

ASSET PURCHASE AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of _____, 2001, by and between VISION COMMUNICATIONS, INC. ("Seller") and POSITIVE ALTERNATIVE RADIO, INC. ("Buyer");

WITNESSETH:

WHEREAS, Seller is the owner, operator, and licensee of Radio Station WRXT-FM at Roanoke, Virginia, and FM Translator Stations W279AC at Roanoke, Virginia and W220CU at Danville, Virginia, as well as the permittee of FM Translator Station W209BQ at Martinsville, Virginia (hereinafter referred to as "the Stations"); and

WHEREAS, Buyer desires to acquire certain assets and rights used, useful or intended to be used, in the business and operation of the Stations, and to secure an assignment of the licenses and other authorizations issued by the Federal Communications Commission ("FCC") for the operation of the Stations, and Seller desires to sell, assign, transfer and convey the same to Buyer pursuant to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS: Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

(a) Closing Date or Closing means a date to be designated by Buyer which shall not be earlier than the tenth (10th) nor later than the forty-fifth (45th) business day after the FCC provides Notice that it has approved and granted the assignment of the Stations' licenses; provided, however, that, in the event of any post-grant protest of the Application, either Seller or Buyer shall have the option to extend the Closing Date to a date not later than the tenth (10th) business day after the Commission's consent and approval has become a Final Order, as defined below.

(b) Final Order means an Order of the FCC granting its consent and approval to the assignment of the Stations' licenses and authorizations from Seller to Buyer, which is no longer subject to rehearing, reconsideration or review by the FCC, or to a request for stay, an appeal or review by any court under the Communications Act of 1934, or the Rules and Regulations of the FCC.

2. SALE AND TRANSFER OF ASSETS: On the Closing Date, Seller agrees to sell and shall sell, transfer, assign, convey and deliver to the Buyer good and marketable title, free and clear of all liens, encumbrances, taxes, claims, options, liabilities, commitment, charges, restrictions, and other obligations of whatsoever nature, certain assets of the Stations, including but not limited to the following:

the goodwill of each Station, all tradenames, trademarks and service marks used by the Stations, all FCC Licenses and Authorizations associated with the Stations, subject to the necessary approvals for assignment, as hereinafter set forth; and equipment as listed on "**Exhibit A**," attached hereto and incorporated herein, as well as all of Seller's rights under manufacturers' and vendors' warranties relating to such items listed on Exhibit A, provided that the assets to be transferred shall not include:

- a. Seller's charter documents and such other books and records as pertain to the organization and existence of Seller and duplicate copies of such business records as Seller shall require;
- b. The name "Vision Communications, Inc." and any identity associated therewith;
- c. Any cash, certificates of deposit, cash equivalents, and marketable securities on hand and/or in banks and any prepaid assets; and,
- d. Accounts and notes receivable for services fully performed or provided by Seller prior to the Closing Date.
- e. Seller's real property at the Bedford County tower site, including the broadcast tower and building located thereon.

In addition to the foregoing, the parties hereby acknowledge and agree that an intrinsic part of this transaction shall be the requirement that Seller enter into a long-term lease with Buyer for at least ten (10) years duration, at no more than Five Hundred Dollars (\$ 500.00) per month, for Buyer's use of the building and tower at the Bedford County tower site. Such lease agreement, which shall be executed by the parties at Closing and be in the form of the Building and Tower Lease Agreement attached hereto as "**Exhibit A-1**," shall include the usual terms in the trade such as complete quiet enjoyment, including unfettered ingress and egress.

3. PURCHASE PRICE, METHOD OF PAYMENT AND TERMS: The total consideration to be paid by Buyer to Seller pursuant to this Agreement is One Million Seven Hundred Thousand Dollars (\$ 1,700,000.00). Said consideration shall be paid as follows:

- a. At the time this Asset Purchase Agreement is executed, Buyer shall place into the Escrow Account of Buyer's attorney, Cary S. Tepper ("Escrow Agent"), the sum of Seventy-Five Thousand Dollars (\$75,000.00) as an Earnest Money

Deposit towards Buyer's payment obligations at Closing. This Earnest Money Deposit shall be governed by that certain Escrow Agreement between Seller, Buyer and Cary S. Tepper as Escrow Agent, which is attached hereto as "**Exhibit B.**" In the event the sale of the Stations is approved by the Federal Communications Commission ("FCC") and does not consummate through no fault of Buyer, then such Earnest Money Deposit shall be released to Buyer. In the event the sale of the Stations is approved by the FCC but does not consummate as a result of Buyer's default, then the Earnest Money Deposit shall be released to Seller as a non-performance liquidate damages penalty payment from Buyer.

b. At Closing, the Earnest Money Deposit shall be released to Seller as partial payment of the consideration due at Closing, and Buyer shall also pay Seller in cash or certified check an additional sum of Seven Hundred Twenty-Five Thousand Dollars (\$ 725,000.00), so that the total consideration paid to Seller at Closing shall be Eight Hundred Thousand Dollars (\$ 800,000.00).

c. At Closing, Buyer shall execute the Installment Promissory Note attached hereto as "**Exhibit C**" in favor of Seller, in the amount of Nine Hundred Thousand Dollars (\$ 900,000.00), without interest. The Installment Promissory Note requires Buyer to pay Seller the sum of Three Hundred Thousand Dollars (\$300,000.00) on the one-year anniversary date of the Closing, with a second Three Hundred Thousand Dollar (\$ 300,000.00) payment due on the two-year anniversary date of the Closing, and a final Three Hundred Thousand Dollar (\$ 300,000.00) payment due on the three-year anniversary date of the Closing. In addition, Buyer's officer (Edward A. Baker) shall execute a personal guaranty for Four Hundred Fifty Thousand Dollars (\$ 450,000.00) of the above-referenced financial obligation, and Seller shall be afforded a security interest in Four Hundred Fifty Thousand Dollars (\$ 450,000.00) worth of Buyer's broadcast equipment assets in certain radio stations owned by Buyer. The Personal Guaranty and Security Agreement to be executed at Closing shall be in the form that are attached hereto as "**Exhibit C-1**" and "**Exhibit C-2.**"

The parties further acknowledge and agree that of the Eight Hundred Thousand Dollars paid by Buyer to Seller at Closing, One Hundred Twenty Thousand Dollars (\$ 120,000.00) shall be allocated as compensation paid for a five-year Non-Compete Agreement by Seller's Vice-President, with the requirement that such Non-Compete Agreement be executed at

Closing in the form attached hereto as "**Exhibit D.**"

4. PRORATIONS AND ADJUSTMENTS; ASSUMED CONTRACTS; ACCOUNTS RECEIVABLE:

a. All insurance premiums, taxes, assessments, excises, payroll, sales commissions, rents, utility and telephone charges, accumulated vacation time, sick leave, other employee benefits and all other liabilities, expenses or charges to the Seller with respect to the Stations shall be prorated as of the Closing Date, and those items accruing prior to the Closing Date shall be paid when due by the Seller and those accruing thereafter shall be paid when due by the Buyer.

b. All insurance premiums, taxes, rents, deposits, payments on contracts to be assigned to Buyer, or other items and expenses which have been pre-paid by Seller shall be prorated as of the Closing Date and Seller shall be credited for any payments made on obligations assumed by Buyer which will accrue prior to the Closing Date but which have not been paid by Seller prior to the Closing Date shall also be prorated as of the Closing Date and credited to Buyer. The net amount of these prorations shall either be added to or subtracted from the purchase price due Seller on the Closing Date.

c. No expense, debt or liability of Seller, of any nature whatsoever, shall be assumed by Buyer unless said assumption is set forth in this Agreement, or in any separate written agreements executed by both Buyer and Seller. Attached hereto as "**Exhibit D**" is a list of all contracts and agreements relating to the operation of the Stations that Buyer agrees to assume at Closing. Prior to Closing, both the Seller and Buyer agree to take all actions that are necessary to obtain any consents necessary for the assumption of such obligations so that such matters may be effectuated at or before the Closing.

d. The outstanding accounts receivable of the Seller as of the Closing Date shall be handled in the manner set forth in "**Exhibit E**" attached hereto.

5. TERMINATION: This Agreement may be terminated at the option of either party upon written notice to the other party if a Final Order consenting to the assignment of the Stations' FCC License(s) has not been obtained within twelve (12) months after the date on which the application is filed with the FCC, provided however, that neither party may terminate this Agreement if that party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the application has been caused or materially contributed to (i) by any failure of the terminating party to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by the terminating party of incorrect, inaccurate, or incomplete information to the FCC, or (iii) by any other action taken

by the terminating party for the purpose of delaying the FCC's decision or determination respecting the application.

6. **TRANSFER OF ASSETS**: Seller, on the Closing Date at the Closing Place, will sell, transfer, convey, assign and deliver to Buyer the assets, business rights, privileges and immunities of Seller referenced in Section 2, above, including those assets listed on "Exhibit A" attached hereto. In addition, Seller shall convey to Buyer at Closing the following:

- (a) A complete set of all documents maintained in the WRXT-FM Public File.
- (b) The program, operating and maintenance logs of the Stations.

7. **CONSENT OF THE FCC**: It is specifically understood and agreed that the consummation of this Agreement shall be subject to the prior consent of the FCC without conditions materially adverse to the Buyer. Upon the execution of this Agreement, Seller and Buyer will, at their mutual expense, proceed to expeditiously prepare and file with the FCC the requisite Assignment Application to secure such consent, together with such other necessary instruments and documents as may be required. The parties further agree to tender the said Application to the FCC within fifteen (15) days of the date of execution of this Agreement, and thereafter to prosecute said Application with diligence, and to cooperate with each other and to use their best efforts to obtain the requisite consent and approval promptly, and to carry out the provisions of this Agreement. At the time the FCC License Assignment Application is filed, Buyer shall pay the FCC Filing Fee of Seven Hundred Fifty-Five Dollars (\$755.00), and shall deduct half of said fee (\$377.50) from the additional payment to Seller at Closing, as noted in Paragraph 3, above.

8. **LEGAL NOTICE**: Upon the filing of the license transfer application, Seller shall be responsible for, and shall take the necessary steps, to provide such Legal Notice concerning the filing as is required by the FCC Rules.

9. **POSSESSION AND CONTROL OF STATION**: Between the date of this Agreement and the Closing Date, Buyer shall not control the operation of the Stations, but such operation shall be the responsibility of Seller.

10. **OPERATION OF STATION PENDING FCC APPROVAL OF SALE**: Between the date of this Agreement and the Closing Date, Seller shall give prompt written notice to Buyer if any of the following events occur on any of the Stations: (1) the transmission of the regular broadcast

programming is interrupted or discontinued for a period of time in excess of seventy-two (72) hours during any seven day period, (2) the station is operated at reduced power for ten consecutive days or longer, or (3) the programming format of Radio Station WRXT-FM is materially changed.

11. [THIS SECTION IS INTENTIONALLY BLANK.]

12. **TRADE:** With respect to any negative trade balance, Seller and Buyer will agree on or before the Closing Date which obligations will be assumed by Buyer. Seller will endeavor to reduce the aggregate negative trade balance to zero before the Closing Date. Any negative trade balance remaining as of the Closing Date which is not expressly assumed by Buyer will be applied on a dollar-for-dollar basis as a reduction in the Purchase Price payable at Closing.

13. **SECTION 73.1150 STATEMENT:** Both the Seller and Buyer agree that the Seller has retained no rights of reversion of the Stations' licenses, no right to the reassignment of the Stations' licenses in the future, and has not reserved the right to use the facilities of the Stations in the future for any reason whatsoever.

14. **COMPLIANCE WITH LAWS:** Seller has not received any notice asserting noncompliance by it in connection with the business or operation of the business of the Stations with any applicable local, state or federal (including FCC) statute, rule or regulation. Seller is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other governmental authority or any other tribunal duly authorized to resolve disputes in any respect material to the transactions contemplated hereby. There are no applications, complaints or proceedings pending or, to the best of Seller's knowledge, threatened before the FCC relating to the business and operations of the Stations which would have a material adverse effect on the operation of any of the Stations.

15. **HAZARDOUS MATERIALS:** To the best of Seller's knowledge, without having conducted any study or inquiry, no hazardous or toxic materials (as hereinafter defined) exist in any structure located on, or exist on or under the surface of, any of the real property or equipment to be conveyed to or leased by Buyer. For purposes of this Agreement, "hazardous or toxic material" shall mean waste, substances, materials, smoke, gas, pollutants, contaminants, asbestos or asbestos related products, PCB's, petroleum, crude oil (or any fraction or distillate thereof) or particular matter designated as hazardous, toxic or dangerous, or requiring special handling, treatment or storage whether or not designated hazardous, toxic or dangerous under any environmental laws. For purposes of this Agreement "environmental law" shall be interpreted to mean the Comprehensive Environmental Response Compensation and Liability Act, any successor to such law, and/or any other applicable federal, state, or local environmental, health or safety law, rule or regulation concerning the treating, producing, handling, storing, releasing, spilling, leaking, pumping, pouring, emitting, or dumping of any

waste, substance, materials, smoke, gas or particulate matter or imposing liability or standards in connection therewith.

16. COVENANTS, REPRESENTATIONS, WARRANTIES AND INSURANCE:

(a). Seller has full power and authority to enter into this Agreement, is the holder of the Stations' licenses and associated authorities, and has good and marketable title to all assets conveyed pursuant to this Agreement. Seller agrees to maintain adequate insurance on the assets subject to this Agreement between the date hereof and the Closing Date. Seller hereby represents that all of the Stations' FCC licenses and authorizations are now, and on the Closing Date, will be in full force and effect, and that there is no action pending before the FCC to revoke, cancel, modify or rescind any of the Stations' licenses and authorizations. Unless Buyer and Seller otherwise acknowledge in writing at the time this Agreement is executed, Seller further represents and warrants that at Closing those assets listed on "Exhibit A" attached hereto will be in good operating condition, not in need of repair or replacement, and will meet all technical criteria specifications outlined in the FCC's rules and regulations, and will comply with the requirements of Section 15 herein ("Hazardous Materials"). Immediately prior to Closing, Buyer shall have the right of reinspection of the purchased assets to ensure that all such assets remain in the possession of Seller with no material deterioration in the condition thereof since the execution of this Agreement. Buyer may require Seller to repair or replace any missing or broken assets prior to Closing, or the Seller may accommodate Buyer in any other manner satisfactory to Buyer.

(b). Buyer has full power and authority to enter into this Agreement and has correctly represented its financial standing to consummate this Agreement.

17. EXPIRATION OF REPRESENTATIONS AND WARRANTIES: The representations and warranties of Seller contained herein shall expire one (1) year after the Closing.

18. FCC QUALIFICATIONS:

(a) Seller is qualified under the Communications Act of 1934, as amended, to assign the Stations' FCC licenses and authorizations to Buyer.

(b) Seller does not know of any facts relating to Seller which would cause the FCC to deny its consent to the assignment of the Stations' licenses and authorizations to Buyer, and should any such facts come to Seller's attention, Seller shall promptly notify Buyer thereof and use his reasonable best efforts and take such steps as may be reasonably necessary to remove any such impediment to the Assignment.

19. PUBLIC INSPECTION FILE: At Closing, Seller will transfer to Buyer all licenses, authorizations, reports, applications, correspondence, contracts and other documents required to be included in the post-Closing WRXT-FM Public Inspection File. In the event certain required documents are missing and are unobtainable by Seller, such missing documents will be identified, in writing, to Buyer at time of Closing.

20. SELLER'S PERFORMANCE AT CLOSING: On the Closing Date at the Closing Place, Seller shall execute and deliver or cause to be delivered to Buyer the following:

- (a) An Assignment to Buyer of the FCC Licenses for the Stations, together with any and all other related authorizations.
- (b) An Assignment to Buyer of all rights, title and interest in and to the Call Letters WRXT-FM.
- (c) One or more Bills of Sale assigning, transferring and conveying to Buyer free and clear title to all of the Personal Tangible Assets to be acquired by Buyer pursuant to the terms of this Agreement.
- (d) An Assignment of all intangibles owned or held by Seller, including tradenames, trademarks and service marks, that are subject to this Agreement.
- (e) An Assignment of the Public Inspection File of WRXT-FM, together with a list of any required documents that are missing and unobtainable at time of Closing.
- (f) The files, records, logs and books of account of the Stations.
- (g) Such other assignments, bills of sale or other instruments as may be required to effectuate this Agreement and the assignment of the Stations' licenses and related assets from Seller to Buyer.
- (h) The Non-Compete Agreement.
- (i) The building and tower lease agreement.
- (j) The Employment Agreement in the form that is attached hereto as **"Exhibit F."**

21. BUYER'S PERFORMANCE AT CLOSING:

a. On the Closing Date at the Closing Place, Buyer shall deliver to Seller a cashier's or certified check in the amount of Seven Hundred Twenty-Five Thousand Dollars (\$ 725,000.00), which represents the total consideration due at Closing minus the amount of funds in Escrow. Buyer shall also take all actions necessary at Closing to release such escrowed funds to Seller. The total consideration due at Closing is allocated as follows: \$680,000.00 consideration payment to Seller, and \$120,000.00 non-compete payment to Seller's Vice-President.

b. In addition, Buyer shall execute the Installment Promissory Note, Security Agreement, the building and tower lease agreement, and the Employment Agreement, and Edward A. Baker shall execute the personal guaranty.

22. MAINTENANCE OF CONFIDENCES: Until after the Closing, Buyer agrees to keep confidential all information it receives or has received during the course of the negotiations in connection with the transaction contemplated herein or relating to the business operations of Seller, provided that Buyer may disclose such information to its professional advisors, agents and any financial institution which it may be dealing with in connection with the proposed financing of the transactions contemplated herein, or as required by law. In the event that the transaction contemplated hereby is not consummated for any reason, Buyer shall promptly return to Seller all materials acquired by Buyer from Seller with respect to the Stations and the associated assets and intangibles, and provide to Seller the names and addresses of any and all persons, firms or other entities who have viewed or received information with respect to the proposed sale of the Stations (together with a meaningful description of the materials viewed or received by each of them).

23. RISK OF LOSS: The risk of loss, damage or destruction to any of the property or assets to be transferred to Buyer hereunder from fire or other casualty or cause shall be borne by Seller at all times up to the close of business on the Closing Date. In the event of any such loss, damage or destruction, the proceeds of any claim for any loss, payable under any insurance policy with respect thereto, shall be used to repair, replace, or restore any such property to its former condition. However, in the event that the property is not completely repaired, replaced or restored on or before the Closing Date, the parties may agree to postpone the Closing. If circumstances referenced above require postponement of the Closing for a period of 60 days or more, the parties may agree to rescind this Agreement.

24. BENEFIT: The parties hereto understand and agree that this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

25. OTHER DOCUMENTS: The parties shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement.

26. INDEMNIFICATION:

(a) It is understood and agreed that the Buyer does not assume and shall not be obligated to pay any liabilities of Seller under the terms of this Agreement or otherwise and shall not be obligated to perform any obligations which arise subsequent to the Closing Date or as herein provided. Seller hereby agrees to indemnify and hold Buyer, its successors and assigns, harmless from and against the following:

(i) Any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or related to the operation of the Stations prior to the close of business on the Closing Date, including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed prior to the close of business on the Closing Date under any contract or instrument assumed by Buyer hereunder.

(ii) Any and all damages or deficiency resulting from any misrepresentations, breach of warranty or covenant, or nonfulfillment of any agreement or obligation on the part of Seller under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished to the Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby.

(iii) Any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses, including reasonable attorneys' fees incident to any of the foregoing provisions.

(b) If any claim or liability shall be asserted against the Buyer which would give rise to a claim by the Buyer against the Seller for indemnification under the provisions of this Paragraph, the Buyer shall promptly notify the Seller in writing of the same and the Seller shall, at its own expense, defend any such action.

27. BROKER: The Seller and Buyer agree that no broker was involved in this transaction.

28. ATTACHMENTS: All Attachments to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. If any provision in any Attachment conflicts with or is not consistent with the provisions of this Agreement, the terms of this Agreement shall govern.

29. NO INCONSISTENT ACTIONS. Neither the Seller nor the Buyer shall take any

action which is materially inconsistent with its obligations under this Agreement.

30. ENTIRE AGREEMENT: This Agreement is the only Agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. No alteration, modification or change of this Agreement shall be valid unless by like instrument.

31. NOTICES: All necessary notices required under this Agreement shall be sent first-class mail, postage pre-paid, to the following:

If to Buyer: Edward A. Baker, President
 Positive Alternative Radio, Inc.
 P.O. Box 889
 Blacksburg, VA 24063

With a copy to: Cary S. Tepper
 Booth, Freret, Inlay & Tepper, P.C.
 5101 Wisconsin Avenue, N.W.
 Suite 307
 Washington, D.C. 20016-4120

If to Seller: Barry Armstrong
 Vision Communications, Inc.
 20276 Timberlake Road
 Lynchburg, VA 24502

With a copy to: A. Wray Fitch, III
 Gammon & Grange
 8280 Greensboro Drive; 7th Floor
 McLean, VA 22102-3807

32. GOVERNING LAW: This Agreement shall be construed and enforced in accordance with the laws of the State of Virginia.

33. SPECIFIC PERFORMANCE: Buyer and Seller recognize that if Seller refused to perform under the provisions of this Agreement, monetary damages alone will not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement.

34. SELLER'S LIQUIDATED DAMAGES: If this Agreement is not consummated because of a default on the part of Buyer in material breach of this Agreement then Seller may, provided it is not in material default of any term or condition of this Agreement, terminate this Agreement upon providing twenty (20) days written notice to Buyer. The parties recognize that it would be extremely difficult and impractical to ascertain the actual damages sustained by Seller as a result of Buyer's default. Accordingly, it has been mutually agreed that, in the event of such default, Buyer shall forfeit to Seller as liquidated damages the escrowed sum of Seventy-Five Thousand Dollars (\$75,000.00), so long as Seller is not in material default of any term or condition of this Agreement and has otherwise complied with all of its obligations under this Agreement.

35. COUNTERPARTS: This Agreement may be executed in counterparts.

36. HEADINGS: The headings of the Paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit or describe the scope of this Agreement nor the intent of any Paragraph hereof.

IN WITNESS HEREOF, the parties hereto have hereunto set their hands and seals.

BUYER:

SELLER:

POSITIVE ALTERNATIVE RADIO, INC.

VISION COMMUNICATIONS, INC.

By: _____

By: _____

Edward A. Baker
President

Barry Armstrong
President

Date: _____

By: _____

W. Mac Miller
Vice-President

Date: _____

Exhibit A

(List of Assets)

Exhibit A-1

(Building and Tower Lease Agreement)

Exhibit B

(Escrow Agreement)

Exhibit C

(Installment Promissory Note)

Exhibit C-1

(Personal Guaranty)

Exhibit C-2

(Security Agreement)

Exhibit D

(Non-Compete Agreement)

Exhibit E

(Accounts Receivable Information)