

Sea-Comm, Inc.  
FM Broadcast Station WBNE  
Facility I.D. No. 73954  
Topsail Beach, North Carolina

FCC Form 301, Section II, Item 4(a)  
Application for Construction Permit  
to Make Minor Changes in Licensed Facilities

#### **EXHIBIT 4**

This application seeks to implement a change in channel classification and community of license for Sea-Comm, Inc.'s ("Sea-Comm's") commercial FM broadcast station WBNE (Facility I.D. No. 73954) that was authorized in the Commission's *Report and Order* in MB Docket No. 05-16, DA 06-21, adopted on January 4, 2006, released on January 6, 2006, and effective on February 21, 2006 (the "*Report and Order*").

The *Report and Order*, among other things, authorized WBNE to change its channel classification from Channel 229A to Channel 229C3 and to change its community of license from Wrightsville Beach, North Carolina to Topsail Beach, North Carolina. A copy of the *Report and Order* is attached to this Exhibit 4.

As indicated elsewhere in this application, the community of Wrightsville Beach is located in the Wilmington, North Carolina market (as defined by Arbitron) and it is presumed that WBNE, when and if licensed to Topsail Beach, which is not within the Wilmington market, will nevertheless be considered "home" to the Wilmington market.

Sea-Comm is a party to a Local Marketing Agreement ("LMA") with Ocean Broadcasting II, LLC ("Ocean"), the licensee of commercial FM broadcast station WUIN in Carolina Beach, North Carolina (Facility I.D. No. 34006). WUIN is also located in the Wilmington market. The LMA is dated as of April 5, 2004 and was amended as of November 19, 2004. Copies of the LMA and the Amendment to Local Marketing Agreement (the "LMA Amendment") are attached to this Exhibit 4.

Sea-Comm has been advised by the Commission's staff that while the LMA, as amended, confers upon Sea-Comm an interest in WUIN that is considered to be "attributable" for purposes of the Commission's revised multiple ownership rules, and such an interest is inconsistent with those rules, given Sea-Comm's attributable interests in WBNE and in three other commercial FM broadcast stations in the Wilmington market,<sup>1</sup> of which Sea-Comm is the licensee, because

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<sup>1</sup> Those other three stations are: WBNU, Shallotte, North Carolina (Facility I.D. No. 52023); WWTB, Topsail Beach, North Carolina (Facility I.D. No. 67339), which while licensed to a community that is outside of the Wilmington market, is considered "home" to that market; and WLTT, Shallotte, North Carolina (Facility I.D. No. 60882). The *Report and Order* authorized  
(continued...)

the LMA (i) was entered into at a time when the Commission's revisions to those rules with which the LMA is inconsistent had been stayed by the United States Court of Appeals for the Third Circuit (the "Third Circuit"),<sup>2</sup> and (ii) was consistent with the prior rules that were in effect when the LMA was entered into, Sea-Comm and Ocean may continue to perform in accordance with the LMA, as amended, for a period of two years after the Third Circuit vacated its stay and affirmed those portions of the revised multiple ownership rules with which the LMA, as amended, is inconsistent. Such two-year period is scheduled to expire on September 3, 2006.

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(...continued)

changes in the communities of license for WBNU (to Wrightsville Beach) and WWTB (to Swansboro, North Carolina, which is outside of the Wilmington market).

<sup>2</sup> *Prometheus Radio Project v. FCC*, 03-3388, *et al.* (3rd Cir. September 3, 2003).

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 05-16
Table of Allotments,	)	RM-11143
FM Broadcast Stations.	)	RM-11295
(La Grange, Richlands, Shallotte, Swansboro,	)	
Topsail Beach, and Wrightsville Beach,	)	
North Carolina <sup>1</sup> )	)	

**REPORT AND ORDER  
(Proceeding Terminated)**

**Adopted: January 4, 2006****Released: January 6, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")<sup>2</sup> issued in response to a Petition for Rule Making filed on behalf of Sea-Comm, Inc. ("Petitioner") licensee of Stations WBNU, Shallotte, North Carolina; WWTB, Topsail Beach, North Carolina; and WBNE, Wrightsville Beach, North Carolina. Petitioner filed comments and reply comments. Conner Media Corporation ("Conner") filed "Comments and Counterproposal" ("Counterproposal") and reply comments. Several other responsive pleadings were filed. Subsequently, both Petitioner and Conner ("Joint Parties") submitted a settlement agreement entitled "Resolution of Rulemaking Proceeding" ("Joint Resolution") which proposed granting Conner's Counterproposal.<sup>3</sup> For the reasons stated below, we grant Conner's Counterproposal and dismiss Petitioner's Petition for Rule Making.

2. In its Petition for Rule Making, Petitioner proposed to upgrade Channel 279C3, Station WBNU, to Channel 279C2, reallocate Channel 279C2 from Shallotte to Wrightsville Beach, North Carolina, and modify the Station WBNU license accordingly. To accommodate the Station WBNU changes, Petitioner proposed to downgrade Station WWTB from Channel 280C3 to Channel 281A, reallocate Channel 281A from Topsail Beach to Richlands, North Carolina, and modify the license of Station WWTB accordingly. In order to assure that Topsail Beach retains a local aural transmission service, Petitioner proposed to upgrade Station WBNE from Channel 229A to Channel 229C3, reallocate Channel 229C3 from Wrightsville Beach to Topsail Beach and to modify Station WBNE's license accordingly. Petitioner's proposal would provide a first local aural transmission service to Richlands,

<sup>1</sup> La Grange and Swansboro have been added to the caption.

<sup>2</sup> *Richlands, Shallotte, Topsail Beach and Wrightsville Beach, North Carolina*, 20 FCC Rcd 1282 (MB 2005).

<sup>3</sup> The Joint Parties agree that upon the grant of Conner's Counterproposal, all pending pleadings except the Joint Resolution, may be dismissed without further consideration. Therefore, the reply comments of Conner and Petitioner and all pleadings filed subsequent to those reply comments but prior to the Resolution of Rulemaking Proceeding are dismissed, upon the grant of Conner's Counterproposal. The pleadings filed after the reply comments include Conner's motion to file a procedural response to Petitioner's reply comments and the procedural response itself; Petitioner's opposition to Conner's foregoing motion and response; Petitioner's motion to strike Conner's reply comments; Conner's opposition to the foregoing motion to strike; and Petitioner's reply to that opposition.

North Carolina. Conner filed a counterproposal (RM-11295) which proposed the same three steps of Petitioner's initial Petition for Rule Making, except Conner recommended that Station WWTB move to Swansboro, North Carolina (2000 U.S. Census population of 1,426 persons), rather than Richlands (2000 U.S. Census population of 928 persons), thus providing the larger community of Swansboro with its first local aural transmission service. In addition, the counterproposal requested the upgrade of Conner's Station WZUP, La Grange, North Carolina, from Channel 284C3 to Channel 284C2. After the record was closed, Petitioner and Conner filed their Joint Resolution that proposed granting Conner's counterproposal.

3. The Joint Resolution asks that Petitioner's Petition for Rule Making be dismissed and that Conner's Counterproposal be granted. The Joint Parties explain that Petitioner's decision to support Conner's Counterproposal was unilateral and did not result from any negotiations or discussions between the parties or their representatives. Each of the Joint Parties has submitted a declaration under penalty of perjury explaining that no consideration has been paid or promised to Petitioner to induce its concurrence with Conner's Counterproposal.<sup>4</sup> The downgrade of Channel 280C3, Station WWTB to Channel 281A and the reallocation of Channel 281A to Swansboro, North Carolina, would provide Swansboro with its first local aural transmission service. In their Joint Resolution, Petitioner and Conner made the three foregoing reallocation requests for Stations WBNU, WWTB, and WBNE pursuant to Section 1.420(i) of the Commission's rules,<sup>5</sup> which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>6</sup> In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities.<sup>7</sup>

4. We find that reallocating Channel 281A, Station WWTB, from Topsail Beach to Swansboro, North Carolina, would result in a preferential arrangement of allotments under the FM allotment priorities because it would provide the first local aural transmission service to Swansboro (priority (3) of the FM allotment priorities).<sup>8</sup> This would not deprive Topsail Beach of its only local aural transmission service, because Station WBNE will move to Topsail Beach to replace Station WWTB. Further, a total net gain in radio service to 145,190 persons would result from the three changes in community of license we grant in this proceeding. Swansboro, North Carolina is an incorporated town to which an FM allotment may be made. Since the proposed Channel 281A facility at Swansboro would provide a 70 dBu contour over 64.6 percent of the Jacksonville, North Carolina

<sup>4</sup> These declarations comply with 47 C.F.R. § 1.420(j).

<sup>5</sup> 47 C.F.R. § 1.420(i).

<sup>6</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>7</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

<sup>8</sup> *Community of License* does not provide for a party to seek a change in community of license of a station licensed to another party. In this situation, the Petitioner has agreed to the modification of its Station WWTB as recommended by Conner in its Counterproposal.

Urbanized Area, the Joint Parties were required to provide a *Tuck* showing that Swansboro is sufficiently independent of the Jacksonville, North Carolina Urbanized Area, that the proposal to relocate Station WWTB to Swansboro deserves credit for providing the first local service to Swansboro.<sup>9</sup> Conner submitted a *Tuck* analysis in its Counterproposal that demonstrates that Swansboro is independent of the Jacksonville Urbanized Area. This analysis meets a clear majority of the eight *Tuck* factors, as required by Commission precedents.<sup>10</sup> Conner states that Swansboro is self-governed and also has its own town manager, levies its own property tax, provides its own police and fire departments, rescue squad and sewer and water services. In addition, Swansboro has a weekly newspaper published in Swansboro, its own zip code, numerous commercial establishments, and several health facilities. Therefore, in accordance with the provisions of Section 1.420 (i) of the Commission's rules,<sup>11</sup> we modify the licenses of Stations WBNU, WWTB, WBNE as requested and grant the Joint Parties' Joint Resolution. Pursuant to Section 1.420(g)(3) of the Commission's rules,<sup>12</sup> we also grant the Joint Parties' request to upgrade Channel 284C3, Station WZUP, to Channel 284C2 at La Grange, North Carolina. In addition, we shall condition the commencement of service on Channel 281A by Station WWTB at Swansboro, on the commencement of service on Channel 229C3 by Station WBNE at Topsail Beach, to avoid any disruption of service of local service to Topsail Beach.

5. Consistent with the technical requirements of the Commission's rules, Channel 279C2 can be allotted to Wrightsville Beach, North Carolina, utilizing coordinates of 33-59-56 NL and 77-54-35 WL, with a site restriction of 25.4 kilometers (15.8 miles) southwest of Wrightsville Beach; Channel 229C3 can be allotted to Topsail Beach, North Carolina, utilizing coordinates of 34-25-37 NL and 77-38-33 WL, with a site restriction of 7.0 kilometers (4.3 miles) north of Topsail Beach; and Channel 281A can be allotted to Swansboro, North Carolina, utilizing coordinates of 34-42-41 NL and 77-16-07 WL, with a site restriction of 13.9 kilometers (8.7 miles) west of Swansboro. Lastly, Channel 284C3 can be upgraded to Channel 284C2 at La Grange, North Carolina, utilizing coordinates of 35-07-39 NL and 77-42-59 WL, with a site restriction of 20.9 kilometers (13.0 miles) south of La Grange.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

7. Accordingly, pursuant to the authority contained in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective February 21, 2006, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED for the

<sup>9</sup> See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *see also Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (a reallocation proposal that seeks a preference for providing a first local aural transmission service to a community must submit a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area.)

<sup>10</sup> See, e.g., *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095, 1096 (MMB 1996).

<sup>11</sup> 47 C.F.R. § 1.420(i).

<sup>12</sup> 47 C.F.R. § 1.420(g)(3).

communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
La Grange, North Carolina	284C2
Shallotte, North Carolina	292A
Swansboro, North Carolina	281A
Topsail Beach, North Carolina	229C3
Wrightsville Beach, North Carolina	279C2

8. IT IS FURTHER ORDERED that the foregoing Resolution of Rulemaking Proceeding IS GRANTED.

9. IT IS FURTHER ORDERED, That the Petition for Rule Making filed by Sea-Comm, Inc. IS DISMISSED as requested.

10. IT IS FURTHER ORDERED, That the Counterproposal submitted by Conner Media Corporation IS GRANTED.

11. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Sea-Comm, Inc. for Station WBNU(FM), Shallotte, North Carolina, IS MODIFIED to specify operation on Channel 279C2 at Wrightsville Beach, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

12. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Sea-Comm, Inc. for Station WWTB(FM), Topsail Beach, North Carolina, IS MODIFIED to specify operation on Channel 281A at Swansboro, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may not be conducted in accordance with 47 C.F.R. Section 73.1620 until Station WBNE(FM) is operating on Channel 229C3 at Topsail Beach; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

13. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Sea-Comm, Inc. for Station WBNE(FM), Wrightsville Beach, North Carolina, IS MODIFIED to specify operation on Channel 229C3 at Topsail Beach, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

14. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Conner Media Corporation for Station WZUP(FM), La Grange, North Carolina, IS MODIFIED to specify operation on Channel 284C2 at La Grange, North Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

15. Pursuant to 47 C.F.R. Section 1.1104(3)(I), Sea-Comm, Inc., licensee of FM Stations WBNU, WWTB, and WBNE, and Conner Media Corporation, licensee of FM Station WZUP, are required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes in community of license for FM Stations WBNU, WWTB and WBNE and the upgrade in channel for Station WZUP, respectively, at the time their Form 301 applications are submitted.

16. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

17. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau



## LOCAL MARKETING AGREEMENT

This Local Marketing Agreement (this "Agreement") is entered into as of this fifth day of April, 2004, by and between Sea-Comm, Inc., a North Carolina corporation ("Programmer"), and Ocean Broadcasting II, LLC, a North Carolina limited liability company ("Licensee"), as the owner of Radio Station WUIN (FM), serving the Carolina Beach, North Carolina market (the "Station").

### RECITALS

A. Licensee holds licenses from the Federal Communications Commission (the "FCC" or the "Commission") authorizing Licensee to operate the Station. Licensee is engaged in the business of radio broadcasting on the Station, and has available for sale broadcast time on the Station. Programmer and Licensee intend to enter into an Asset Exchange Agreement (the "Exchange Agreement"), pursuant to which Programmer will acquire from Licensee, and Licensee will sell, transfer, convey, and assign to Programmer, certain asserts of the Station.

B. Programmer desires to purchase time on the Station for the broadcast of programming on the Station and to sell all of the commercial advertising time inventory of the Station, pending the closing (the "Closing") of the transactions contemplated in the Exchange Agreement. Licensee desires to make available such time to Programmer, pending the Closing. Accordingly, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Programmer and Licensee, intending to be legally bound hereby, are entering into this Agreement.

### AGREEMENT

1. Time Sale. Subject to the provisions of this Agreement, from and after the Commencement Date set forth in Paragraph 1(b) below, Licensee shall make the equipment listed on Exhibit A hereto available to Programmer, to assist in the broadcast of Programmer's programs on the Station originating from Programmer's studios. The Station's time made available to Programmer is, subject to all other provisions of this Agreement, up to twenty-four (24) hours of programming each day, seven (7) days per week, during the term of this Agreement, except that Licensee reserves two (2) hours of the Station's time for Licensee's own use at a mutually agreeable time between 5:00 a.m. and 9:00 a.m. on Sunday mornings.

(a) Payments. During each Month (as defined below) of the term of this Agreement, commencing on the Commencement Date set forth in Paragraph 1(b) below, Programmer agrees to reimburse Licensee for all verified, reasonable, customary, and usual operating expenses of the Station, including, but not limited to, the following verifiable, reasonable, customary, and usual operating expenses of the Station: all compensation (including wages and employment benefits) of the Licensee's employees serving as (i) the General Manager of the Station, and (ii) Licensee's second employee at the Station (such compensation not to exceed Eighty-seven Thousand Five Hundred Dollars (\$87,500.00) *per annum* in the aggregate for both such persons, and the employee benefits and payroll tax costs not to exceed Fifteen Thousand

Dollars (\$15,000.00) *per annum* in the aggregate for both such persons; provided, however, that the foregoing amounts may be exceeded, solely in order to account for overtime pay owing to such employees of Licensee, to the extent that Licensee, after consultation with Programmer, shall have determined that such overtime shall be required for the discharge of Licensee's duties under this Agreement), the utility costs for the Station, property taxes, leases, maintenance, supplies (including tubes and parts), and the general property and casualty and general liability insurance costs related to the Station, all of such expenses being referred to as "Licensee's Operating Expenses" and such payment being referred to as the "Operating Expense Payment," with such reimbursement to be made in cash or by check within ten (10) business days after receipt by Programmer from Licensee of a written account (each, a "Monthly Expense Report") of Licensee's Operating Expenses for such Month; and, in addition to the foregoing, Programmer shall pay Licensee in cash or by check the amount of Three Thousand Eight Hundred Fifty-eight Dollars and Twenty-seven Cents (\$3,858.27) on the tenth (10th) business day of each Month (the "LMA Fee Payment") until this Agreement shall have expired or shall have been terminated. Payment of all amounts due under this Paragraph 1(a) for any partial Month during the term of this Agreement shall be prorated on a daily basis. Should this Agreement terminate upon the Closing, the final Operating Expense Payment and the final LMA Fee Payment will be made at the Closing and, if applicable, shall be pro-rated as aforesaid. For the purposes of this Agreement, a "Month" means a calendar month, except that for purposes of pro-rations pursuant to this Paragraph 1(a), every Month shall be deemed to consist of thirty (30) days. Licensee agrees to provide Programmer such records, receipts, copies of contracts, and other information and documentation as Programmer may reasonably request in order to enable Programmer to verify Licensee's Monthly Expense Reports.

(b) Term. The term of this Agreement shall commence at 12:01 a.m., Eastern Time, on the date hereof (the "Commencement Date") and shall continue until the first to occur of (i) the date of the Closing, (ii) the termination of the Exchange Agreement in accordance with its terms, prior to the Closing, (iii) the termination of this Agreement in accordance with its terms by either or both of Programmer or Licensee, or (iv) the expiration of the Exchange Agreement in accordance with its terms, subject (in the case of any termination pursuant to Clauses (ii), (iii), or (iv) of this Paragraph 1(b)) to a short-term extension with the mutual written consent of Programmer and Licensee.

2. Programs. Programmer shall furnish or shall cause to be furnished to the Station the artistic personnel and materials for Programmer's programming to be broadcast by the Station hereunder. Programmer represents and warrants that all of the programming, advertising, and promotional material that Programmer shall provide hereunder for broadcast on the Station shall be in compliance with the rules, regulations, policies, and procedures of the Commission and the Communications Act of 1934, as amended (the "Communications Act"), all other applicable statutes, laws, rules, regulations, ordinances, and other requirements of law, and the reasonable standards established by Licensee for broadcast programming on the Station, and shall not contain material that would expose either Licensee or Programmer to FCC sanctions or to civil liability to any person or entity, including liability in tort or in contract, for defamation, libel, slander, infringement, unfair trade practice, invasion of right of privacy, misappropriation of right of publicity, or otherwise.

3. Accounts Receivable.

(a) General. The parties agree that accounts receivable of Licensee for advertising broadcast on the Station prior to the Commencement Date shall be collected by Programmer for the benefit of Licensee (but shall remain the sole property of Licensee) for a period of one hundred twenty (120) days from the Commencement Date, or until the termination of this Agreement, whichever comes first (the "Collection Period"), and shall be allocated and distributed between Programmer and Licensee in the manner described in Paragraph 3(b) below. Within three (3) days following the Commencement Date, Licensee will provide Programmer with a detailed list of such accounts receivable. At the end of the Collection Period, Programmer shall turn over to Licensee any such accounts receivable that remain uncollected. All accounts receivable of Programmer for advertising broadcast on the Station on or after the Commencement Date shall be and shall remain the sole property of Programmer. Programmer shall be responsible for the collection of Programmer's accounts receivable and shall retain ownership of such accounts receivable upon the expiration or the termination of this Agreement.

(b) Remittance. During the Collection Period, Programmer shall remit to Licensee by the tenth (10th) day of each Month (except as otherwise provided in this Paragraph 3(b)) all of Licensee's accounts receivable collected by Programmer during the previous Month. For purposes of such remittances, if the Commencement Date shall be other than the first (1st) day of a Month, the remittance of the accounts receivable of Licensee that shall have been collected by Programmer during that Month shall be made by the tenth (10th) day of the following Month; and if this Agreement shall expire or be terminated on any day other than the last day of a Month, the remittance of the accounts receivable of Licensee that shall have been collected by Programmer during that Month shall be made by the tenth (10th) day of the next succeeding Month. Notwithstanding anything in this Paragraph 3(b) to the contrary, in the case of any single, undifferentiated payment received from any advertiser or account debtor in consideration for advertising broadcast by the Station and by any other radio station or stations (the "Licensee's Other Stations") that are owned by Licensee, Programmer shall promptly, and in no event later than three (3) business days after receipt of such payment, remit to Licensee such portion of such payment representing consideration for advertising broadcast by Licensee's Other Stations. All amounts collected with respect to a particular advertiser or account debtor shall be applied first to the oldest receivable owed by that advertiser or account debtor; provided, however, that if the advertiser or account debtor shall specify that its payment is to be applied to a specific receivable or invoice of Licensee or Programmer, such collection shall be so applied and paid to Licensee or Programmer, as appropriate. Licensee and Programmer agree that they shall take no actions to influence or require any advertiser or account debtor to specify that such advertiser's or account debtor's payments are to be applied to a specific receivable or invoice.

4. The Station's Facilities.

(a) Licensee Responsibility. During the term of this Agreement, Programmer shall be responsible for those expenses of the Station described in Paragraph 7(c) below and shall reimburse the Licensee for those expenses described in Paragraph 1(a) above. Licensee shall be responsible for, and shall pay in a timely manner, all capital expenses associated with owning and controlling the Station during the term of this Agreement. Licensee shall be responsible for the

Station's compliance with all applicable provisions of the Communications Act, the rules, regulations, policies, and procedures of the FCC, and all other applicable laws. Licensee represents that it now holds all permits and authorizations necessary for the operation of the Station, including all FCC permits and authorizations. Licensee will continue to hold such permits and authorizations throughout the term of this Agreement. Licensee represents that there is not now pending or, to Licensee's knowledge, threatened, any action by the FCC or by any other party to revoke, cancel, suspend, refuse to renew, or modify adversely any of the licenses, permits, or authorizations necessary for the operation of the Station, and no event has occurred that allows or, after notice or lapse of time or both, would allow, the revocation or termination of such licenses, permits, or authorizations, or the imposition of any restriction thereon of such a nature that may materially limit the operation of the Station as presently conducted. Licensee has no reason to believe that any such license, permit, or authorization will not be renewed in the ordinary course. Licensee shall make its transmitter, transmitter building, and tower site available to Programmer, at no additional charge, for the placement and use of broadcast equipment that Programmer reasonably deems necessary in order to fulfill Programmer's responsibilities under this Agreement; provided, however, that such placement and use shall not cause any material degradation to any property owned, leased, or held for use by Licensee.

(b) Broadcast Facilities. Licensee represents that the Station's facilities and equipment, on the date hereof, comply with, and have been operated in material accordance with, good engineering standards necessary to deliver a high-quality technical signal, and comply with all applicable laws and regulations (including the requirements of the Communications Act, and the rules, regulations, policies, and procedures of the FCC), and are operating with the full power and antenna height authorized for the Station by the FCC. Licensee is not in material violation of any statute, ordinance, rule, regulation, order, or decree of any federal, state, local, or foreign governmental agency, court, or authority having jurisdiction over Licensee or over any part of Licensee's operations or assets, which material violation would have an adverse effect on Licensee or its assets or on its ability to perform this Agreement. During the term hereof, under Licensee's supervision, Programmer will be responsible for maintaining the transmission facilities of the Station in a high quality condition, normal wear and tear excepted, to enable the Station to broadcast with its FCC-authorized power and antenna height as Licensee is presently authorized by the FCC, and (subject to Licensee's obligation to pay for capital expenditures at the Station) to make any replacements of or improvements to such facilities as may be reasonably necessary to maintain them in such condition and with the FCC-authorized power and antenna height. Notwithstanding anything in this Agreement to the contrary, Licensee shall not be responsible for any reduction in power or antenna height, any impairment of the Station's broadcast facilities, or any resulting loss of the Station's coverage, that is the result of any act or omission on the part of Programmer, its employees, agents, or representatives during the term of this Agreement (provided, however, that such act or omission shall have been in derogation of a specific duty on the part of Programmer under this Agreement, or shall constitute negligence or willful misconduct on the part of Programmer or its employees, agents, or representatives), and in the event of any such act or omission on the part of Programmer, its employees, agents, or representatives, Programmer shall be solely responsible, at Programmer's cost, for the prompt restoration of the Station's power, antenna height, and facilities to the condition obtaining as of the date hereof.

5. Handling of Mail and Complaints. During the term of this Agreement, Programmer shall promptly forward to Licensee any mail or other correspondence which Programmer may receive from any agency of government or from members of the public relating to the Station or to any of Programmer's programming broadcast on the Station.

6. Programming and Operations Standards. Programmer recognizes that the Licensee has full authority and a duty to control the operation of the Station. The parties agree that Licensee's authority includes, but is not limited to, the right to reject or to refuse all or such portions of Programmer's programming which Licensee reasonably believes to be contrary to the public interest. Should Licensee reject any of Programmer's programming pursuant to this paragraph, the payments, reimbursements, and fees provided for in this Agreement shall be reduced on a prorated basis accordingly.

7. Responsibility for Employees and Expenses.

(a) Employment by Programmer of Licensee's Employees. Programmer shall not hire any of the current employees of the Station. Programmer shall not assume any payment in connection with any group medical, group insurance, or pension plan of Licensee associated with Licensee's employees at the Station, nor shall Programmer assume responsibility for any compensation, benefits, or other costs or liabilities of Licensee related to such employees (apart from Programmer's obligation to reimburse Licensee for the salaries and benefits of the Licensee employees set forth in Paragraph 1(a) hereof) or relating to the period prior to the Commencement Date, including any salaries, wages, sales commissions, incentives, bonuses, accrued and unpaid vacation, holiday and sick pay, severance, or obligations under Licensee's benefit plans, nor shall Programmer assume any employment contracts between Licensee and any such employees. Licensee represents and warrants to Programmer that all of Licensee's employees at the Station are and have been "at-will" employees.

(b) Employees. During the term of this Agreement, Programmer shall employ and be responsible for the salaries, commissions, taxes, insurance, vacation, sick leave and all other related costs, for the period from and after the Commencement Date, of all employees of Programmer involved in the production and broadcast of its programming, including air personalities, salespersons, sales representatives, consultants, traffic personnel, board operators, and other programming staff members.

(c) Expenses. During the term of this Agreement, Programmer shall pay directly on a current basis licensing fees required to be paid to ASCAP, BMI, and SESAC, and any other copyright or programming rights fees, in each case attributable to programming provided by Programmer for broadcast on the Station during the term of this Agreement. Upon execution of this Agreement, Programmer shall apply promptly to ASCAP, BMI, and SESAC for the necessary licenses and permits for Programmer to provide programming in its own name over the Station during the term of this Agreement. Beginning on the Commencement Date, Programmer will pay and perform, directly and on a current basis on behalf of Licensee, (i) only those fees, payments, and obligations set forth in Exhibit B to this Agreement, and (ii) only with respect to such fees, payments, and obligations relating to the period beginning on the Commencement Date and ending on the date of the expiration or the termination of this Agreement, and (iii) only to the

extent that the contracts, agreements, and understandings wherein such payments and obligations are established may be assigned to Programmer by Licensee without the third-party contractor's consent, or – if not so assignable – then only to the extent that such third-party contractor's consent shall have been obtained. In addition, subject to the provisions of Paragraph 7(d) below, Programmer shall, during the term of this Agreement, pay, perform, and discharge Licensee's obligations relating to the broadcast of advertising on the Station in exchange for goods and services.

(d) Barter and Trade.

(i) Licensee represents and warrants that Exhibit C hereto accurately describes all barter, trade, or similar agreements or arrangements for the sale of advertising on the Station for consideration other than cash (the "Trade Agreements") which are outstanding as of the date hereof. With respect to the Station, all such advertising time sold under the Trade Agreements may be preempted by advertising time that is sold for cash. All Trade Agreements have been entered into in the ordinary course of business consistent with past practices.

(ii) Programmer shall offset against the initial LMA Fee Payment made to Licensee under Paragraph 1(a), above, any amount by which the value of the aggregate liability of the Station under the Trade Agreements as of the Commencement Date (the "Trade Liability") exceeds the sum of (x) Ten Thousand Dollars (\$10,000.00), plus (y) the aggregate value of the goods or services to be received by the Station after the Commencement Date under the Trade Agreements (the "Trade Receivables").

(iii) The initial LMA Fee Payment made to Licensee by Programmer under Paragraph 1(a), above, shall be increased by any amount by which the Trade Receivables exceed the sum of (x) Ten Thousand Dollars (\$10,000.00), plus (y) the Trade Liability.

8. Advertising and Programming Revenues. Programmer shall retain all revenues from the sale of advertising time on the programming that Programmer shall provide for broadcast on the Station. With respect to prepaid advertising sold by Licensee and broadcast on or after the Commencement Date, Programmer shall offset the value of such prepaid advertising against the initial LMA Fee Payment made to Licensee under Paragraph 1(a), above. Programmer shall sell time to political candidates from the time that Programmer purchases from Licensee in strict compliance with the Communications Act and the rules, regulations, policies, and procedures of the Commission.

9. Operation of the Station. Anything to the contrary in this Agreement notwithstanding, Licensee shall have full authority and power over the operation of the Station during the term of this Agreement. Licensee shall be responsible for all programming that Licensee shall furnish for broadcast on the Station, and (subject to the reimbursement obligations of Programmer, as provided in Paragraph 1(a) hereof) for the payment of the salaries of Licensee's employees, who shall report solely to and be accountable solely to Licensee. Licensee's General Manager for the Station shall direct the day-to-day operation of the Station. Licensee shall retain the right to interrupt and discontinue Programmer's programming at any time, if Licensee shall determine that such programming is not in the public interest or violates

this Agreement, or in case of an emergency or an Emergency Alert System activation, or for the purpose of providing programming which Licensee in its sole discretion determines to be of greater national, regional, or local importance, whereupon the payments, reimbursements, and fees provided for in Paragraph 1(a) above shall be reduced by a percentage equal to the percentage that the amount of Programmer's programming that is not broadcast by the Station (other than as a consequence of the broadcast of Emergency Alert System activations or tests) bears to the total programming time purchased by Programmer hereunder, pursuant to Paragraph 1 above. Programmer shall properly prepare and promptly provide to Licensee copies of all of Programmer's contracts, agreements, and requests for advertising on the Station for political programming or programming addressing controversial issues of public importance; all records, complaints, and reports of every kind whatsoever which may be required by the FCC to be maintained or filed with the FCC by the Station in connection with Programmer's programming announcements which are responsive to issues of public concern, in sufficient detail to enable Licensee to prepare in a timely manner all appropriate or necessary records and reports required by the Commission and its rules and policies concerning the Station's operations. Programmer will properly prepare and furnish to Licensee such information, records, and reports relating to Programmer's programming, sales, or employment practices at the Station in sufficient detail as shall be necessary to enable Licensee to comply with all rules and policies of the FCC or any other governmental agency.

10. Station Identification Announcements. Licensee will be responsible for ensuring the proper broadcast of station identification announcements by the Station. However, Programmer will provide appropriate station identification announcements that comply with FCC requirements in a form acceptable to Licensee.

11. Right to Use the Programs. The right to use Programmer's programs and to authorize their use in any manner and in any media whatsoever shall be, and shall remain, vested in Programmer.

12. Payola/Plugola. Programmer agrees that neither it, nor its agents, employees, consultants, or personnel, will accept any consideration, compensation, gift, or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, material, supplies or other merchandise, goods, services, or labor (collectively "Consideration"), whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the program for which such Consideration was provided as having paid for or furnished such Consideration, in accordance with the Communications Act and FCC requirements.

13. Compliance with Law. Programmer warrants to Licensee that Programmer is an experienced radio broadcasting station owner and operator and is fully familiar with the Commission's rules, regulations, policies, and procedures, and all other laws, statutes, rules, regulations, governmental policies, governmental procedures, and other requirements of law governing the lawful operation of stations such as the Station. Programmer agrees that, throughout the term of this Agreement, Programmer will comply with all laws, rules, regulations, policies, and procedures including, but not limited to, the FCC's technical, political broadcasting,

obscenity and indecency regulations, fair trade practice regulations, lottery broadcast regulations, sponsorship identification rules, and sales practice regulations, that are applicable to the operations of the Station, and all FCC rules applicable to programming agreements of this kind. Programmer acknowledges that Licensee has not urged, advised, consented to, or agreed in any way whatsoever to, the use of any unfair business practice.

14. Indemnification.

(a) Programmer's Indemnification. Programmer shall indemnify Licensee for, and shall hold Licensee harmless from, any material loss, damage, or injury of any kind (including, but not limited to, reasonable attorneys' fees and court costs) sustained or incurred by Licensee resulting from Programmer's breach of or default under this Agreement, from any programming material broadcast by Programmer on the Station, from the sale of or attempt by Programmer to sell advertising or program time on the Station, from any breach of any of Programmer's representations and warranties to Licensee contained in this Agreement, and from any act or omission by Programmer, including any act or omission that results in Licensee's non-fulfillment of any of Licensee's representations, warranties, or covenants under the Exchange Agreement (provided, however, that such act or omission shall have been in derogation of a specific duty on the part of Programmer under this Agreement, or shall constitute negligence or willful misconduct on the part of Programmer or its employees, agents, or representatives).

(b) Licensee's Indemnification. Licensee shall indemnify Programmer for, and shall hold Programmer harmless from, any material loss, damage, or injury of any kind (including, but not limited to, reasonable attorneys' fees and court costs) sustained or incurred by Programmer resulting from Licensee's breach of or default under this Agreement, from the broadcast of programming on the Station furnished by Licensee, from the sale of or attempt by Licensee to sell advertising or program time on the Station, from any breach of any of Licensee's representations and warranties to Programmer contained in this Agreement, and from any act or omission by Licensee, including any act or omission that results in Programmer's non-fulfillment of any of Programmer's representations, warranties, or covenants under the Exchange Agreement (provided, however, that such act or omission shall have been in derogation of a specific duty on the part of Licensee under this Agreement, or shall constitute negligence or willful misconduct on the part of Licensee or its employees, agents, or representatives).

(c) Survival. Neither Licensee nor Programmer shall be entitled to indemnification pursuant to this Section 14, unless a claim for indemnification shall be asserted in writing delivered to the other party. The representations, warranties, and covenants of Licensee and of Programmer, and their respective obligations to indemnify and hold each other harmless, as set forth in this Agreement, shall survive the expiration or the termination of this Agreement, and shall continue for a period of one (1) year after such expiration or termination.

(d) Procedure for Indemnification. If, within the period specified in Paragraph 14(c) hereof, any third party shall notify either party hereto (the "Indemnified Party") with respect to any third-party claim which may give rise to a claim for indemnification against the other party hereto (the "Indemnifying Party") under this Paragraph 14, then the Indemnified Party shall notify the Indemnifying Party thereof promptly; provided, however, that no delay on the part of the



Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party of any liability or obligation hereunder, unless (and then solely to the extent that) the Indemnifying Party thereby shall have been prejudiced. In the event that the Indemnifying Party shall notify the Indemnified Party, within twenty (20) days after the Indemnified Party shall have given notice to the Indemnifying Party of the third-party claim, that the Indemnifying Party shall assume the defense thereof, (i) the Indemnifying Party will defend the Indemnified Party against the third-party claim, with counsel of the Indemnifying Party's choice reasonably satisfactory to the Indemnified Party, (ii) the Indemnified Party may retain separate counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of the separate counsel for the Indemnified Party, to the extent that the Indemnified Party concludes reasonably that the counsel that the Indemnifying Party shall have selected may have a conflict of interest), (iii) the Indemnified Party will not consent to any settlement with respect to the third-party claim without the written consent of the Indemnifying Party (such consent not to be withheld, delayed, or conditioned unreasonably), and (iv) without the written consent of the Indemnified Party, the Indemnifying Party will not consent to the entry of any judgment with respect to the third-party claim, nor enter into any settlement with respect to the third-party claim, unless the Indemnifying Party shall pay all amounts in full and such judgment or settlement shall include a provision whereby the third-party claimant in the matter shall release the Indemnified Party from all liability with respect thereto.

15. Termination and Remedies Upon Default.

(a) Termination. In addition to other remedies available at law or in equity, this Agreement may be terminated as set forth below by either Licensee or Programmer, by written notice to the other party, if the party seeking to terminate is not then in material default or breach of its obligations hereunder, upon the occurrence of any of the following:

(i) This Agreement shall have been declared invalid or illegal in whole or in material part by an order or a decree of the FCC or any other administrative agency or court of competent jurisdiction, and such order or decree shall have become final and shall no longer be subject to further administrative or judicial review;

(ii) The other party shall be in material default or breach of its representations, warranties, covenants, or obligations hereunder, and shall have failed to have cured such default or breach within thirty (30) days of notice from the terminating party;

(iii) The mutual consent of both parties;

(iv) There shall have been a change in FCC rules, policies, or case law that would cause this Agreement or any material provision hereof to be in substantial violation thereof, and such change shall not be the subject of an appeal or further administrative or judicial reconsideration or review;

(v) Licensee and Programmer shall have failed to have entered into the Exchange Agreement by April 30, 2004; or

(vi) The Exchange Agreement shall have expired or shall have been

terminated in accordance with its terms, provided that the party seeking to terminate this Agreement pursuant to this Paragraph 15(a)(vi) shall not be in default or in breach of its representations, warranties, covenants, or undertakings under the Exchange Agreement at the time of such expiration or termination.

Upon termination of this Agreement according to the provisions of this Paragraph 15, the payments, reimbursements, and fees provided for hereunder shall be prorated to the effective date of termination and paid by Programmer to Licensee promptly thereafter. Licensee shall cooperate reasonably with Programmer to the extent necessary to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the carriage of such advertising or programming that consideration which shall already have been paid to Programmer, or which otherwise would have been paid to Programmer.

The termination of this Agreement shall not relieve either party of its obligations to the other party for any pre-termination breaches of, or defaults under, this Agreement nor of any obligations arising under Paragraph 14 hereof.

(b) Programmer's Additional Remedies for Licensee's Technical Operation Deficiencies. In addition to Programmer's right to terminate this Agreement for the reasons set forth in Paragraph 15(a) above, if the Station shall suffer any damage to its transmission facilities which shall result in the inability of the Station to operate with its presently-authorized facilities, and if Licensee shall not have restored the full-time operation of the Station with its presently-authorized facilities within fourteen (14) days of any such occurrence, Programmer may (but shall not be obliged to) give notice to Licensee of Programmer's termination of this Agreement, in which event this Agreement shall terminate upon the giving of such notice, any other provision of this Agreement to the contrary notwithstanding. For each day that the Station shall not be operating with its presently-authorized facilities, the payments due pursuant to Paragraph 1(a) above shall be reduced by the product of one-fourth ( $\frac{1}{4}$ ) multiplied by the percentage equal to the percentage that the number of hours of operation of the Station at reduced power bears to the number of hours that Programmer shall have purchased pursuant to Paragraph 1 above.

(c) Programmer's Additional Termination Rights. Anything herein to the contrary notwithstanding, and in addition to Programmer's termination rights in Paragraphs 15(a) and (b), above, Programmer shall have the right to terminate this Agreement in the event that Licensee shall make a general assignment for the benefit of Licensee's creditors, shall file or shall have filed against Licensee a petition for relief under any bankruptcy or reorganization law, or for an arrangement for the benefit of Licensee's creditors, or for the appointment of a receiver, trustee, or similar creditors' representative for the property or assets of Licensee under any federal or state insolvency law, which, if filed against Licensee, shall not have been dismissed within sixty (60) days thereof.

(d) Licensee's Additional Termination Rights. Anything herein to the contrary notwithstanding, and in addition to Licensee's termination rights in Paragraph 15(a) above, Licensee shall have the right to terminate this Agreement in the event that Programmer

shall make a general assignment for the benefit of Programmer's creditors, shall file or shall have filed against Programmer a petition for relief under any bankruptcy or reorganization law, or for an arrangement for the benefit of Programmer's creditors, or for the appointment of a receiver, trustee, or similar creditors' representative for the property or assets of Programmer under any federal or state insolvency law, which, if filed against Programmer, shall not have been dismissed within sixty (60) days thereof.

16. Force Majeure. Any failure or impairment of facilities, any delay or interruption in broadcast programming, or any failure at any time to furnish facilities, in whole or in part, for broadcasting, due to any act of God, strikes or threats thereof, war, acts of terrorism, civil disturbance, *force majeure*, or any other cause beyond the reasonable control of Licensee or Programmer, shall not constitute a breach of this Agreement, and neither Licensee nor Programmer, as the case may be, will be liable to the other party therefor, provided that each party shall use reasonable diligence to correct such failure or impairment as soon as is reasonably possible; and provided, further, that Programmer's inability or failure to sell advertising time or to deliver programming or commercial matter on account of any of the foregoing circumstances shall not release Programmer from its obligation to make the payments required in Paragraph 1(a) above during the term of this Agreement.

17. Notices. All notices, requests, consents, waivers, and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given if transmitted by facsimile, upon acknowledgment of receipt thereof in writing by facsimile or otherwise; if personally delivered, upon delivery or upon refusal of delivery by the addressee; if mailed by registered or certified United States mail, return receipt requested, postage prepaid, upon delivery or refusal of delivery by the addressee; or if sent by a nationally-recognized overnight delivery service, upon delivery or upon refusal of delivery by the addressee. All notices, requests, consents, waivers, or other communications required or permitted to be given hereunder shall be addressed to the respective party to whom such notice, request, consent, waiver, or other communication relates at the following addresses:

if to Licensee:

Ocean Broadcasting II, LLC  
6100 Fairview Road  
Suite 650  
Charlotte, North Carolina 28210  
Attn.: Macon B. Moye  
Telecopier No.: (704) 643-4482

with a copy to (which shall not, by itself, constitute notice to Licensee):

Ocean Broadcasting II, LLC  
6100 Fairview Road  
Suite 650  
Charlotte, North Carolina 28210  
Attn.: Thomas B. Henson

Telecopier No.: (704) 643-4482

if to Programmer:

Sea-Comm, Inc.  
45 Pecan Acres  
Hattiesburg, Mississippi 39402  
Attn: N. Eric Jorgensen  
President  
Telecopier No: (601) 450-8586

with a copy to (which shall not, by itself, constitute notice to Programmer):

Paul, Hastings, Janofsky & Walker, LLP  
1299 Pennsylvania Avenue, N.W.  
Tenth Floor  
Washington, D.C. 20004-2400  
Attn: John Griffith Johnson, Jr.  
Telecopier No.: (202) 508-8578

17. Modification and Waiver. No modification or waiver of any provision of this Agreement shall in any event be effectuated, unless the same shall be in writing and shall be signed by the party adversely affected by the waiver or modification, and then, in the case of any waiver of any provision hereof, such waiver shall be effective only in the specific instance and for the specific purpose for which it shall have been given.

18. Corporate Authority; Construction. The parties represent and warrant that they have full corporate or limited-liability-company authority, as the case may be, to execute and deliver this Agreement. This Agreement shall be construed in accordance with the laws of the State of North Carolina applicable to contracts made in, and to be wholly performed in, such State, without reference to the choice-of-law principles of such State, and the obligations of the parties hereto are subject to all federal, state, and local laws and regulations now or hereafter in force and to the rules, regulations, policies, and procedures of the Commission and all other governmental entities or authorities presently or hereafter to be constituted.

19. Headings. The headings contained in this Agreement are included for convenience only, and no such heading shall in any way alter the meaning of any provision.

20. Counterpart Signatures. This Agreement may be signed in counterpart originals, which collectively shall have the same legal effect as if all signatures had appeared on one (1) and the same physical document. This Agreement may be signed and exchanged by facsimile transmission, with the same legal effect as if the signatures had appeared in original handwriting on one (1) and the same physical document.

21. No Partnership or Joint Venture Created. Programmer is acting as an independent contractor hereunder, and nothing in this Agreement shall be construed to make

Licensee and Programmer partners or joint venturers, or to make Licensee or Programmer the agent of the other.

22. Assignment; Binding Agreement. Neither Programmer nor Licensee may assign its rights, nor delegate its duties, under this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld, delayed, or conditioned. The party whose approval shall be requested to a proposed assignment or delegation shall communicate its position on any such proposed assignment or delegation within fourteen (14) days after receipt of the written request by the other party for approval of the proposed assignment or delegation. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

23. Severability. In the event that any term or provision of this Agreement shall be declared to be invalid or illegal for any reason, this Agreement shall remain in full force and effect, and the same shall be interpreted as through such invalid and illegal provision were not a part hereof. The remaining provisions of this Agreement shall be construed to preserve the intent and purpose of this Agreement, and the parties shall negotiate in good faith to modify the provisions so held to be invalid or illegal in order to preserve, to the greatest extent achievable, each party's anticipated benefits thereunder.

24. Entire Agreement. This Agreement supersedes any prior agreements between the parties and contains all of the terms agreed upon with respect to the subject matter hereof.

25. No Third Party Beneficiaries. This Agreement shall not confer any benefit upon, nor create any right or any cause of action in favor of, or on behalf of, any person other than the parties hereto and their respective successors and permitted assigns.

26. Certifications. Licensee hereby certifies that for the term of this Agreement, Licensee shall maintain ultimate control over the Station's facilities, including specifically control over the Station's finances, personnel, and programming, and nothing herein shall be interpreted as depriving Licensee of such ultimate control. Programmer hereby certifies that Programmer's execution and delivery of, and Programmer's performance of its obligations under, this Agreement complies with the restrictions on ownership of media set out in the Commission's rules and regulations, and specifically in 47 C.F.R. Section 73.3555.

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APR. 2. 2004 4:49PM

MEGAGATE BROADBAND

NO. 0911 P. 1

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date and year first above written.

PROGRAMMER:

SEA-COMM, INC.

By: *N. Eric Jorgensen*  
Name: N. Eric Jorgensen  
Title: President

LICENSEE:

OCEAN BROADCASTING II, LLC

By: \_\_\_\_\_  
Name: Macon B. Moye  
Title: Manager

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date and year first above written.

PROGRAMMER:

SEA-COMM, INC.

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

Name: N. Eric Jorgensen

Title: President

LICENSEE:

OCEAN BROADCASTING II, LLC

By: Macon B. Moye

Name: Macon B. Moye

Title: Manager

**EXHIBIT A**

**Paragraph 1**

**Licensee Equipment to be Made Available to Programmer**



## WUIN ASSETS

## EXHIBIT A

As Of 3/31/04

Location	Make	Model	Quantity	Description
2	AAAA			
2	ANDREW			
2	CONTINENTAL	HJ7-50A	350	WUIN Transmitter Site
2	DIELECTRIC	802B	1	1-5/8" Coaxial Cable & Conn
2	ENERGY-ONIX	DCR-HE02-SS	1	FM Exciter
2	MARTI	ECO	1	2-Bay Directional Antenna
2	SINESYSTEMS	STL-15	1	5 KW FM Transmitter
2	SINESYSTEMS	RFC-1	1	STL Receiver
2	TRIPP-LITE	SP8	1	Remote Control
2	UNKN		1	Surge Protector / Relay Panel
2	UNKN	UNKN	1	Uninterruptible Power Supply
2	VICTOR	UNKN	1	Telephone
6	AAAA	UNKN	1	Nitrogen Regulator
6	Beast Tools			
6	BE	2 X 8	1	WUIN Studio
6	Brocksonic	BEI/RS422	1	Audio Switcher
6	Bulletin Boards		1	AV I/O Card
6	Chips		1	Television
6	Denon	P1000	2	Bulletin Boards
6	EV	DNC680	2	Pentium Computer
6	EV	RE-20	1	CD Player
6	Harris	409	1	Microphone
6	Lamp	Stereo 80	1	RE-20 Shock Mount
6	Luxo		1	Mixing Console
6	Noname	LX1	1	Lamp
6	OC White		2	Mic Arm
6	Realistic	HD-1	1	Pentium Computer
6	Realistic	Hiball	1	HD Mic Boom
6	Rolls	40-4037A	2	Microphone
6	Sharp Stereo	HA-43	2	Speakers
6	Swivel Chair		1	Headphone AMP
6	Techniques		1	Stereo Casette Deck
6	Unkn	SL-PG480	2	Chair
6	Walmart		1	CD Player
11	AAAA		1	Console Furniture
11	Audiovault		10	CD Racks
11	Audiovault		1	Engineering/Rack Room
11	Audiovault		1	AV100 P/P Daughter BD
11	Audiovault		1	AV100 R-P Board
11	Cablewave		1	AV100 R-P Board
11	Marti	FLC 12-50C	1	AV100 R-P Daughter BD
11	Marti	STL4	140	STL XMTR Line/Conn
11	Orban	STL-15	1	4' Grid Dish
12	Ricoh	8200/U3S	1	Composite STL XMTR
12	Ricoh	Aficio 200	1	Digital FM Optimod
		AP306D	1	Fax, copier, printer
			1	Color copier

## INVENTORY LOCATION KEY

2	WUIN Transmitter
6	WUIN Studio
11	Engineering/RackRoom
12	Sales Department

**EXHIBIT B**

Paragraph 7(c)

Licensee's Fees, Payments, and Obligations to be Paid and Performed by Programmer

## EXHIBIT B

1. Tower lease with Sea-Comm.
2. Public Radio International contract for the "World Café". Cost is \$987 per quarter.
3. RDR Radio contract for "Acoustic Café". This is a barter contract.
4. Putumayo World Music contract for "The Putumayo World Music Hour". This is a barter contract.
5. ETOWN contract for "ETOWN". Cost is \$750 per year.
6. Fairway Outdoor Advertising of the Triangle East, Location #23335, Contract #350319 for \$650 per month.
7. Audio Architecture Library License Agreement, #0229383. Cost is \$91.90 per month.
8. Marlin Leasing, Ricoh Aficio 200, DF, 1x250, 2x500, fax, parallel printing, duplex. Cost is \$99.60 per month.
9. C&W Copier Service, Inc. Service agreement for Ricoh AP306D. Service agreement. If not cancelled, \$1,680 per year. Must notify by September 29, 2004.

**EXHIBIT C**

Paragraph 7(d)

Licensee's Trade and Barter Agreements Outstanding on the Date of this Agreement

**EXHIBIT C**

**TRADE AND BARTER**

<b>Customer Name</b>	<b>Barter Due WUIN</b>	<b>Remaining Air Time</b>
Dock Street Oyster Bar	\$450	\$450
Mason Bistro	0	80
Thalian Hall	0	550
Cape Fear Formal Wear	0	1360
Triovisions	6299	6299
Wilma	1200	1200
Inkwell Design	0	790
L&L Tent Rental	0	4000
	\$7,949	\$14,729

## AMENDMENT TO LOCAL MARKETING AGREEMENT

This Amendment to Local Marketing Agreement (this "Amendment") is made as of this 19th day of November, 2004 by and between Sea-Comm, Inc., a North Carolina corporation, and Ocean Broadcasting II, LLC, a North Carolina limited liability company. This Amendment amends the Local Marketing Agreement (the "Agreement") entered into by the parties as of April 5, 2004. Capitalized terms in this Amendment shall have the meanings assigned to them in the Agreement.

The Agreement is hereby amended as follows:

1. Recital A.

The final sentence of Recital A is deleted in its entirety and is hereby replaced with the following sentence:

Simultaneously with the execution and delivery of this Amendment, Programmer and Licensee are executing and delivering an Option Agreement (the "Option Agreement") by and between Programmer, as Optionee, and Licensee, as Optionor, pursuant to which Licensee is granting to Programmer an option (the "Option") to purchase the assets of the Station on the terms and conditions set forth in the Option Agreement.

2. Recital B.

The first sentence of Recital B is deleted in its entirety and is hereby replaced with the following sentence:

Programmer desires to purchase time on the Station for the broadcast of programming on the Station and to sell all of the commercial advertising time inventory of the Station, pending the closing (the "Closing") of the sale by Licensee to Programmer of the assets of the Station pursuant to Programmer's exercise of the Option.

3. Paragraph 1(a): Payments.

The following sentence is hereby added to Paragraph 1(a) immediately preceding the sentence that reads, "Payment of all amounts due under this Paragraph 1(a) for any partial Month during the term of this Agreement shall be prorated on a daily basis.":

For each Month during the period from November 19, 2005 to September 3, 2006 (September 3, 2006 being hereinafter referred to as the "Grandfathering Termination Date") during which this Agreement shall be in effect, in addition to the Operating Expense Payment and the LMA Fee Payment, Programmer shall pay to Licensee an amount (the "Licensee Loan Principal Amortization Payment") equal to the monthly amortization of principal owed by Licensee to RBC Centura Bank, Charlotte, North Carolina (the "Bank") pursuant to

Licensee's currently-outstanding Loan from the Bank pertaining to the Station (the "Loan"), such Licensee Loan Principal Amortization Payment not to exceed Fifteen Thousand United States Dollars (US\$15,000.00) in any single Month during the said period. In the event that this Agreement shall be terminated under Paragraph 15 (a)(i) hereof, or in the event that the Closing shall not have been held by the Grandfathering Termination Date by virtue of Programmer's failure to have rendered itself qualified under the FCC's commercial radio station multiple ownership rules to exercise the Option, any amounts paid by Programmer to Licensee that constituted Licensee Loan Principal Amortization Payments shall be refunded to Programmer at the end of the Term or on the Grandfathering Termination Date, whichever comes first. In the event that the Closing shall be held, all amounts paid by Programmer to Licensee that constituted Licensee Loan Principal Amortization Payments shall be credited to reduce the purchase price otherwise payable to Licensee by Programmer at the Closing for the assets of the Station.

4. Paragraph 1(b): Term.

Clause (ii) of Paragraph 1(b) is deleted in its entirety and is hereby replaced with the following Clause (ii):

(ii) the termination of the Option Agreement or the asset purchase agreement (the "Station Asset Purchase Agreement") pursuant to which Programmer shall purchase from Licensee the assets of the Station pursuant to Programmer's exercise of the Option, in accordance with the terms of the Option Agreement or the Station Asset Purchase Agreement, prior to the Closing;

5. Paragraph 1(b): Term.

Clause (iv) of Paragraph 1(b) is deleted in its entirety and is hereby replaced with the following Clause (iv):

(iv) the expiration of the Option Agreement or the Station Asset Purchase Agreement in accordance with their respective terms, subject (in the case of any termination pursuant to Clauses (ii), (iii), or (iv) of this Paragraph 1(b)) to a short-term extension with the mutual written consent of Programmer and Licensee.

6. Paragraph 1(b): Term.

The following new Clause (v) is hereby added immediately following Clause (iv) of Paragraph 1(b):

(v) the Grandfathering Termination Date.

7. Paragraph 2: Programs.

The following new sentence is hereby added at the end of Paragraph 2:

Notwithstanding any other representation, warranty, covenant, agreement, undertaking, or understanding elsewhere expressed in this Agreement, Programmer represents and warrants that from April 5, 2004 to September 3, 2004, Programmer's execution and delivery of, and Programmer's performance of its obligations under, this Agreement complied in all material respects with the FCC's commercial radio station multiple ownership rules, and that from and after September 3, 2004 (subject to any further judicial review or reconsideration and modification by the FCC of those rules), Programmer's performance of its obligations under this Agreement is not consistent with those rules, but that such inconsistency has been "grandfathered" by the FCC to the Grandfathering Termination Date.

8. Paragraph 13: Compliance with Law.

The second sentence of Paragraph 13 is deleted in its entirety and is hereby replaced with the following sentence:

Programmer agrees that, throughout the term of this Agreement, Programmer will comply with all laws, rules, regulations, policies, and procedures, including, but not limited to, the FCC's technical, political broadcasting, obscenity and indecency regulations, fair trade practice regulations, lottery broadcast regulations, sponsorship identification rules, and sales practice regulations, that are applicable to the operations of the Station, and (subject to the final sentence of Paragraph 2 hereof) all FCC rules applicable to programming agreements of this kind.

9. Paragraph 14(a): Programmer's Indemnification.

The words "Exchange Agreement" appearing in Paragraph 14(a) is hereby replaced with the words, "Option Agreement or the Station Asset Purchase Agreement."

10. Paragraph 14(b): Licensee's Indemnification.

The words "Exchange Agreement" appearing in Paragraph 14(b) is hereby replaced with the words, "Option Agreement or the Station Asset Purchase Agreement."

11. Paragraph 15(a): Termination.

Subparagraph 15(a)(i) is hereby modified by adding, at the end thereof, the following phrase:

, and the FCC or a court of competent jurisdiction or other governmental authority having jurisdiction over Licensee, Programmer, or the Station shall affirmatively order that this Agreement be terminated prior to the Grandfathering Termination Date;

12. Paragraph 15(a): Termination.



Subparagraph 15(a)(iv) is hereby modified, by adding, at the end thereof, the following phrase:

, and the FCC or a court of competent jurisdiction or other governmental authority having jurisdiction over Licensee, Programmer, or the Station shall affirmatively order that this Agreement be terminated prior to the Grandfathering Termination Date;

13. Paragraph 15(a): Termination.

Subparagraph 15(a)(v) is deleted in its entirety and is hereby replaced with the following Subparagraph 15(a)(v):

(v) upon the occurrence of the Grandfathering Termination Date;

14. Paragraph 15(a): Termination.

Subparagraph 15(a)(vi) is hereby modified by replacing the words "Exchange Agreement" in both places where they appear with the words "Option Agreement or Station Asset Purchase Agreement".

15. Paragraph 26: Certifications.

The final sentence of Paragraph 26 is deleted in its entirety and is hereby replaced with the following sentence:

Subject to the final sentence of Paragraph 2 hereof, Programmer hereby certifies that Programmer's execution and delivery of, and Programmer's performance of its obligations under, this Agreement complies with the restrictions on ownership of media set out in the Commission's rules and regulations, and specifically in 47 C.F.R. Section 73.3555.

16. Counterparts.

This Amendment may be executed in counterparts and shall become effective when Licensee and Programmer shall each have executed a counterpart hereof, and shall have delivered to the other party hereto an original or facsimile copy thereof, notwithstanding that such executions by Licensee and Programmer shall not be found upon one and the same page.

17. Ratification.

Except as specifically amended by this Amendment, the Agreement is ratified by Licensee and Programmer as of the date hereof and shall remain in full force and effect in all other respects.

IN WITNESS WHEREOF, The parties have executed this Amendment as of the date and year first above written.

SEA-COMM, INC.

OCEAN BROADCASTING II, LLC

By: N. Eric Jorgensen  
N. Eric Jorgensen, President

By: \_\_\_\_\_  
Macon Moye, Manager

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IN WITNESS WHEREOF, The parties have executed this Amendment as of the date and year first above written.

SEA-COMM, INC.

OCEAN BROADCASTING II, LLC

By: \_\_\_\_\_  
N. Eric Jorgensen, President

By: Macon Moye  
Macon Moye, Manager

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