

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of JULY 14, 2009, by and between WAMC ("Buyer") and The St. Lawrence University ("Seller").

WITNESSETH:

WHEREAS, Seller is the licensee of FM Translator Station W219AK, Lake Placid, New York, Facility ID Number 66421 (the "Station"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Seller and Buyer are parties to a settlement agreement (the "Settlement Agreement") relating to Buyer's pending application for a new noncommercial educational FM station on Channel 219 at Lake Placid, New York (File No. BNPED-20071019ASZ, Facility ID No. 176626) (the "WAMC Application") and Seller's pending application for a new noncommercial educational FM station on Channel 219 at Lake Placid, New York (File No. BNPED-20071022AWF, Facility ID No. 176270) (the "SLU Application"), which applications are mutually exclusive and part of MX Group 185.

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Buyer, and Buyer desires to acquire from Seller, certain of the assets owned and held by Seller and used or useful solely in connection with the operation of the Station.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Sale of Assets.** On the Closing Date (as hereinafter defined in Section 5), Seller agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer agrees to purchase and assume, all of the right, title and interest of Seller in and to those certain assets and properties of Seller owned or held by Seller and used or useful solely in connection with the operation of the Station (the "Assets"), which are limited to the following:

(a) All FCC licenses, permits and authorizations to operate the Station (the "FCC Authorizations") together with all licenses, permits and authorizations issued by any other governmental authority in connection with the operation of the Station, as set forth on Schedule 1.

(b) One TTC XL1-FM/2 FM translator,

2. **FCC Consent; Assignment Application.** It is specifically understood and agreed by Seller and Buyer that the assignment of the FCC Authorizations is subject to the prior consent of the FCC ("FCC Consent"). Within ten (10) business days after the grant of the SLU Application, Seller and Buyer shall jointly file with the FCC an application for assignment of the FCC Authorizations (the "Assignment Application") from Seller to Buyer. Seller and Buyer shall thereafter prosecute the Assignment Application with all reasonable diligence and

otherwise use their best efforts to obtain the grant of the Assignment Application as expeditiously as practicable. Any filing fees for the Assignment Application shall be paid by the Buyer.

3. **Modification Application.** Upon the filing of the Assignment Application, Buyer shall file a contingent application in its name as the proposed assignee to modify the technical parameters for the Station (the "*Modification Application*") so as to avoid interference to the station specified in the SLU Application (the "*Lake Placid Station*"). Buyer and Seller, acting in good faith, shall mutually agree upon the technical parameters to be proposed in the Modification Application. Buyer shall, at its own expense, prepare the Modification Application for filing with the FCC and shall have the responsibility to prosecute it. Buyer and Seller agree that nothing in this Agreement or the Settlement Agreement restricts the right of Buyer to subsequently modify the Station in any manner that will not cause interference to the Lake Placid Station.

4. **Closing Date.** The closing (the "*Closing*") of the transactions contemplated by this Agreement shall occur on a date (the "*Closing Date*") mutually agreed upon by Buyer and Seller within fourteen (14) business days following the date on which the Lake Placid Station commences operation pursuant to program test authority, or one (1) year from the date on which the FCC's grant of the SLU Application becomes final, whichever comes first; provided, however, that the FCC has granted its consent to the assignment of the FCC Authorizations to Buyer. If the FCC has not granted its consent by the time the Lake Placid Station commences operation pursuant to program test authority, or one (1) year from the date on which the FCC's grant of the SLU Application becomes final, the Closing shall occur fourteen (14) business days following the date on which the FCC grants its consent to the assignment of the FCC Authorizations to Buyer.

5. **Seller's Representations, Warranties and Other Obligations.** Seller represents and warrants, to the best of its knowledge and belief, that:

(a) Seller is a private, non-profit institution of higher education in the State of New York. Seller has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement.

(b) Seller is the authorized legal holder of the FCC Authorizations and the other licenses, permits and authorizations.

(c) The FCC Authorizations are in full force and effect and have not been revoked, canceled or rescinded.

(d) Between the date of this Agreement and the Closing Date: (i) Seller shall operate the Station in good faith, in the usual manner, and with due diligence to maintain the Station and its operations and to preserve the Station's FCC Authorizations and Assets; and (ii) Seller shall operate the Station in compliance with all applicable laws, regulations and policies; and (iii) Seller shall not, except in the ordinary course of the Station's business, dispose of any Assets, or enter into or modify any agreements or commitments regarding the Station or its operation, without the prior written consent of Buyer, which consent may not be unreasonably

withheld, delayed or conditioned. Buyer and Seller acknowledge and agree that Seller may take the Station off the air as may be necessary for the construction and operation of the Lake Placid Station.

6. **Buyer's Representations and Warranties.** Buyer represents and warrants that Buyer is a nonprofit corporation duly formed under the laws of the State of New York, and is validly existing and in good standing. Buyer has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement. The execution and performance of this Agreement do not constitute a violation, breach, or default under any law, regulation, agreement or other obligation to which Buyer is or will become subject.

7. **Further Assurances.** Each party shall, from time to time at the request of, and without further cost or expense to the other party, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

8. **Interference by Station.** Seller agrees in good faith to refrain from raising unreasonable objections to the Station with respect to any interference it may have upon the operation of the Lake Placid Station.

9. **Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder are subject to the satisfaction of each of the following express conditions precedent:

(i) 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.

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Seller.

(iv) The Lake Placid Station shall have commenced operation pursuant to program test authority, or one (1) year shall have passed from the date on which the FCC's grant of the SLU Application has become final.

(v) The Modification Application shall have been granted by the FCC.

(b) The performance of the obligations of Buyer hereunder are subject to the satisfaction of each of the following express conditions precedent:

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

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Buyer.

(iv) The Modification Application shall have been granted by the FCC.

10. **Closing Deliveries.** At the Closing, the parties shall deliver to each other such documents, instruments and agreements as either party shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for the requesting party.

11. **Assignment.** No party shall assign or attempt to assign any of the rights or obligations under this Agreement without the prior written consent of the other party hereto.

12. **Indemnification by Seller.** Seller shall indemnify and hold harmless Buyer against and in respect of:

(a) **Operations Prior to Closing.** Any and all liabilities, obligations, claims, and demands arising prior to the Closing Date out of: the right to own or operate the Station (including, but not limited to, claims related to compliance with FCC rules and regulations), any breach by Seller of this Agreement, or any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein.

(b) **Defense.** Should any claim covered by the foregoing indemnity be asserted against Buyer, Buyer shall notify Seller promptly and give it an opportunity to defend the same and Buyer shall extend reasonable cooperation to Seller in connection with such defense. In the event that Seller fails to defend the same within a reasonable time, Buyer shall be entitled to assume, but need not assume, the defense thereof and Seller shall be liable to repay Buyer for all damages suffered by Buyer and all of its expenses reasonably incurred in connection with such defense (including, but not limited to, reasonable attorney fees and settlement payments).

13. **Indemnification by Buyer.** Buyer shall indemnify and hold harmless Seller against and in respect of:

(a) **Operations after Closing.** Any and all liabilities, obligations, claims, and demands arising after the Closing Date out of the right to own or operate the Station (including, but not limited to, claims related to compliance with FCC rules and regulations), any breach by Buyer of this Agreement, or any inaccuracy in or breach of any representation, warranty, or covenant made by Buyer herein.

(b) Defense. Should any claim covered by the foregoing indemnity be asserted against Seller, Seller shall notify Buyer promptly and give it an opportunity to defend the same, and Seller shall extend reasonable cooperation to Buyer in connection with such defense. In the event Buyer fails to defend the same within a reasonable time, Seller shall be entitled to assume, but need not assume, the defense thereof, and Buyer shall be liable to repay Seller for all damages suffered by Seller and all its expenses reasonably incurred in connection with such defense (including, but not limited to, reasonable attorney fees and settlement payments).

14. Specific Performance. The parties recognize that this Agreement confers unique benefits, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

15. Termination.

(a) Termination by Seller. This Agreement may be terminated by Seller and the purchase and sale of the Assets abandoned, if Seller is not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(i) Conditions. If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied or waived in writing by Seller.

(ii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Seller, that would prevent or make unlawful the Closing.

(iii) SLU Application. If the SLU Application is denied or dismissed.

(b) Termination by Buyer. This Agreement may be terminated by Buyer and the purchase and sale of the Assets abandoned, if Buyer is not then in material default, upon written notice to Seller, upon the occurrence of any of the following:

(i) Conditions. If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Buyer.

(ii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Buyer, that would prevent or make unlawful the Closing.

(c) Termination by Breach of Settlement Agreement. This Agreement may be terminated by the non-breaching party in the case of an uncured breach of the Settlement Agreement by the other party, which shall also constitute a breach of this Agreement.

(d) Termination by Both Parties. This Agreement may be terminated by mutual written consent of Seller and Buyer.

16. Miscellaneous.

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and permitted assigns.

(b) Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

(c) The construction and performance of this Agreement shall be governed by the laws of the State of New York, without regard to its conflict of law provisions.

(d) This Agreement embodies the entire agreement and understanding of the parties hereto relating to the matter provided for herein, and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

(e) No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

(f) The representations, covenants, and warranties herein shall survive the Closing Date for a period of twelve months.

17. Notices. All notices and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, including U.S. Postal Service Express Mail, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller to:

Ellen Rocco, General Manager
WSLU
The St. Lawrence University
Canton, New York 13617

With copy (which shall not constitute notice) to:

Donald E. Martin, Esq.
Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, Virginia 22041

If to Buyer, to:

David Galletly, Vice President
WAMC/Northeast Public Radio
P.O. Box 66600
Albany, NY 12206

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

Margaret L. Miller, Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036

18. **Counterparts.** This Agreement may be signed in counterpart originals, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Agreement may be signed and exchanged by facsimile or email (PDF) transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

19. **Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

[next page is signature page]

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

THE ST. LAWRENCE UNIVERSITY

By: _____

Name:

Title:

WAMC

By: _____

Name:

Title:

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

THE ST. LAWRENCE UNIVERSITY

By: *Kathryn Mullensy*

Name: Kathryn L. Mullensy

Title: Vice President for Finance & Treasurer

WAMC

By: _____

Name:

Title:

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

THE ST. LAWRENCE UNIVERSITY

By: _____

Name:

Title:

WAMC

By:  _____

Name: Alan Chartock

Title: President & CEO

SCHEDULE 1

FCC Authorizations

<u>Main Station</u> <u>Call Sign</u>	<u>Facility ID</u> <u>Number</u>	<u>Community of</u> <u>License</u>	<u>File</u> <u>Number(s)</u>	<u>Expiration</u> <u>Date</u>
W219AK	66421	Lake Placid, NY	BLFT-19921222TB	06/01/2014 (license)