum (the "Buyer"), Boch Broadcasting, LP, a Massachusetts limited partnership ("Boch"), Boch Broadcasting Realty Corp, a Massachusetts corporation ("Boch Realty," and together with Boch, the "Sellers") and Subaru of New England, Inc., a Massachusetts corporation, Sellers are to sell, convey, assign and otherwise transfer to Quantum substantially all of the Sellers' assets used in connection with or otherwise related to WXTK(FM), West Yarmouth, MA; WCOD-FM, Hyannis, MA; WDVTFM), Harwichport, MA ("WDVT"); and WTWV(FM), Mashpee, MA ("WTWV"), including the FCC licenses associated with those stations (the "Boch Transaction").

B. Quantum of Cape Cod License Company, LLC, which is an indirect, wholly-owned Quantum subsidiary, already holds the FCC licenses associated with WPXC(FM), Hyannis, MA ("WPXC"); WCIB(FM), Falmouth, MA; and WRZE(FM), Nantucket, MA.

C. Consummation of the Boch Transaction without the sale of certain radio stations, the assignment of the licenses of certain radio stations and the transfer of the assets of such radio stations to the Cape Cod Trust, as defined below, pursuant to this Trust Agreement, would result in the attribution to Quantum and its subsidiaries of more radio stations in the Cape Cod, MA, Arbitron Market (the "Cape Cod Market") than would be permissible under the Communications Act of 1934, as amended, and the rules, regulations and policies of the Federal Communications Commission ("FCC") (collectively referred to as the "Communications Laws").

D. The parties hereto desire to enter into this Trust Agreement, effective as of the consummation of the Boch Transaction and subject to the consent of the FCC, to facilitate consummation of the Boch Transaction by assuring that such consummation will not result in the attribution to Quantum or its subsidiaries of radio stations in the Cape Cod Market in violation of the Communications Laws by assigning the FCC licenses and other assets relating to the operation of certain stations to an independent trustee, who is directed under this Trust Agreement to operate such stations as independent voices and competitors in the Cape Cod Market.

Accordingly, the parties agree as follows:

## **AGREEMENT**

1.     **Creation of the Cape Cod Trust.** Subject to the terms and conditions hereof, a trust in respect of WPXC(FM), WDV(T)(FM) and WTWV(FM) (the "Trustee Stations"), is hereby created and established, to be known as the "Cape Cod Trust," and the Trustee hereby accepts the trust created hereby and agrees to serve as trustee hereunder. The parties agree that the purpose of the Cape Cod Trust is to vest ownership and control of the Trustee Stations in Trustee for the purpose of the FCC's broadcast ownership and attribution rules and that the provisions of the Trust Agreement shall be interpreted to effectuate such purpose.

2.     **Assets to be Conveyed; Assumption of Obligations.** Upon execution of this Trust Agreement, Quantum and its subsidiaries shall transfer, assign, deliver and convey to the Trustee, and the Trustee shall acquire from Quantum and its subsidiaries, all of the assets, real, personal and mixed, tangible and intangible (including the business of the Trustee Stations as a going concern), owned or held by Quantum or its subsidiaries as of the date of this Trust Agreement, and used primarily in or necessary for the conduct of the business and operations of the Trustee Stations, including, but not limited to, the following:

(a)     all of the right, title and interest of Quantum or any of its subsidiaries in and to the licenses, permits and other authorizations issued by any governmental authority and used, useful or necessary in the conduct of the business of the Trustee Stations, including the licenses issued by the FCC with respect to the Trustee Stations, the call letters for the Trustee Stations and any applications for such licenses, permits and authorizations;

(b)     all of the right, title and interest of Quantum or any of its subsidiaries in and to all real property, including leasehold interests and easements, used primarily in or necessary for the conduct of the business and the operations of the Trustee Stations;

(c)     all equipment, office furniture and fixtures, office materials and supplies, inventory, spare parts, motor vehicles and other tangible personal property of every kind and description, owned, leased or held by Quantum or any of its subsidiaries and used primarily in or necessary for the conduct of the business and operations of the Trustee Stations;

(d)     all cash in the Trustee Stations' operating bank accounts;

(e)     all accounts receivable arising out of the operations of the Trustee Stations;

(f)     all of the rights of Quantum or any of its subsidiaries under, and interest in, all contracts relating primarily to the conduct of the business of the Trustee Stations (but excluding any contract or agreement for the sale of the Trustee Stations' assets following termination of the trust created hereby);

(g) all programs and programming materials of whatever form or nature owned by Quantum or any of its subsidiaries and used or intended for use on or by the Trustee Stations;

(h) the right to use all of the trademarks, trade names, service marks, franchises, copyrights, jingles, logos, slogans, licenses, permits and privileges owned or held by Quantum or any of its subsidiaries and used primarily in or necessary for the conduct of the business and operations of the Trustee Stations, which such right shall be royalty-free during the term of this Trust;

(i) all files, records, books of account, computer programs and software and logs relating primarily to the operations of the Trustee Stations; and

(j) all of the rights of Quantum or any of its subsidiaries under manufacturers' and vendors' warranties relating to items included in the Assets and all similar rights against third parties relating to items included in the Assets to the extent contractually assignable.

The assets to be transferred to the Trustee hereunder are hereinafter collectively referred to as the "Assets." The Trustee assumes and undertakes to pay, satisfy or discharge the liabilities, obligations and commitments relating to the Trustee Stations under all of the contracts included in the Assets, including time sales agreements, employment agreements, leases and other agreements.

Quantum has obtained policies of insurance, or procured the amendment of or riders to existing policies of insurance, to provide insurance coverage related to the Assets under the umbrella policies currently held by Quantum. All such policies shall name the Trustee as the insured or as an additional insured and shall not be canceled or amended without thirty (30) days prior written notice to the Trustee. The Trustee is hereby authorized to make payment of all the premiums, and pay all deductibles and excesses, related to such policies of insurance in the same manner as any other expense in the ordinary course of business of the Trustee Stations.

**3. Term of Trust; Irrevocability.** The Cape Cod Trust shall have a term of five years, subject to early termination as provided in Sections 6 and 7(a) below and subject to extension as provided in Sections 7(b) and 7(e) below. The Cape Cod Trust is irrevocable by Quantum.

**4. Duties and Authority of the Trustee.** The Trustee shall have sole and exclusive power and authority to manage the assets in the Cape Cod Trust, subject to the terms and conditions of this Trust Agreement:

(a) The Trustee shall operate the Trustee Stations in the ordinary course of business consistent with past operations of the Trustee Stations. To the extent possible, the Trustee shall maintain the status quo of such operations at the

Trustee Stations as currently operating with a view to maximizing the value to be received by Quantum consistent with the Trustee's duties as licensee of the FCC and as a fiduciary under this Trust Agreement.

(b) The Trustee shall comply in all material respects with all rules, regulations and policies of the FCC.

(c) The Trustee shall devote such time to the Cape Cod Trust as is necessary in the proper exercise of his fiduciary duties hereunder.

(d) The Trustee is expressly authorized to incur and pay all reasonable charges and other expenses which the Trustee deems necessary and proper in the performance of his duties under this Trust Agreement, including fees and charges for legal counsel of his choosing and the cost of any necessary secretarial staff.

(e) The Trustee and any successor Trustee designated pursuant to Section 8 shall not be an officer, employee, director, shareholder or affiliate of Quantum or any of its subsidiaries, and shall not have any business or familial relationship with any officer, employee, director, or attributable shareholder of Quantum or any of its subsidiaries, or any of their families.

(f) Any employee hired by the Trustee who is not employed at the Trustee Stations as of the effective date of this Trust Agreement shall not be a director, officer, shareholder or employee of Quantum or any of its subsidiaries, and shall not have any business or familial relationship with Quantum or any of its subsidiaries or with any director, officer, attributable shareholder or employee of Quantum or any of its subsidiaries. In his discretion, the Trustee may cause any employee hired pursuant to this Section, and any person previously employed by Quantum or any of its subsidiaries whom the Trustee elects to retain, to execute and deliver to the Trustee an agreement, in form and substance acceptable to the Trustee, pursuant to which such employee agrees to comply with the rules, regulations and policies of the FCC, including without limitation all rules, regulations and policies governing communications among such employee and Quantum, any Quantum subsidiary, or their officers, directors, shareholders, employees, and affiliates regarding the Trustee Stations and its management.

(g) No person other than the Trustee or managers designated by the Trustee shall have any authority with respect to management of the Trustee Stations for so long as this Trust Agreement is in effect.

(h) Except as expressly provided in this Trust Agreement, the Trustee shall not: (i) incur any debt or guaranty obligation in favor of any other person; (ii) engage in any business other than as necessary in the Trustee's reasonable opinion to meet his fiduciary duties with respect to management of the Trustee Stations; (iii) sell or otherwise transfer, assign or encumber all or any significant Assets; (iv) enter into any merger, consolidation, or similar transaction or engage

in any reclassification or similar transaction; or (v) enter into any agreement to do any of the foregoing.

(i) The Trustee shall have any and all such further powers and shall take any and all such further actions (including, but not limited to, taking legal action) as he may, in his sole discretion, deem necessary, proper or prudent to fulfill the Trustee's obligations under this Trust Agreement.

(j) The Trustee shall provide Quantum or its designee with financial reports in form and substance and in such time frames as are consistent with the practices established by Quantum for the Trustee Stations, together with such other financial information as may be reasonably requested by Quantum in order to meet its financial reporting requirements to its accountants, lenders, and any authorities of competent jurisdiction. The Trustee shall also provide Quantum or its designee with monthly budgets and estimates (which shall be prepared in a manner and within such time frames as are consistent with the practice established by Quantum for the Trustee Stations). Quantum shall not use or attempt to use these financial materials to limit or restrict the Trustee's discretion to operate the Trustee Stations in the manner described in this Section 4.

(k) The Trustee shall be free from liability in acting upon any paper, document or signature believed by the Trustee to be genuine and to have been signed by the proper party. The Trustee shall not be liable for any error of judgment in any act done or omitted, nor for any mistake of fact or law, nor for anything which the Trustee may do or refrain from doing in good faith. The Trustee may consult with legal counsel of his own choosing, and the Trustee shall not be liable for any action taken (or omitted to be taken) in good faith by the Trustee and in accordance with such advice of Trustee's counsel.

**5. Distributions of Excess Cash Flow; Reimbursement of Expenses; Indemnification.**

(a) To the extent that the Cape Cod Trust generates cash accumulations in excess of the Trustee Stations' actual and projected expenses as determined by the Trustee in his sole discretion ("Excess Cash Flow"), such Excess Cash Flow shall be remitted to Quantum from time to time as the Trustee shall determine.

(b) Quantum hereby agrees to reimburse and to indemnify the Trustee against all claims, costs of defense of claims (including reasonable attorneys' fees and disbursements and taxes related to the Cape Cod Trust or the Trustee Stations), expenses and liabilities incurred by the Trustee in connection with the performance of his duties under this Trust Agreement, except those incurred as a result of the Trustee's gross negligence, intentional wrongful action or willful misconduct. Payments to the Trustee pursuant to this Section 5(b) shall be made within 20 days of submission by the Trustee of an invoice or bill together with appropriate supporting documentation. The obligations of Quantum to the Trustee

under this Section 5(b) shall survive the resignation, incapacity to act, death or insolvency of the Trustee and the termination or revocation of this Trust Agreement.

6. **Early Termination of Trust.** Notwithstanding any other provision in this Trust Agreement to the contrary, the Cape Cod Trust shall terminate if it becomes lawful as a result of a change in the Communications Laws or a disposition by Quantum of another broadcast interest in the Cape Cod Market, or for any other reason, for Quantum or a Quantum subsidiary to own, operate and control the Trustee Stations. In such event, the Trustee and Quantum shall promptly submit and fully prosecute any necessary application for the FCC's consent to the assignment of the FCC licenses associated with the Trustee Stations to Quantum, and following receipt of FCC consent, the Trustee shall promptly assign the Assets relating to the Trustee Stations to Quantum. Following such assignment, this Trust Agreement shall terminate. Following termination of this Trust Agreement, the Trustee shall distribute all assets remaining in trust to Quantum (including, without limitation, the remaining proceeds of sale) after paying (or reserving for payment thereof) any expense or liability incurred pursuant to this Trust Agreement.

7. **Sale of Assets of Trustee Stations.** Notwithstanding anything in this Trust Agreement to the contrary, the Trustee shall have the authority to sell the Trustee Stations, including the Assets, under the following circumstances: (i) at the request of Quantum or (ii) at the expiration of the term of this Trust Agreement.

(a) Quantum shall have the right at any time to request the Trustee to sell the Trustee Stations, including the Assets, to a third party. For purpose of this Section 7(a), a sale shall include an exchange of the Trustee Stations, including the Assets, with a third party. Within 48 hours of receipt of such a request from Quantum, the Trustee shall advise Quantum whether he concurs with the requested sale (a "Quantum Requested Sale"). If the Trustee concurs, the Trustee shall promptly take all actions necessary or appropriate to effectuate the Quantum Requested Sale. Notwithstanding any other provision of this Trust Agreement to the contrary, Quantum shall have the right, at any time prior to consummation of Quantum Requested Sale, to withdraw its request that the Trustee sell or exchange the Trustee Stations, subject to the independent concurrence of the Trustee with such withdrawal; provided, however, that the Trustee shall be indemnified in accordance with this Trust Agreement for any damages incurred by the Trustee as a result of such withdrawal.

(b) If at the end of the five-year term of this Trust Agreement the Trust has not otherwise been terminated, then the term hereof shall be extended and the Trustee shall have the authority and is directed to use commercially reasonable efforts to sell the Trustee Stations (including the Assets) to a third party unaffiliated with Quantum in a manner intended to maximize the value received by the Cape Cod Trust (a "Trustee-Initiated Sale" and together with a Quantum Requested Sale, a "Sale") unless at the end of such five-year term of this Trust

Agreement an assignment of the Trustee Stations Licenses to Quantum pursuant to Section 6 or an Quantum Requested Sale pursuant to Section 7(a) is then pending.

(c) The Trustee shall have the authority and is directed to take all actions necessary or appropriate to effectuate a Sale, including execution and delivery of an appropriate agreement (which such agreement may provide for a local marketing agreement pending the consummation of the Sale), submission and prosecution of an application for the FCC's consent to the Sale and notification to the United States Department of Justice and Federal Trade Commission of a proposed Sale. The Trustee may request Quantum to provide such consents, information, representations, warranties and indemnifications regarding the Assets as may be necessary or appropriate to effectuate a Sale, and Quantum shall provide such consents, information, representations, warranties and indemnifications to the extent reasonable. During the time that the Trustee is attempting to effectuate a Sale, the Trustee shall file monthly reports with Quantum (or more frequent reports, as the Trustee shall deem appropriate) describing the Trustee's efforts. Within three (3) days following execution of a binding agreement for a Sale, the Trustee shall notify and provide Quantum with details of the proposed transaction.

(d) Notwithstanding any other provision of this Trust Agreement to the contrary, Quantum shall have the right, with respect to any Sale: (i) to establish a minimum purchase price for the Sale or an acceptable exchange of Assets for other assets; (ii) to require that the entire purchase price or a percentage thereof be paid at the closing of such Sale; (iii) to require that all Assets relating to the Trustee Stations be sold together to a single purchaser and that the purchaser assume all of the liabilities, obligations and commitments relating to Trustee Stations arising and accruing after the closing of such Sale; (iv) to require that any Sale include terms and conditions that are customary in the sale or exchange of assets of radio stations, including escrow arrangements, representations, covenants, indemnities, remedies and termination provisions; (v) to establish a date by which such Sale must be consummated; and (vi) to retain investment bankers to assist in securing purchasers of the Trustee Stations; provided, however, that the Trustee shall be free to accept or reject any advice offered by such investment bankers and shall be privy to any instructions that Quantum may give to the investment bankers.

(e) Pending consummation of a Sale pursuant to this Section 7, the Trustee shall continue to operate the Trustee Stations in the ordinary course of business pursuant to this Trust Agreement. Upon consummation of a Sale, this Trust Agreement shall terminate, and the Trustee shall distribute all assets remaining in trust (including, without limitation, the remaining proceeds of sale) to Quantum, after paying (or reserving for payment thereof) any expense or liability incurred pursuant to this Trust Agreement.

**8. Incapacitation, Reassignment and Replacement of Trustee.**

(a) The rights and duties of the Trustee under this Trust Agreement shall terminate upon the Trustee's incapacity to act, death or insolvency. No interest in the Assets directly or indirectly held by the Trustee nor any of the rights and duties of an incapacitated, deceased or insolvent Trustee may be transferred by will, devise, succession or in any manner except as provided in this Trust Agreement. The heirs, administrators, executors or other representatives of an incapacitated, deceased or insolvent Trustee shall, however, have the right and duty to convey any Assets held by the Trustee to one or more successor Trustees designated by Quantum pursuant to Section 8(c) below.

(b) The Trustee may resign by giving not less than 60 days' advance written notice of resignation to Quantum, provided that a successor Trustee has been appointed and such appointment has received all necessary approval from the FCC. Quantum shall cooperate fully by prompt appointment of a successor Trustee and shall not unreasonably interfere with or delay the effectiveness of such resignation.

(c) In the event of the resignation, incapacity to act, death or insolvency of the Trustee, he shall be succeeded, subject to such prior approval of the FCC as may be required, by a successor Trustee chosen by Quantum.

(d) Any successor Trustee shall succeed to all of the rights and obligations of the Trustee replaced hereunder upon execution by such successor Trustee of a counterpart of this Trust Agreement.

**9. Communications between Trustee and Quantum.**

(a) The Trustee may communicate with and provide reports to Quantum concerning the implementation of the Cape Cod Trust, but not concerning the management or the use of the Assets except for financial reports as provided in Section 4 above. The Trustee may engage in the communications with Quantum to facilitate an assignment of the Assets to Quantum pursuant to Section 6 or a Sale pursuant to Section 7.

(b) Neither Quantum, any Quantum subsidiary nor any of their officers, directors, employees, shareholders or affiliates shall communicate with the Trustee regarding the management of the Assets. Quantum may communicate with the Trustee pursuant to Sections 6 and 7 concerning the mechanics of implementing a Sale or reassignment to Quantum. Ministerial written communications in connection with existing contracts may continue.

(c) Any communications permitted by Sections 4, 6, 7 or 9 shall be evidenced in writing, and shall be retained by the Trustee for inspection upon request by the FCC.



(d) All notices and other communications given under this Trust Agreement shall be in writing and shall be given by delivery in person or by overnight courier, by registered or certified mail, postage prepaid, or by facsimile and addressed to the parties as follows:

If to Qantum: Qantum Communications Corporation  
3 Stamford Landing, Suite 210  
46 Southfield Avenue  
Stamford, Connecticut 06902  
Attn: Michael F. Mangan  
Facsimile: (203) 388 0054

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

John M. Pelkey, Esq.  
Garvey Schubert Barer  
5th Floor  
1000 Potomac Street, NW  
Washington, DC 20007  
Facsimile: (202) 965-1729

If to Trustee: Mark O. Hubbard  
10 Melville Court  
Lenox, MA 01240  
Facsimile: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

or to such other address or facsimile number as any of them by written notice to the others may from time to time designate. Each notice or other communication that is delivered, mailed or transmitted in the manner described shall be deemed sufficiently received and given for all purposes at such time as it is delivered to the addressee (with any return receipt or delivery receipt being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation, but in the case of a facsimile, only if a hard copy is also sent by overnight courier.

10. **Trustee Compensation.** The Trustee shall be entitled to receive total compensation for his services hereunder at the rate of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per month for so long as the Trustee Stations' Assets are held in trust. Payment of the Trustee's monthly compensation shall be made by Quantum within 20 days after receipt of an appropriately detailed written invoice rendered on a monthly basis.

11. **Tax Matters.** It is the intention of the parties hereto that the Cape Cod Trust shall be disregarded as an entity separate from Quantum for federal income tax purposes, and that all of its assets shall be treated for tax purposes as directly owned by Quantum and any successor thereto by merger or otherwise. The parties hereto agree that all relevant federal income tax reporting shall be consistent with the foregoing.

12. **Miscellaneous.**

(a) This Trust Agreement and the Engagement and Assignment Agreement of February 4, 2005, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral or other written agreements, commitments or understandings with respect to the matters provided for herein. This Trust Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by each of the parties hereto. Substantial changes in this Trust Agreement may be made only as required or approved by the FCC. A copy of any insubstantial change in this Trust Agreement shall be filed by the Trustee with the FCC within ten days following the execution thereof, with copies to the appropriate divisions and bureaus of the FCC.

(b) This Trust Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns. Subject to Section 8 hereof, this Trust Agreement shall not be assignable by the Trustee.

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

(d) The headings of the sections of this Trust Agreement are inserted for convenience of reference only and do not form a part or affect the meaning hereof.

(e) This Trust Agreement, the rights and obligations of the parties hereto, and any claims and disputes relating thereto, shall be governed by and

construed in accordance with the laws of the State of Delaware (not including the choice of law rules thereof). Each party shall reimburse the other for costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the other in connection with the enforcement of this Trust Agreement against a party judicially determined to be in breach hereof.

(f) This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Signatures on this Trust Agreement transmitted by facsimile shall be deemed to be original signatures for all purposes of this Trust Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement or caused this Trust Agreement to be duly executed on their behalf as of the date and year first herein above set forth.

MARK O. HUBBARD

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QANTUM COMMUNICATIONS CORPORATION

By: \_\_\_\_\_

Name:

Office: