

**FM TRANSLATOR**  
**ASSET PURCHASE AGREEMENT**

THIS FM TRANSLATOR ASSET PURCHASE AGREEMENT, dated as of February 29, 2016 (this "Agreement"), is entered into by and between **DAVID COLE** ("Seller"), and **ZACK MEDIA, LLC** ("Buyer").

**RECITALS**

**WHEREAS**, Seller is the licensee of FM translator station W221CO, licensed to Winona, West Virginia, Facility ID 157429 (the "Station"), pursuant to authorizations (the "FCC Authorizations") issued by the Federal Communications Commission (the "FCC").

**WHEREAS**, on the terms and conditions described in this Agreement, Seller desires to sell and Buyer desires to acquire certain of the assets owned by Seller and used or held for use exclusively in connection with the operation of the Station.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Buyer and Seller agree as follows:

**Section 1. Sale of Assets.** On the Closing Date (as hereinafter defined), Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase and assume from Seller, the following assets owned by Seller and used or held for use exclusively in connection with the operation of the Station (the "Assets"):

- (a) Seller's engineering data and other tangible and intangible personal property used or held for use exclusively in the operation of the Station (the "Personal Property"), as set forth on Schedule 1; and
- (b) the licenses, permits, applications and other authorizations, including the FCC Authorizations (collectively, the "Licenses"), issued by the FCC, to Seller in connection with the operation of the Station, including without limitation those set forth on Schedule 2 attached to this Agreement.

Seller shall transfer the Assets to Buyer at the Closing free and clear of all liens, claims or encumbrances of every kind and nature. Except as expressly set forth in this Agreement, the parties expressly agree that Buyer shall not assume any debts, accounts payables, or any other liabilities of Seller of any type or nature. Further, Buyer shall not assume any agreements, contracts, leases or any other commitments of Seller of any type or nature.

**Section 2. Consideration.** Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, Buyer has paid Seller the aggregate

sum of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) as the purchase price (the "Purchase Price"). If this Agreement is terminated by Buyer pursuant to Section 9.1(a) or (b), then any payments which Buyer has made to Seller shall be returned to Buyer.

**Section 3. FCC Consent; Assignment.** Buyer and Seller shall execute, file and prosecute an application with the FCC (the "Assignment Application") requesting its consent to the assignment, from Seller to Buyer, of all the FCC Licenses in connection with operation of the Station (the "FCC Consent") as soon as possible after the execution of this Agreement and in any event not later than five (5) business days after the parties execute this Agreement. The parties shall split 50/50 the payment of the FCC filing fee for filing the Assignment Application.

**Section 4. Closing Date; Closing Place.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur, unless otherwise agreed to by Buyer and Seller, ten (10) business days following the later of: (i) the date on which FCC Consent for the Assignment Application is issued; and (ii) the date of fulfillment of the Conditions Precedent to Closing under this Agreement in Sections 6 and 7 below, if such conditions are not waived by the parties. The Closing shall be held by mail, facsimile, or electronic mail, or in person as the parties may agree.

**Section 5. Representations and Warranties.**

(a) Seller hereby makes the following representations and warranties to Buyer: (i) Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereunder; (ii) Seller lawfully holds the FCC Licenses listed on Schedule 2; (iii) The Station's Licenses are in full force and effect, are in good standing with the FCC, and have not been revoked, suspended, canceled, rescinded or terminated and have not expired; and no protest or complaint of any type as to the Station is either pending or threatened at the FCC or any other governmental entity or court; (iv) The Station is currently on-the-air and operating in material compliance with the FCC rules; (v) Seller owns and shall convey good title to the Station Licenses and other Assets, free and clear of debts, liens and encumbrances of any type; (vi) The tangible personal property listed in Schedule 1 (except as expressly noted therein) is in good condition and repair, ordinary wear and tear excepted; (vii) Between now and the date of Closing Seller shall not, without the consent of Buyer, enter into any leases or contracts pertaining to the Station which will survive Closing Date; and (viii) Neither Seller nor the Station have any financial obligation to the FCC which would delay the processing or approval of the Assignment Application.

(b) Buyer hereby makes the following representations and warranties to Seller: (i) Buyer is a limited liability company, validly existing and in good standing under the laws of the State of West Virginia; (ii) Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereunder and; (iii) Buyer is qualified to be an FCC licensee and to hold the FCC Licenses that constitute part of the Assets.

(c) The representations and warranties set forth in this Section 5 shall survive for nine months following the consummation of this Agreement.

**Section 6. Conditions Precedent to Obligation of Buyer to Close.** The obligations of Buyer hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

(a) All representations and warranties of Seller made in this Agreement shall be true and complete in all material respects on and as of the Closing Date as if made on and as of that date;

(b) All of the terms, covenants and obligations to be complied with and performed by Seller on or prior to Closing Date shall have been complied with or performed in all material respects;

(c) The FCC Consent shall have been issued without any terms or conditions adverse to Buyer.

(d) No suit, action, claim or governmental proceeding shall be pending or threatened against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered against, any party hereto that would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms;

(e) Seller shall have delivered to Buyer on the Closing Date all the Closing documents required to be delivered under this Agreement;

(f) The FCC Licenses shall be in full force and effect and in good standing with the FCC; and

(g) Seller shall have released all liens, mortgages, or other encumbrances of any type on the Assets, if any, before or at the Closing in a manner reasonably satisfactory to the Buyer.

**Section 7. Conditions Precedent to Obligation of the Seller to Close.**

(a) The performance of the obligations of the Seller under this Agreement is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by the Seller:

(i) All representations and warranties of Buyer made in this Agreement shall be true and complete in all material respects on and as of the Closing Date as if made on and as of the date;

(ii) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date;

(iii) The FCC Consent shall have been issued without any terms or conditions adverse to Seller;

(iv) Buyer shall have delivered to Seller on the Closing Date, all of the Closing documents required to be delivered under the Agreement.

**Section 8. Closing Deliveries.**

(a) At the Closing, Seller will deliver to Buyer the following, each of which shall be in form and substance reasonably satisfactory to Buyer and its counsel:

(i) an Assignment and Assumption of the Station's Licenses and an Assignment and Assumption of Personal Property.

(b) Prior to or at the Closing, Buyer will deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

(i) the Purchase Price required by Section 2; and

(ii) an Assignment and Assumptions of the Station's Licenses and an Assignment and Assumption of the Personal Property.

**Section 9. Termination.** This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in breach of any of its material obligations under this Agreement, upon written notice to the other of any of the following: (a) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or thirty (30) days after receipt of the notice of breach from the non-breaching party; (b) if the Assignment Application is dismissed or denied by the FCC and such action shall have become a Final Order, although the party materially responsible for this denial or dismissal of the application may not terminate the Agreement under this subsection.

**Section 10. Notices.** All notices, demands, requests or other communications that may be or are required to be given, served or sent by either party to the other party pursuant to this Agreement shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by overnight courier or hand delivery, addressed as set forth below. Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request or communication that is mailed or delivered in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee with the return receipt, the delivery receipt, or the affidavit of messenger being deemed conclusive evidence of such delivery or at such time as delivery is refused by the addressee upon presentation.

If to Seller, to:

David Cole  
P.O. Box 359  
Ansted, WV 25812-0359

If to Buyer, to:

ZACK Media, LLC  
3038 Lansing-Edmond Road  
Edmond, WV 25837  
Attn: Thomas Syner

**Section 12. Confidentiality.** Buyer agrees to keep confidential the terms of this Agreement, except with respect to any disclosure required by law or the rules and regulations of the FCC.

**Section 13. Governing Law; Venue.** The construction and performance of this Agreement shall be governed by the laws of the State of West Virginia without regard to its principles of conflict of law.

**Section 14. Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument.

**Section 15. Expenses.** Except as otherwise set forth in this Section, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

**Section 16. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither Buyer nor Seller may assign this Agreement without the prior written consent of the other party hereto, such consent not be unreasonably withheld or delayed. However, Buyer may assign this Agreement to any entity under control of or common control of a Buyer, provided Buyer guarantees the performance of such entity.

**Section 17. MISCELLANEOUS.** (a) For purposes of this Agreement, a "Final Order" [and an FCC action which is "final" and "finality" of an FCC action] shall mean an action by the FCC: (i) that has not been vacated, reversed, stayed, set aside, annulled or suspended; (ii) with respect to which no timely appeal, timely request for stay, or timely petition for rehearing, reconsideration or review, complaint, or objection by any person or governmental entity or by the FCC on its own motion, is pending; and (iii) as to which the time for filing any such timely appeal, timely request, timely petition or for the reconsideration or review, complaint or objection by any person, entity or government entity has expired, and the time for FCC to reconsider, review or revoke the action on its own motion has expired; (b) This Agreement

represents the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreement with respect thereto whether it is in writing or otherwise, and may be amended only in writing by an instrument duly executed by both parties; and (c) Each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate or evidence the consummation of the transactions contemplated hereby.

*(Signatures to Follow)*

***IN WITNESS WHEREOF***, the parties hereto have executed this Agreement as of the day and year first above written.

**Seller:**

**DAVID COLE**

  
David Cole

**Buyer:**

**ZACK MEDIA, LLC**

**By:**

Thomas Syner, Managing Member

***IN WITNESS WHEREOF***, the parties hereto have executed this Agreement as of the day and year first above written.

**Seller:**

**DAVID COLE**

David Cole

**Buyer:**

**ZACK MEDIA, LLC**

**By:**

Thomas Syner  
Thomas Syner, Managing Member



SCHEDULE 1

Personal Property

Call Sign W221CO

Schedule 2

FCC Authorizations

<u>Station</u>	<u>File No.</u>	<u>Grant Date</u>	<u>Exp. Date</u>
W221CO	BLFT-20150623AAE	7/13/2015	10/1/2019
W221CO	BRFT-2011050AAT	10/11/2011	10/1/2019
W221CO	BPFT-20160217ACA	Pending	