

**ASSET PURCHASE AND EXCHANGE AGREEMENT**

**by and between**

**NBC Telemundo Phoenix, Inc., Purchaser**

**and**

**Televisión Apogeo de Tucson, LLC, and**

**Televisión Apogeo de Phoenix, LLC, Sellers**

Dated as of October 5, 2002

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### Exhibits

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## ASSET PURCHASE AND EXCHANGE AGREEMENT

**THIS ASSET PURCHASE AND EXCHANGE AGREEMENT** (the "Agreement") is made and entered into this 5th day of October, 2002, by and between NBC Telemundo Phoenix, Inc., a Delaware corporation (the "Purchaser"), and Televisión Apogeo de Tucson, LLC, an Arizona limited liability company ("Apogeo Tucson"), and Televisión Apogeo de Phoenix, LLC, an Arizona limited liability company ("Apogeo Phoenix") (Apogeo Tucson together with Apogeo Phoenix are collectively referred to herein as the "Sellers"). Certain capitalized terms used in this Agreement are defined on Exhibit A hereto.

### RECITALS

**WHEREAS**, Apogeo Tucson owns and operates television stations, including Station KHRR-TV and its associated auxiliary facilities, licensed by the Federal Communications Commission ("FCC") to broadcast on analog channel 40 and digital channel 42 in Tucson, Arizona, and assigned to the Tucson DMA, and Station K28EY and its associated auxiliary facilities, licensed by the FCC to broadcast on analog channel 28 in Douglas, Arizona, and assigned to the Tucson DMA (which stations are collectively referred to as "KHRR");

**WHEREAS**, Apogeo Phoenix owns and operates television stations, including Station KDRX-CA ("KDRX") and associated auxiliary facilities, licensed by the FCC to broadcast on analog channel 48 in Phoenix, Arizona, and assigned to the Phoenix DMA;

**WHEREAS**, Apogeo Phoenix owns and operates Station K43GV ("K43GV") and its associated auxiliary facilities, licensed by the FCC to broadcast on analog channel 43 in Phoenix, Arizona, and assigned to the Phoenix DMA, and Apogeo Tucson owns and operates Station KQBN-LP ("KQBN") and associated auxiliary facilities, licensed by the FCC to broadcast on analog channel 14 in Tucson, Arizona, and assigned to the Tucson DMA (K43GV together with KQBN are collectively referred to herein as the "Apogeo LPTVs");

**WHEREAS**, Purchaser presently intends to purchase Station KPSW-CA ("KPSW"), a low power television station, and associated auxiliary facilities, licensed by the FCC to broadcast on analog channel 41 in Phoenix, Arizona, and assigned to the Phoenix DMA;

**WHEREAS**, subject to all necessary Consents of the FCC, Sellers wish to sell and Purchaser wishes to purchase certain of the assets of Sellers used by Sellers for the use and operation of KHRR and of KDRX, with a portion of the consideration for KDRX being either the assignment of KPSW, or both of the following: (i) the payment of the KPSW Cash Purchase Payment to Apogeo Phoenix, and (ii) the waiver of Purchaser's rights under Section 7.9(a) and subsections (a), (c), (d) and (e) of Schedule 7.9, and in connection therewith Purchaser is willing to assume certain specified obligations of Sellers relating to the Business, all on the terms and conditions hereinafter set forth;

**WHEREAS**, upon execution of this Agreement, Sellers commit to attempt to sell the Apogeo LPTVs and KPSW (any such designated station, together with the Apogeo LPTV's, are referred to collectively herein as the "Designated LPTV's") upon the terms and conditions more fully set forth herein and in Schedule 7.9; and

**WHEREAS**, concurrently herewith, the parties are negotiating an agreement with South 33rd Place Associates, LLC ("South 33rd") for the sale to Purchaser of the studio and office building located at 4625 South 33rd Place in Phoenix, Arizona; (ii) Purchaser and each Seller may, at Purchaser's option, enter into mutually acceptable local marketing agreements setting forth the parties' responsibilities for providing programming, certain facilities and certain services prior to the Closing, the effectiveness of which will be conditioned upon the execution of this Agreement (the "Tucson Pre-Closing LMA" and the "Phoenix Pre-Closing LMA" (collectively, the "Pre-Closing LMAs"); and (iii) Purchaser and each Seller will enter into mutually acceptable local marketing agreements for the Designated LPTVs setting forth the parties' responsibilities for providing programming, certain facilities and certain services after the Closing substantially in the form attached hereto as Exhibit C, the effectiveness of which will be conditioned upon the Closing (the "Tucson Post-Closing LMA" and the "Phoenix Post-Closing LMA" (collectively, the "Post-Closing LMAs") (collectively, the Pre-Closing LMAs and the Post-Closing LMAs are referred to herein as the "LMAs").

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual representations, warranties, covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **AGREEMENT**

### **ARTICLE 1. THE TRANSACTION**

#### **1.1 Purchased Assets.**

Subject to the terms and conditions of this Agreement, at the Closing, Sellers shall sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase from Sellers, each of Seller's right, title and interest in, to and under the assets, properties, goodwill and rights of Sellers used in the conduct of the Business of every nature, kind and description, tangible and intangible, wherever located, whether or not carried on the Sellers' books of Seller (other than the Excluded Assets and subject to the terms and conditions of the LMAs) (collectively, the "Purchased Assets"), including the following:

(a) FCC Authorizations. All FCC Authorizations and pending applications therefor, obtained by each Seller in connection with the Business or otherwise used in the Business, including with respect to KHRR, the FCC Authorizations listed on Schedule 1.1(a)(i), and with respect to KDRX, the FCC Authorizations listed on Schedule 1.1(a)(ii), together with any additions, renewals, extensions or modifications thereof;

(b) Furniture, Fixtures, Equipment. All furniture, trade fixtures, equipment, machinery and other tangible personal property, wherever located and whether held by each Seller or third parties, used or held for use in the conduct of the Business (the "Personal Property"), including with respect to KHRR, the Personal Property listed on Schedule 1.1(b)(i), and with respect to KDRX, the Personal Property listed on Schedule 1.1(b)(ii);

(c) Call Letters. All of: (i) Apogeo Tucson's rights in the television call letters "KHRR-TV" and the names or styles "Channel 28", "28-TV", TV-28", "Channel 40", "40-TV",



“TV-40”, “Channel 42”, “42-TV”, “TV-42” and any derivation, variant or modification thereto and any logograms, jingles and other Intellectual Property incorporating or using such call letters, names or styles, *provided, however*, that any rights to the exclusive use of the channel numbers and related marks shall be limited to the Tucson DMA; and (ii) Apogeo Phoenix’s rights in the television call letters “KDRX-CA”, and the names or styles “Channel 48”, “48-TV”, “TV-48”, and any derivation, variant or modification thereto and any logograms, jingles and other Intellectual Property incorporating or using such call letters, names or styles, *provided, however*, that any rights to the exclusive use of the channel numbers and related marks shall be limited to the Phoenix DMA (collectively, “Sellers Intellectual Property”);

(d) Programming. (i) All films, film libraries and news archives, if any, all programs, programming material and inventories and production material of whatever form or nature (whether recorded on film, tape or any other substance or whether intended for live performance, television broadcast or any other medium, and whether completed or in production) owned by Sellers and used or intended for use in the Business, (ii) all licenses and broadcast and other rights thereto and all amendments, extensions, renewals, substitutions and replacements thereof, and (iii) other licenses, rights and Contracts related thereto as may be entered into in accordance with the terms of this Agreement from the date hereof through the Closing Date, with respect to KHRR, as listed on Schedule 1.1(d)(i), and with respect to KDRX, as listed on Schedule 1.1(d)(ii);

(e) Stations Logs and Records. All logs and other records relating to the Stations, including those required by the FCC to be maintained by Sellers at the Stations;

(f) Intellectual Property. All Seller Intellectual Property, including with respect to KHRR, the Seller Intellectual Property listed on Schedule 1.1(f)(i), and with respect to KDRX, the Seller Intellectual Property listed on Schedule 1.1(f)(ii);

(g) Leased Real Property. All rights in, to and under the real estate leases with respect to KHRR listed on Schedule 1.1(g)(i), and all rights in, to and under the real estate leases with respect to KDRX listed on Schedule 1.1(g)(ii), (the “Real Property Leases”), together with all of Sellers’ right, title and interest in and to all land, buildings, structures, easements, appurtenances, improvements (including construction in progress) and fixtures located thereon (the “Leased Real Property”);

(h) Owned and Leased Vehicles. All vehicles owned by Sellers and all rights in, to and under vehicle leases to which any Seller is a party (collectively, the “Owned and Leased Vehicles”), including with respect to KHRR, the Owned and Leased Vehicles listed on Schedule 1.1(h)(i), and with respect to KDRX, the Owned and Leased Vehicles listed on Schedule 1.1(h)(ii);

(i) Assumed Contracts. With respect to KHRR, all rights in, to and under those Contracts listed on Schedule 1.1(i)(i), and with respect to KDRX, all rights in, to and under those Contracts listed on Schedule 1.1(i)(ii) (which schedules shall also specify those Contracts the assignment of which requires third-party Consent), as well as standard commercial time sales agreements and any other standard agreements which relate to the sale of time on the Stations that do not extend for more than thirty (30) days beyond the Closing Date or are terminable on

thirty (30) days or less notice and are entered in the ordinary course of business ("Time Sales Agreements"), and certain Contracts that may be terminated without penalty on thirty (30) days or less notice and/or require monthly payments of \$750 or less, together with all Contracts that have been entered into between the date hereof and the Closing Date to the extent expressly permitted by this Agreement (collectively, "Assumed Contracts");

(j) Barter Benefits. All benefits for trade, barter or similar agreements for other than cash with respect to KHRR as summarized on Schedule 1.1(j)(i), and with respect to KDRX, as summarized on Schedule 1.1(j)(ii), to be received for advertising time on the Stations that have not been received prior to the Closing Date;

(k) Intentionally Omitted.

(l) Rebates and Credits. All rights in, to and under claims for refunds, rebates or other discounts due from suppliers or vendors and rights to offset in respect thereof (the "Rebates and Credits") attributable to the period after Closing;

(m) Insurance Proceeds. All rights to any insurance proceeds payable to Purchaser pursuant to Section 6.5.

(n) Books and Records. All data, books, records, correspondence, accounts, customer lists, advertiser lists, archives, morgues, files, papers, employment records of employees subsequently hired by Purchaser within thirty (30) days of Closing, if any, (subject to restrictions imposed under applicable law) located at the offices of Sellers, sales and advertising materials and related materials used or held for use in the Business or relating to the Purchased Assets or the Assumed Liabilities or the transactions contemplated by this Agreement on whatever medium (the "Books and Records"), it being agreed that if originals of any books, records or other materials are required by law to be retained by Sellers, only copies thereof shall be delivered to Purchaser; and

(o) Other Assets. Except as otherwise provided in this Agreement, all other items of tangible property, whether real, personal or mixed, owned or held by each Seller and used in the Business or relating to the Stations, and any replacements or additions thereto after the date hereof, and all other assets, properties and other rights (including goodwill and intangible assets) of each Seller of every kind and nature used in the Business or relating to the Stations, including inventory, Contract rights, licenses, franchise rights, privileges, graphics used to promote or identify the Stations, warranties, guaranties and to the extent the same are assignable, business licenses, certificates of occupancy and other governmental and regulatory licenses and permits, and telephone, telex, telecopy and telecommunication numbers.

## **1.2 Excluded Assets.**

Notwithstanding Section 1.1, the following assets of Sellers (the "Excluded Assets") shall not be included in the Purchased Assets:

(a) Cash. Cash, cash equivalents and marketable securities;

(b) Accounts Receivable. All amounts owed to any Seller for the sale of broadcast time on the Stations aired on or prior to the Closing Date or for any other services rendered or products delivered by any Seller on or prior to the Closing Date, which shall be subject to the collect-and-remit procedure described in Section 2.5.

(c) Certain Debt. Any intercompany or intracompany receivable cash balances between any Seller and its Affiliates or between any of its Affiliates;

(d) Charter Documents. Any seals, certificates of formation, limited liability company operating agreements, company meeting record books or other records related to the organization of any Seller;

(e) Other Stations. Any assets used exclusively by any television station licensed to or owned by any Seller, or any business of any Seller other than the Business, including the Apogeo LPTVs and their antenna, transmitter, or tower leases;

(f) Employee Benefit Contracts. Sellers' Benefit Plans and Contracts of insurance for employee group medical, dental and life insurance plans;

(g) Certain Other Property. The assets listed on Schedule 1.2(g);

(h) Insurance Policies. All insurance policies (except to the extent specified in Section 1.1(m));

(i) Deposits. Any Rebates and Credits or Seller Claims related to any Excluded Liability and any security deposits or advances related to any Real Property Lease;

(j) Rebates and Credits. All rights in, to and under claims for Rebates and Credits attributable to the period prior to Closing;

(k) Rights Under Certain Agreements. All rights under a Transaction Agreement; and

(l) Seller's Books and Records. All books and records pertaining to the organization existence and capitalization of the Sellers.

### **1.3 Assumed Liabilities.**

Subject to the terms and conditions of this Agreement, at the Closing, Sellers shall assign, and Purchaser shall assume, only the Assumed Liabilities. Thereafter, Purchaser shall pay and discharge all such Assumed Liabilities as and when such Assumed Liabilities become due and owing. For the purposes of this Agreement, the "Assumed Liabilities" shall mean only the following Liabilities of Sellers:

(a) Any Liability arising after the Closing Date under the Assumed Contracts or the Real Property Leases; and

(b) The Liabilities of Sellers specifically listed on Schedule 1.3(b)(i) with respect to KHRR and on Schedule 1.3(b)(ii) with respect to KDRX.

(c) Accounts payable arising in the ordinary course of business of the Stations which become payable after the Closing Date up to an aggregate amount of \$2,500 for each DMA outstanding as of the Closing; which shall be subject to proration as set forth in Section 2.2 and 2.3 if and to the extent such accounts payable extend through the Closing.

#### **1.4 Excluded Liabilities.**

Except for the Assumed Liabilities, Purchaser shall not assume and shall not be liable or responsible for any Liability of Sellers, any direct or indirect subsidiary of Sellers (each, a "Subsidiary") or any Affiliate of Sellers (collectively, the "Excluded Liabilities"). Without limiting the foregoing, Purchaser shall not be obligated to assume, and does not assume, and hereby disclaims any of the following Liabilities of Sellers, their Subsidiaries or their Affiliates:

(a) Any Liability attributable to any assets, properties or Contracts that are not included in the Purchased Assets, except Liabilities attributable to Non-Assignable Assets for which Sellers and Purchaser have reached a mutually acceptable arrangement pursuant to Section 1.5(b);

(b) Any Liability for breaches of any Assumed Contract or the Real Property Leases on or prior to the Closing Date or any Liability for payments or amounts due under any Assumed Contract or the Real Property Leases on or prior to the Closing Date;

(c) Any Liability for Taxes attributable to or imposed upon Sellers or its Affiliates, or attributable to or imposed upon the Purchased Assets for the Pre-Closing Period, including any Transfer Taxes;

(d) Any Liability for or with respect to any loan, other indebtedness, or account payable, including any such Liabilities owed to Affiliates of Sellers other than accounts payable arising in the ordinary course of business of the Stations which become payable after the Closing Date up to an aggregate amount of \$2,500 per DMA;

(e) Any Liability arising from accidents, occurrences, misconduct, negligence, breach of fiduciary duty or statements made or omitted to be made (including libelous or defamatory statements) on or prior to the Closing Date, whether or not covered by workers' compensation or other forms of insurance;

(f) Any Liability arising as a result of any legal or equitable action or judicial or administrative proceeding initiated at any time, to the extent related to any action or omission on or prior to the Closing Date, including any Liability for (i) infringement or misappropriation of any Intellectual Property Rights or any other rights of any Person (including any right of privacy or publicity); (ii) defamation, libel or slander; or (iii) violations of any Legal Requirements;

(g) Any Liability arising out of any Seller Benefit Plans or any Contract of insurance for employee group medical, dental or life insurance plans;

(h) Any Liability for making payments of any kind to employees (including, but not limited to, severance payments and any payments owed or paid to any employees as a result of the Transaction, the termination of an employee by any Seller, or other claims arising out of the terms of employment with a Seller) or with respect to payroll Taxes;

(i) Any Liability incurred in connection with the making or performance of this Agreement and the Transaction;

(j) Any costs or expenses incurred in connection with shutting down, deinstalling and removing equipment not purchased by Purchaser and any costs or expenses associated with any Contracts not assumed by Purchaser hereunder;

(k) Any Liability for expenses and fees incurred by any Seller incidental to the preparation of the Transaction Agreements, preparation or delivery of materials or information requested by Purchaser, and the consummation of the Transaction, including all broker, counsel and accounting fees and Transfer Taxes;

(l) Any Liability related to or arising from the acquisition of the Stations or the Business by any Seller; and

(m) Any Liability to any members, managers, directors or officers of any Seller.

## **1.5 Non-Assignable Assets**

Notwithstanding the foregoing, if any of the Assumed Contracts or other Purchased Assets (other than FCC Authorizations and the Required Consent Leases) are not assignable or transferable (each, a "Non-Assignable Asset") without the Consent of, or waiver by, a third party (each, an "Assignment Consent"), either as a result of the provisions thereof or applicable Legal Requirements, and any of such Assignment Consents are not obtained by Sellers on or prior to the Closing Date, Sellers shall cooperate with Purchaser after the Closing in any reasonable arrangement designed to provide Purchaser with all of the benefits of the Non-Assignable Assets as if the appropriate Assignment Consents had been obtained, including by granting subleases and establishing arrangements whereby Purchaser shall undertake the work necessary to perform under the Assumed Contracts. Sellers shall use its Best Efforts to obtain the Assignment Consents as soon as reasonably practicable after the Closing Date and thereafter assign to Purchaser such Non-Assignable Assets. Following any such assignment, such assets shall be deemed Purchased Assets for purposes of this Agreement. This Agreement and the related instruments of transfer shall not constitute an assignment or transfer of such Non-Assignable Assets, and Purchaser shall not assume any Sellers' rights or obligations under such Non-Assignable Asset (and such Non-Assignable Asset shall not be included in the Purchased Assets). This Section 1.5 shall at all times remain subject to Article 9.

## **ARTICLE 2. CONSIDERATION FOR TRANSFER**

### **2.1 Purchase Price, Payment and Security for Indemnification Obligations.**

Subject to the terms of this Agreement, as consideration for the sale, assignment, transfer and delivery of the Purchased Assets of each of KHRR and KDRX and the execution and

delivery of the Transaction Agreements by each Seller to Purchaser, Purchaser at Closing shall, subject to any adjustments required pursuant to Section 2.2 below, (i) pay \$19,300,000 to Sellers by wire transfer of immediately available U.S. funds to the account or accounts which shall be designated by Sellers no less than three (3) days in advance of the Closing; (ii) either (A) transfer the KPSW Property to Apogeo Phoenix (subject to all necessary Consents of the FCC and the terms of this Agreement) or (B) pay the KPSW Cash Purchase Payment by wire transfer of immediately available U.S. funds to the account or accounts which shall be designated by Sellers no less than three (3) days in advance of the Closing and waive the Purchaser's rights under Section 7.9(a) and subsections (a), (c), (d) and (e) of Schedule 7.9 (collectively, the "Purchase Price"); and (iii) deliver an executed Assignment and Assumption.

## **2.2 Prorations.**

The Purchase Price as calculated above shall be increased or decreased as required to effectuate the proration of expenses. All expenses arising from the operations of the Stations and the Business and incurred by Sellers, including tower rental, business and license fees, utility charges, property and equipment rentals, applicable copyright or other fees, sales and service charges, Taxes (except for Transfer Taxes) and similar prepaid and deferred items, shall be prorated between Sellers and Purchaser in accordance with the principle that Sellers shall be responsible for all expenses, costs and liabilities allocable to the operations of the Stations and the Business and incurred by either Seller for the period prior to and including the Closing Date, and Purchaser shall be responsible for all expenses, costs and obligations allocable to the operations of the Station and the Business and incurred by Purchaser for the period after the Closing Date as determined in accordance with Section 2.3 below, subject to the following:

(a) There shall be no adjustment for, and Sellers shall remain solely liable with respect to the Excluded Liabilities and any other obligation or Liability not being assumed by Purchaser in accordance with Section 1.4, including Liability under all Contracts other than Assumed Contracts whether arising before or after Closing Date;

(b) Payments due under film or programming license agreements and the network affiliation agreement for the month in which the Closing occurs shall be prorated based on the number of days in such month on or before and including the Closing Date and the number of days in such month after the Closing Date;

(c) There shall be no adjustment for, and Sellers shall remain solely liable with respect to, all FCC regulatory fees imposed or incurred by reason of Seller's ownership of the Station prior to the Closing Date, and, the parties agree that Purchaser shall be entitled to include in the Prorated Obligations calculated under Section 2.3(c) below a credit for any such fees to be paid by Purchaser in 2003 and attributable to the period prior to the Closing Date based on an agreed upon good faith estimate of such fees; and

(d) Certain expenses associated with and incurred in the operation of the Designated LPTVs shall be allocated between each Seller and Purchaser as provided in the applicable LMA.

### **2.3 Manner of Determining Prorations.**

The Purchase Price, taking into account the adjustments specified in Section 2.2 shall be determined in accordance with the following procedures:

(a) Prorated Obligations. The Sellers shall, no later than five (5) Business Days prior to the Closing Date, prepare a preliminary document listing by item, all of the expenses, costs, obligations and other Liabilities of the Sellers that are attributable solely to the operations of the Stations and the Business, either in whole or in part, during the period after the Closing Date ("Prorated Obligations") but either payable in advance prior to the Closing Date or in arrears after the Closing Date. For each Prorated Obligation, there shall be listed (i) the estimated aggregate amount thereof remaining to be paid after the Closing Date, (ii) the amount of such Prorated Obligation incurred by Sellers or attributable to operations of the Stations or the Business on or prior to Closing ("Pre-Closing Incurred Obligations") and (iii) the actual amount paid by Sellers with respect to such Prorated Obligation prior to Closing ("Pre-Closing Paid Obligations").

(b) Closing Adjustment. The Purchase Price paid to Sellers shall be adjusted on an estimated basis at Closing (with a final adjustment to be completed in accordance with Section 2.3(c) below): (i) upward dollar-for-dollar by the amount, if any by which Pre-Closing Paid Obligations exceed Pre-Closing Incurred Obligations; or (ii) downward dollar-for-dollar by the amount, if any, by which, Pre-Closing Incurred Obligations exceed Pre-Closing Paid Obligations.

(c) Post-Closing Adjustment.

(i) As promptly as possible after the Closing, but in any event not later than sixty (60) days after the Closing Date, Purchaser shall deliver to Sellers a final statement setting forth Purchaser's determination of the Purchase Price and the calculation thereof pursuant to Section 2.3(b). Purchaser's statement shall contain all information reasonably necessary to determine the adjustments to the Purchase Price under Section 2.3(b) (including Purchaser's best estimate of the FCC regulatory fees attributable to the period prior to the Closing as contemplated under Section 2.2(c) above and such other information as may be reasonably requested by Sellers. If Sellers disputes the amount of the Purchase Price determined by Purchaser, it shall deliver to Purchaser within forty-five (45) days after its receipt of Purchaser's statement a statement setting forth its determination of the amount of the Purchase Price. If Sellers notifies Purchaser of its acceptance of Purchaser's statement, or if Sellers fails to deliver its statement within the period specified in the preceding sentence, Purchaser's determination of the Purchase Price shall be conclusive and binding on the parties as of the last day of the forty-five (45) day period. Notwithstanding anything to the contrary contained herein, Prorated Obligations payable by Purchaser shall, subject to Section 2.3(c)(ii) below, be expressly limited to amounts listed as payable by Purchaser on the final statement delivered under this Section 2.3 as amended by the mutual agreement of the parties from time to time, with any obligations in excess of such amounts remaining obligations of Sellers.

(ii) Sellers and Purchaser shall use good faith efforts to resolve any dispute involving the determination of the Purchase Price. If the parties are unable to resolve the

dispute within thirty (30) days following the delivery of Sellers' statement pursuant to Section 2.3(c)(i), Sellers and Purchaser shall jointly designate an Independent Accounting Firm to resolve the dispute. The Independent Accounting Firm's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. Any fees of the Independent Accounting Firm incurred under this Section 2.3(c)(ii) shall be split equally between Sellers and Purchaser.

## **2.4 Allocation of Purchase Price.**

Within a reasonable period of time following the signing this Agreement the parties will agree on an allocation of the Purchase Price and Assumed Liabilities among the Purchased Assets. Such allocation is intended to comply with the requirements of Section 1060 of the Code. The parties covenant and agree that (a) such allocation was determined in an arm's length negotiation and none of the parties shall take a position on any Tax Return (including IRS Form 8594), before any Tax Authority or in any judicial proceeding that is in any way inconsistent with such allocation without the written Consent of the other parties to this Agreement or unless specifically required pursuant to a determination by an applicable Tax Authority; (b) they shall cooperate with each other in connection with the preparation, execution and filing of all Tax Returns related to such allocation; (c) they shall promptly advise each other regarding the existence of any Tax audit, controversy or litigation related to such allocation; and (d) they shall cooperate with each other in connection with any adjustments to the Purchase Price reasonably required for Tax purposes in connection with the payment of any indemnity claims hereunder.

## **2.5 Accounts Receivable.**

(a) Schedule 2.5 sets forth an accurate and complete breakdown and aging of all Accounts Receivable as of August 31, 2002, which shall be updated as of the Closing Date.

(b) As of the Closing Date, each Seller appoints Purchaser, as Seller's agent without compensation but without Liability except for its gross negligence or willful misconduct, to collect the Accounts Receivable. Purchaser shall account to each Seller, with respect to the Station such Seller is transferring hereunder, and remit to such Seller, all amounts collected during the period in respect of Accounts Receivable as follows: (a) on or before the twentieth (20th) day of the first complete calendar month after the Closing Date, pay all amounts collected up to the end of the prior month; and (b) on or before the twentieth (20th) day of each succeeding month, remit all amounts collected during the month prior thereto. With each remittance, Purchaser shall furnish a statement of the amounts collected and the Persons from whom such amounts were collected. Purchaser shall, unless the remittance or an Account Receivable debtor specified otherwise by virtue of a dispute stated in writing as to the validity of the account receivable, apply all amounts it receives from or for the benefit of any Account Receivable debtor first to pay the oldest undisputed Accounts Receivable of such debtor before applying any of such amounts to pay any obligation of such debtor to Purchaser arising during, or otherwise attributable to, the period after the Closing Date.



(c) Purchaser's agency to collect the Accounts Receivable shall expire as of midnight on the one hundred twentieth (120th) day following the Closing Date. Within fifteen (15) Business Days thereafter, Purchaser shall remit to each Seller all amounts collected on such Seller's behalf from the Closing Date until the date thereof not previously remitted. Purchaser shall use commercially reasonable collection efforts to collect the Accounts Receivable, but shall not be required to institute any legal proceedings to collect the Accounts Receivable or to otherwise incur any cost or obligation in respect thereof other than in the ordinary course of business. Upon expiration of the agency, Purchaser shall reassign all Accounts Receivable that have not been collected or received by Sellers and the parties expressly agree that Purchaser shall have no further obligation whatsoever with respect to any such reassigned Accounts Receivable.

(d) In the event the parties enter into the Pre-Closing LMAs, the Accounts Receivable generated on and after the effective date of the Pre-Closing LMAs shall be for Seller's account, as more fully set forth in the Pre-Closing LMAs, and this Section 2.5 shall not apply to such Accounts Receivable.

## **2.6 Tax Matters.**

(a) Notwithstanding any Legal Requirements, Sellers shall be responsible for and shall any Transfer Taxes when due arising in connection with the consummation of the Transaction, and Sellers shall, at their own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, *provided, however*, that, if required by any Arizona Legal Requirements statute, Purchaser will join in the execution of any such Tax Returns and other documentation and will pay only Purchaser's portion of a statutory prescribed Transfer Tax liability.

(b) Sellers shall be responsible for and shall pay any Taxes arising or resulting from or in connection with the conduct of the Business or the ownership of the Purchased Assets attributable to the Pre-Closing Period. Purchaser shall be responsible for and shall pay any Taxes arising or resulting from or in connection with the conduct of the Business or the ownership of the Purchased Assets attributable to the Post-Closing Period.

(c) All real property, personal property, ad valorem or other similar Taxes (not including income Taxes) levied with respect to the Purchased Assets or the Business for a taxable period which includes (but does not end on) the Closing Date shall be apportioned between Purchaser and Sellers in accordance with Sections 2.2 and 2.3.

(d) Sellers shall, at their sole cost and expense, deliver to Purchaser on or before the Closing Date clearance certificates with respect Sellers, such as those issued by the State of Arizona pursuant to Arizona Revised Statutes Section 42-1110 (sales tax) or the Arizona Employment Security Act (employment taxes) (or similar provisions of law of another jurisdiction) and dated not earlier than thirty (30) days before the Closing Date certifying that Purchaser is not liable for any amounts referred to in Arizona Revised Statutes Section 42-1110 or the Arizona Employment Security Act (or similar provisions of law of another jurisdiction) and that Purchaser is not required to withhold any of the Purchase Price thereunder. Sellers hereby acknowledge that for Federal Insurance Contribution Act and Federal Unemployment Tax Act purposes, Purchaser qualifies as a successor employer with respect to any employees of

Sellers hired by Purchaser, if any, after Closing. In connection with the foregoing, the parties agree to follow the "Alternative Procedures" set forth in Section 5 of Revenue Procedure 96-60, 1996-2 CB 399. Sellers and Purchaser understand that Purchaser shall assume Sellers' entire obligation to furnish an Internal Revenue Service Form W-2, Wage and Tax Statement, to each such employee. Sellers shall timely provide Purchaser with any and all other information Purchaser needs to properly comply with the requirements of this Section 2.6(d) which in no event shall be more than ten (10) Business Days from the date of a written request for such information.

(f) Sellers acknowledge that for state unemployment Tax purposes, Sellers will permit Purchaser to apply for a transfer of Sellers' rating accounts with respect to the Business. Each Seller shall deliver to Purchaser within ten (10) Business Days hereof, with respect to the Business, copies of such Seller's (i) Internal Revenue Service Form 940, Employer's Annual FUTA returns for 2000 and 2001, (ii) state unemployment tax rate notices for 2000 and 2001, and (iii) benefit change statements that itemize claims charged against the state account of Sellers in each state in which the Business is operated for the four most recent calendar quarters.

(g) The parties shall cooperate to determine federal, state and local social security, medicare, disability and unemployment tax withholding and other obligations with respect to any employees of Sellers hired by Purchaser, if any, after Closing subject to the procedures set forth in Section 2.6(d) above.

### **ARTICLE 3. CLOSING AND CLOSING DELIVERIES**

#### **3.1 Closing; Time and Place.**

The closing of the purchase and sale provided for in this Agreement (the "Closing") shall occur via facsimile or overnight mail on the fifth (5th) Business Day after the day on which all of the conditions to closing set forth in Article 9 are satisfied or waived (other than receipt of the FCC Consent and conditions that are intended to be satisfied at the Closing), or at such other date, time, place or manner as the parties may agree (the "Closing Date").

#### **3.2 Deliveries by Sellers.**

At the Closing, each Seller shall (i) take all steps necessary to place Purchaser in actual possession and operating control of the Business and the Purchased Assets and (ii) deliver the following items, duly executed by each Seller as applicable, all of which shall be in a form and substance reasonably acceptable to Purchaser and Purchaser's counsel:

(a) General Assignment and Bill of Sale. General Assignment and Bill of Sale covering all of the applicable Purchased Assets, substantially in the form attached hereto as Exhibit D (the "General Assignment and Bill of Sale");

(b) Assignment and Assumption Agreement. Assignment and Assumption Agreement, covering all of the Assumed Liabilities, substantially in the form attached hereto as Exhibit E (the "Assignment and Assumption Agreement");

(c) Assignments of Leases. Assignments of all Real Property Leases and Personal Property Leases;

(d) Owned and Leased Vehicles. Vehicle titles and assignments sufficient to transfer title to the Owned and Leased Vehicles;

(e) Other Conveyance Instruments. Such other specific instruments of sale, transfer, conveyance and assignment as Purchaser may reasonably request;

(f) Assumed Contracts. Originals (to the extent in Sellers' possession, and otherwise legible copies) of all Assumed Contracts;

(g) Payoff and Release Letters. Payoff and release letters from creditors of Sellers, together with UCC-3 termination statements with respect to any financing statements filed against the Business or any of the Purchased Assets, terminating all Encumbrances (including Tax liens) except Permitted Encumbrances on any of the Purchased Assets;

(h) Books and Records. The Books and Records;

(i) Opinion of FCC Counsel. An opinion of Sellers' FCC counsel substantially in the form attached hereto as Exhibit F;

(j) Certificate of Representations and Warranties and Approvals. A certificate executed on behalf of each Seller by the President, Chief Executive Officer or Managing Member of such Seller certifying (i) the matters in Section 9.1(a); and (ii) that the members, directors, officers or managers of each Seller, as required by such Seller's LLC Operating Agreement, have approved this Agreement;

(k) Certificates of Existence. A certificate from the Secretary of State of Arizona as to each Seller's existence;

(l) Other Documentation. Such other certificates, instruments or documents required pursuant to the provisions of this Agreement or otherwise necessary or appropriate to transfer the Purchased Assets in accordance with the terms hereof and consummate the Transaction, and to vest in Purchaser and its successors and assigns full, complete, absolute, legal and equitable title to the Purchased Assets, free and clear of all Encumbrances except Permitted Encumbrances.

### **3.3 Deliveries by Purchaser.**

At the Closing, Purchaser shall deliver the following items, duly executed by Purchaser as applicable, all of which shall be in a form and substance reasonably acceptable to Sellers and Sellers' counsel:

(a) Wire Transfer. A wire transfer to City National Bank for credit as Sellers designate, in the amount of \$19,300,000, as adjusted pursuant to Section 2.2;