

# **ASSET PURCHASE AGREEMENT**

**by and between**

**RADIO HYANNIS, INC.,  
RADIO NANTUCKET, INC.,  
RADIO FALMOUTH, INC.,**

**("Sellers")**

**and**

**LAZER REAL ESTATE TRUST UNDER DECLARATION OF  
TRUST DATED MAY 13, 1992**

**("Trust")**

**and**

**QANTUM COMMUNICATIONS CORPORATION**

**("Buyer")**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT, dated as of this \_\_\_ day of February 2003 (this "Agreement"), by and among Radio Hyannis, Inc., a Massachusetts corporation ("Radio Hyannis"); Radio Nantucket, Inc., a Massachusetts corporation ("Radio Nantucket"); and Radio Falmouth, Inc., a Massachusetts corporation ("Radio Falmouth") (each of Radio Hyannis, Radio Nantucket, and Radio Falmouth being individually referred to herein as a "Seller" and being collectively referred to herein as "Sellers"); Lazer Real Estate Trust under Declaration of Trust dated May 13, 1992, a trust created under Massachusetts law (the "Trust") and Qantum Communications Corporation, a Delaware corporation ("Buyer").

### RECITALS:

WHEREAS, Radio Hyannis is the owner, operator and licensee of radio station WPXC(FM), Hyannis, Massachusetts; Radio Nantucket is the owner, operator and licensee of WRZE(FM), Nantucket, Massachusetts; and Radio Falmouth is the owner, operator and licensee of WCIB(FM), Falmouth, Massachusetts (each a "Station" and collectively, the "Stations");

WHEREAS, each of Radio Hyannis, Radio Nantucket and Radio Falmouth is licensee of its respective Station pursuant to certain authorizations issued by the Federal Communications Commission (the "FCC") and holds substantially all of the assets used or useful in the operation of its respective Station, other than certain real property owned by the Trust;

WHEREAS, the Trust owns certain real property at 154 Barnstable Road, Hyannis, Massachusetts used in the operations of the Stations, and that certain real property is to be transferred by the Trust as part of the sale of the other assets associated with the Stations, provided that the liabilities of the Trust in entering into this Agreement for such a sale are strictly limited to the obligation at Closing to transfer such real property as described herein and to adhere to the representations, warranties and covenants made by the Trust herein; and

WHEREAS, Sellers and Trust desire to sell to Buyer such assets and such real property, and Buyer desires to purchase the same, all subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth in this Agreement, the parties, intending to be legally bound, agree as follows:

### ARTICLE 1. SALE OF ASSETS

#### 1.1. Station Assets.

On the terms and subject to the conditions set forth in this Agreement, on the Closing Date (as defined in Section 5.1), Sellers and Trust shall assign, transfer, convey and deliver to Buyer, and Buyer shall acquire from Sellers and Trust, all of the right, title and interest of Sellers and Trust or their affiliates in and to all of the assets, properties, interests and rights of each Seller, Trust or

their affiliates of whatsoever kind and nature, real and personal, tangible and intangible, or mixed which are used or held for use in the operation of the Stations (the "Station Assets"). Except as otherwise provided in Section 1.2, the Station Assets shall include, without limitation, the following:

(a) all licenses, permits and other authorizations which are issued to any Seller by the FCC with respect to the Stations (the "Station Licenses"), including those described on Schedule 1.1(a), including any renewals, extensions or modifications thereof and additions thereto made between the date hereof and the Closing Date;

(b) all equipment, electrical devices, antennas, towers, cables, tools, hardware, office furniture and fixtures, computer equipment and printers, office materials and supplies, inventory, motor vehicles, spare parts and other tangible personal property of every kind and description which are used or held for use in the operation of the Stations, including, without limitation, those listed or described on Schedule 1.1(b), except any retirements or dispositions thereof made between the date hereof and the Closing Date in the ordinary course of business and consistent with past practices of Sellers or with the written consent of Buyer (the "Tangible Personal Property");

(c) (i) all agreements for the sale of advertising time on the Stations for cash entered into in the ordinary course of business ("Time Sales Agreements"); (ii) all agreements for the sale of advertising time on the Stations for non-cash consideration listed on Schedule 1.1(c)(ii) ("Trade Agreements"); (iii) all leases of real property held or used in the operation of the Stations (the "Leased Real Property") listed in Schedule 1.1(c)(iii); and (iv) all other contracts, agreements and leases which are used or held for use in the operation of the Stations and listed on Schedule 1.1(c)(iv), together with all contracts, agreements and leases entered into by a Seller between the date hereof and the Closing Date that are either entered into with the written consent of Buyer or are consistent with past practices of such Seller, are entered into in the ordinary course of business of the Stations, would impose upon Buyer an obligation of Five Thousand Dollars (\$5,000.00) or less for each such contract, agreement or lease and would impose upon Buyer an obligation of no more than Twenty-five Thousand Dollars (\$25,000.00) in the aggregate for all such contracts, agreements and leases (such contracts, together with the contracts listed on Schedule 1.1(c)(iv), being referred to herein as the "Station Contracts"). Any deposits paid by Sellers with respect to any Station Contracts shall become the property of Buyer, but the amount of any such deposit shall be added to the amounts to be paid to Sellers by Buyer pursuant to Section 4.4 of this Agreement;

(d) To the extent transferable and assignable and to the extent they may be assigned to Buyer without Sellers incurring any cost or expense payable to third parties for such assignment, all of Sellers' rights in and to the Stations' call letters and rights in and to the trademarks, trade names, service marks, franchises, copyrights, computer software, programs and programming material, jingles, slogans, logos and other intangible property which are used or held for use in the operation of the Stations, including, without limitation, as listed on Schedule 1.1(d) (the "Intellectual Property");



(e) all of Sellers' rights in and to all the files, documents, records and books of account (or copies thereof) relating to the operation of the Stations, including (if such exist) the Stations' local public files, programming information and studies, blueprints, technical information and engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports and logs, but excluding accounts payable, payroll, payroll taxes, general ledger and records relating exclusively to the Excluded Assets (as defined in Section 1.2), provided however that for the lesser of (i) seven (7) years following Closing or (ii) the applicable statute of limitations under applicable tax codes Sellers shall have reasonable access to such files, documents, records and books of account for inspection and duplication at Sellers' expense during normal business hours, and to the originals if required, for the purposes of bookkeeping, tax return preparation and accounting procedures, and for such other purposes as may be customary or necessary;

(f) To the extent transferable and assignable and to the extent they may be assigned to Buyer without Sellers incurring any cost or expense payable to third parties for such assignment, all claims and rights against third parties if and to the extent that they relate to Station Assets including, without limitation, all rights under manufacturers' and vendors' warranties;

(g) all of Sellers' goodwill in, and going concern value of, the Stations;

(h) The real property, and the buildings, fixtures and improvements thereon, owned by any of the Sellers or the Trust, and used or held for use in the business and operations of the Stations listed and described on Schedule 1.1(h) attached hereto and any additions and improvements thereto between the date of this Agreement and the Closing Date (collectively, the "Owned Real Property" and, with the Leased Real Property, the "Real Property"); and

(i) Sellers' list of customers and subscriptions.

Except as set forth on Schedule 1.1, the Station Assets shall be assigned to Buyer free and clear of all liens, pledges, claims, security interests, writs, judgments, mortgages (real or personal), tenancies and other possessory interests, conditional sale or other title retention agreements, rights of first refusal, and encumbrances or options, and with respect to the Owned Real Property, easements, rights of way, restrictions, exceptions, reservations, limitations, encroachments, and assessments ("Liens") except for (i) Assumed Obligations (as defined in Section 3.1), (ii) liens for taxes not yet due and payable (iii) such liens, easements, rights of way, restrictions, exceptions, reservations and limitations that are a matter of record as of the date of this Agreement (other than mortgages and other security interests) and (iv) leases, tenancies and other possessory interests set forth in this Agreement ("Permitted Liens").

## 1.2. Excluded Assets.

Notwithstanding anything to the contrary contained in this Agreement, the Station Assets shall not include the following assets along with all right, title and interest therein (the "Excluded Assets"):

(a) all cash and cash equivalents of Sellers, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, asset or money market accounts and all such similar accounts or investments as of the close of business on the business day prior to the Closing Date;

(b) all accounts receivable or notes receivable arising in the operation of the Stations prior to the Closing Date as of the close of business on the business day prior to the Closing Date;

(c) all tangible and intangible personal property of the Stations disposed of or consumed in the ordinary course of business consistent with the past practices of Sellers between the date of this Agreement and the Closing Date;

(d) all Station Contracts that terminate or expire prior to the Closing Date in the ordinary course of business;

(e) Sellers' names, corporate minute books, charter documents, corporate stock record books and such other books and records as pertain to the organization, existence or share capitalization of Sellers;

(f) any contracts of insurance of Sellers relating to the Stations, and all insurance proceeds or claims made thereunder;

(g) all Seller Plans (as defined in Section 7.1(n)) and the trusts, assets and liabilities thereof. Buyer is assuming no rights or obligations with respect to any Seller Plan;

(h) six (6) season Club Seats for New England Patriots Games;

(i) items of art and memorabilia, awards and antique radios on Stations' premises as listed on Schedule 1.2(i);

(j) personal items in offices of each family member of Sellers;

(k) personal items of employees;

(l) four (4) computers with monitors and printers presently used for corporate business purposes;

(m) any assets of the Trust other than the assets specifically listed and described in this Agreement, and with respect to which excluded assets the Trust represents that none of such assets are used or held for use in the Stations' operations; and

(n) all rights, properties and assets described on Schedule 1.2(i).

**ARTICLE 2.**  
**LIMITATION OF TRUST'S, TRUSTEES' AND BENEFICIARIES' LIABILITY**

Notwithstanding anything in this Agreement to the contrary, the liability of the Trust, and the Trust's Trustees and Beneficiaries, under this Agreement is strictly limited to its obligation at Closing to transfer and convey the real property located at 154 Barnstable Road, Hyannis, Massachusetts pursuant to the terms of this Agreement and subsequent to such transfer and conveyance shall have no liability whatsoever under any provisions of this Agreement except for adhering to the specific representations, warranties and covenants of the Trust that survive the Closing. Further, notwithstanding anything to the contrary in this Agreement, in no event shall said Trustees or Beneficiaries have any personal liability whatsoever arising from their status as Trustees or Beneficiaries of the Trust under any provisions of this Agreement.

**ARTICLE 3.**  
**ASSUMPTION OF OBLIGATIONS**

3.1. Assumed Obligations.

On the Closing Date and subject to the representations, warranties and covenants made herein, Buyer shall assume all obligations arising after the Closing in connection with the Station Assets after Closing (the "Assumed Obligations").

3.2. Retained Obligations.

Buyer does not assume or agree to discharge or perform and will not be deemed by reason of the execution and delivery of this Agreement or any agreement, instrument or document delivered pursuant to or in connection with this Agreement or otherwise by reason of the consummation of the transactions contemplated hereby, to have assumed or to have agreed to discharge or perform, any liabilities, obligations or commitments of Sellers of any nature whatsoever whether accrued, absolute, contingent or otherwise and whether or not disclosed to Buyer, other than the Assumed Obligations (the "Retained Obligations").

**ARTICLE 4.**  
**PURCHASE PRICE**

4.1. Purchase Price.

The aggregate purchase price to be paid by Buyer to Sellers and the Trust shall be Thirty-Two Million Dollars (\$32,000,000) (the "Purchase Price").

4.2. Deposit.

Simultaneously with the execution of this Agreement, Buyer shall deposit the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000) (the "Deposit") with, or deliver an irrevocable letter of credit issued by a nationally chartered bank (the "Letter of Credit") in such amount to, Womble Carlyle Sandridge & Rice, PLLC (the "Escrow Agent") pursuant to the Escrow Agreement attached hereto as Exhibit A, dated as of the date of this Agreement (the

"Escrow Agreement"), by and among Buyer, Sellers and Escrow Agent. If Buyer fails to renew or replace such letter of credit at least ten (10) days prior to the expiration date of the then effective Letter of Credit, Escrow Agent shall have an irrevocable and absolute duty under the Escrow Agreement to draw down on the Letter of Credit and place the sum of \$1,500,000 in Escrow, at which point such sum shall be deemed to be the Deposit, with any reasonable fees and expenses of the Escrow Agent for such draw and placement to be at the sole expense of the Buyer and Buyer shall pay to Escrow Agent such fees and expenses within thirty (30) days subsequent to its receipt of Escrow Agent's statement or at the Closing, whichever occurs first. At the Closing, the Escrow Agent shall either (a) return the Letter of Credit, if such is being held by the Escrow Agent, to Buyer or (b) disburse the Deposit to the Sellers for application of the Deposit against the Purchase Price as set forth in Section 4.3 hereof and disburse any interest accrued on the Deposit or interest on such interest (the "Interest") to Buyer. If this Agreement is terminated by Sellers in accordance with Section 18.1(b), the Escrow Agent shall either (x) draw down on the Letter of Credit and disburse the proceeds to Sellers or (y) disburse the Deposit to Sellers, in either event such disbursement serving as an agreed estimate of liquidated damages under Section 18.3. In the event that the Deposit is disbursed to Sellers pursuant to the previous sentence, the Escrow Agent shall disburse any Interest to Buyer. In the event that this Agreement is terminated other than pursuant to Section 18.1(b) hereof, the Escrow Agent shall disburse either the Letter of Credit or the Deposit, plus Interest, as applicable, to Buyer.

#### 4.3. Payment of Purchase Price.

At the Closing, the Purchase Price shall be paid as follows:

(a) If, as of the Closing, Escrow Agent holds the Letter of Credit pursuant to Section 4.2, above, Escrow Agent will return the Letter of Credit to Buyer and Buyer will pay the sum of Thirty Million Dollars (\$30,000,000) by wire transfer of immediately available funds to accounts specified by Sellers and the Trust at least two business days prior to the Closing Date. If, as of the Closing, Escrow Agent holds the Deposit in lieu of the Letter of Credit, Escrow Agent shall disburse the Deposit to Sellers as prescribed in Section 4.2, above, and Buyer will pay Twenty-Eight Million, Five Hundred Thousand Dollars (\$28,500,000) by wire transfer of immediately available funds to accounts specified by Sellers and Trust at least two business days prior to the Closing Date; and

(b) Buyer will issue to Sellers or their designees, as set forth in this Section 4.3(b), Two Million Dollars (\$2,000,000) in junior preferred stock of Quantum Communications Corporation ("Junior Preferred Stock") in accord with the Schedule of Junior Preferred Rights and Privileges attached hereto as Schedule 4.3(b), which Junior Preferred Stock shall accrue cumulative dividends at 2% per annum. Such Junior Preferred Stock shall be redeemed by Quantum Communications Corporation upon the earliest to occur of: (i) seven years from the Closing Date; (ii) a sale of substantially all of the assets of Buyer; (iii) a sale of Buyer's corporate stock constituting a transfer of control of Buyer required to be filed with the FCC on an FCC Form 315 application; (iv) a sale of substantially all of the assets comprising any of the Stations; or (v) the sale of any subsidiary owning any of the Station Assets or FCC licenses (other than pursuant to a corporate restructuring not requiring the submission of an FCC Form 314 or 315 or successor form). At Sellers' option, Sellers may direct Buyers to issue the Junior Preferred Stock

to which Sellers are entitled under this Agreement to any of Sellers' shareholders listed on Schedule 7.1(a) ("Shareholder Designees") upon the presentation by Sellers to Buyer at Closing of a written designation (the "Shareholder Designation") directing Buyer to issue the Junior Preferred Stock to the Shareholder Designees. The Shareholder Designation must be executed by the Sellers and the Shareholder Designees and shall include representations by the Shareholder Designees concerning the investment intent and sophistication of such Shareholder Designees that are substantially similar in language to the representations set forth in Sections 7.1(w) and 7.1(x) of this Agreement. Other than as set forth in this Section 4.3(b), the holders of the Junior Preferred Stock, whether such holders are any or all of the Sellers or any or all of the Shareholder Designees, may not sell, assign, transfer, convey, pledge, hypothecate, grant an option with respect to or otherwise dispose of or encumber any interest in, directly or indirectly, the Junior Preferred Stock without Buyer's consent, which consent may be withheld in Buyer's sole discretion.

#### 4.4. Prorations and Adjustments.

All revenues and expenses arising from the operation of the Stations shall be prorated between Sellers and Buyer in accordance with the principle that, except as expressly otherwise set forth in this Agreement, (a) Sellers shall receive all revenues, and shall be responsible for all expenses, relating to the business and operations of the Stations for the period ending at 11:59 p.m. on the day prior to the Closing Date, and (b) Buyer shall receive all revenues, and be responsible for all expenses, relating to the business and operations of the Stations thereafter. In implementation of this general principle, the parties agree that, except as otherwise provided in this Agreement, all deposits and deferred income and expenses arising from the conduct of the business and operations of the Stations shall be prorated in accordance with generally accepted accounting principles ("GAAP") as of 11:59 p.m. on the date immediately preceding the Closing Date. Such prorations shall include, without limitation, all ad valorem and other property taxes and assessments, business and license fees, regulatory fees, music and other license fees (including any retroactive adjustments thereof), utility expenses, amounts due or to become due under contracts, rents, lease payments, and similar deferred items. Paid time off for any employees of Sellers that become employees of Buyer that has accrued in accordance with the provisions of the employee manual appended hereto as Schedule 4.4 shall be the sole responsibility of the Buyer subsequent to the Closing and shall not be prorated. Schedule 7.1(m) lists the liability of the Sellers as of the date of this Agreement for accrued vacation and sick leave. Real estate taxes shall be apportioned on the basis of taxes assessed for the preceding year, with a reapportionment, if any, as soon as the new tax rate and valuation can be ascertained. FCC regulatory fees shall be apportioned on the basis of the fees charged by the FCC for payment in September 2002. Except as otherwise provided herein, the prorations and adjustments contemplated by this Section 4.4, to the extent practicable, shall be made on the Closing Date. As to those prorations and adjustments not capable of being ascertained on the Closing Date, unless otherwise stipulated in this Section 4.4, an adjustment and proration shall be made within ninety (90) calendar days of the Closing Date. In the event of any disputes between the parties as to such prorations and adjustments, the amounts not in dispute shall nonetheless be paid at the time provided herein and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties, and the fees and expenses of such accountant shall be paid one-half by Buyer and one-half by Sellers. With respect to Trade Agreements, if there

exists on the Closing Date an aggregate negative trade balance in excess of Twenty Five Thousand Dollars (\$25,000) determined in accordance with GAAP, then such excess will be treated as prepaid time sales and adjusted as a proration in Buyer's favor, but there shall be no adjustment for any positive trade balance existing on the Closing Date.

**4.5. Allocation.**

The Purchase Price shall be allocated among the Station Assets in a manner as determined by Buyer such that the following allocation of the Purchase Price shall be made among each of the Sellers and the Trust:

Entity	Allocation
Lazer Real Estate Trust	\$ 600,000
Radio Hyannis, Inc	\$ 7,400,000
Radio Nantucket, Inc.	\$ 9,000,000
Radio Falmouth, Inc.	\$15,000,000

Sellers and Buyer agree to use the allocations determined pursuant to this Section 4.5 for all tax purposes, including without limitation, those matters subject to Section 1060 of the Internal Revenue Code of 1986, as amended.

**ARTICLE 5.  
CLOSING**

**5.1. The Closing.**

The consummation of the transactions contemplated in this Agreement (the "Closing") shall occur (a) within five (5) business days after the FCC Consents (as defined in Section 6.1) to the assignments of the Station Licenses have become Final Orders (as defined below), or (b) such other date as may be mutually agreed to by the parties (the "Closing Date"). For purposes of this Agreement "Final Order" shall mean action by the FCC granting the FCC Applications which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or reconsideration, application for review or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The Closing shall be held at the Stations at 154 Barnstable Road, Hyannis, Massachusetts 02601, or at such other place as the parties hereto may agree (the "Closing Location").

**ARTICLE 6.  
GOVERNMENTAL CONSENTS**

**6.1. FCC Consent.**

The occurrence of the Closing is subject to and conditioned upon receipt of the consent of the FCC (the "FCC Consent") to the assignment of the FCC Licenses to Buyer.

6.2. FCC.

Sellers and Buyer shall file applications with the FCC (the "FCC Applications") requesting the FCC Consent within the later of (a) five (5) business days following the date on which Radio Nantucket files its application for license of the facilities specified in FCC Construction Permit File No. BPH-20020528AAB or (b) five (5) business days following the date of execution of this Agreement. Buyer and Sellers shall diligently prosecute the FCC Applications and otherwise use their best efforts to obtain the FCC Consent as soon as possible.

6.3. General.

Sellers and Buyer shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Sellers and Buyer shall furnish each other with information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

**ARTICLE 7.  
REPRESENTATIONS AND WARRANTIES OF SELLERS**

7.1. Representations and Warranties of Sellers.

Sellers, acting jointly and severally, and the Trust, the Trustees' and the Beneficiaries' only to the extent explicitly stated, hereby make the following representations and warranties to Buyer, each of which is true and correct as of the date hereof, and shall be true and correct as of the Closing Date, and shall be unaffected by any investigation heretofore or hereafter made by Buyer:

(a) Organization.

(i) Each Seller and the Trust is validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and has all requisite corporate power and authority to own, lease, operate or otherwise hold the Station Assets owned, leased or otherwise held by it and to carry on the business and operations of the Station of which it is FCC licensee as now being conducted and is duly qualified to do business in each jurisdiction in which its operation of such Station or its ownership or leasing of property makes such qualification necessary. Appended hereto as Schedule 7.1(a) is a true and correct list of each Seller's officers, directors and shareholders accurately specifying the office held, the voting interest held and the equity interest held by each such person and the principals of the Trust.

(ii) Each Seller has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The Trust has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by each Seller and the Trust and the consummation of the transactions contemplated hereby have been duly authorized as applicable by all necessary corporate or trust action on the part of each Seller and the Trust, and

each of their officers, directors, shareholders and trustees as applicable. This Agreement has been duly executed and delivered by each Seller and the Trust and, assuming the due execution and delivery of this Agreement by Buyer, constitutes the legal, valid and binding obligation of each Seller and the Trust, enforceable against each Seller and the Trust in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

(b) Authority.

Except as set forth in Schedule 1.1(h), the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby shall not (a) violate, conflict with or result in any breach or default of any provision of the organizational documents of any Seller or the Trust, (b) violate, conflict with or result in a violation or breach of, or constitute a default (with or without due notice, lapse of time, right to cure, or all of the foregoing) under, or permit the suspension or termination of, or result in the acceleration of, or entitle any party to accelerate (whether as a result of the sale of the Station Assets or otherwise) any material obligation, covenant, term, condition, or result in the loss of any material benefit, or give rise to the creation of any material Lien, charge, security interest, judgment, claim or encumbrance upon any of the properties or assets of any Seller or the Trust or any of their subsidiaries under any of the terms, conditions or provisions of any loan or credit agreement, note, bond, mortgage, indenture or deed of trust, promissory note, security agreement, chattel mortgage, debt, or any material license, lease, agreement or other material instrument or obligation to which any Seller or the Trust is a party or by which any Seller or the Trust or any of their properties or assets may be bound or affected, or (c) violate any order, writ, judgment, injunction, decree, statute, rule, ordinance or regulation of any court, administrative agency or commission or other governmental authority or instrumentality (a "Governmental Entity") applicable to any Seller or the Trust or any of their properties or assets. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to any Seller or the Trust in connection with the execution and delivery of this Agreement by such Seller or the Trust or the consummation by any Seller or the Trust of the transactions contemplated hereby, except for FCC Consents.

(c) Financial Statements.

Sellers have provided Buyer with the Sellers' combined unaudited balance sheets as of December 31, 2001, December 31, 2000, September 30, 2002 and September 30, 2001, and the related income statements for such periods (such financial statements collectively being referred to as "Sellers' Financial Statements"). Sellers' Financial Statements are appended hereto as Schedule 7.1(c). Sellers' Financial Statements (i) were prepared in the ordinary course and (ii) although prepared for internal management use only and not for reliance upon by any party that is not internal management, may be relied upon by Buyer as, taken as a whole, accurately presenting the combined financial position and results of operations of the Stations on a combined basis for the periods covered and have been prepared in accordance with GAAP applied on a consistent basis with only such material deviations from GAAP: (A) that footnotes required by generally accepted accounting principals are omitted, (B) that no Federal income tax



is shown as accrued, (C) and as otherwise listed in Schedule 7.1(c) hereto. The Trust has not incurred any operating expenses relating to the Station Assets other than expenses that are not reflected in Sellers' Financial Statements as expenses paid which are substantially equal to the gross rent shown in the Sellers' Financial Statements paid by the Sellers to the Trust.

(d) Compliance with Applicable Laws; FCC Matters.

(i) Except as permitted, contemplated or described in the Schedules in this Agreement, the business and operations of the Stations have been, and are being, conducted in material compliance with the Station Licenses and with each law, ordinance, regulation, judgment, decree, injunction, rule or order (collectively, "Laws") of the FCC. The Sellers have no knowledge of any material non-compliance with the laws of any other Governmental Entity having jurisdiction over Sellers, the Trust or the Station Assets. To Sellers' knowledge, no investigation or review by any Governmental Entity with respect to Sellers or the Stations is pending or threatened. Without limiting the generality of the foregoing and with respect to the Stations, the Stations and the operation of the Stations comply in all material respects with the Communications Act of 1934, as amended (the "Communications Act"), and all rules, regulations and written policies of the FCC thereunder. In addition, Sellers have duly and timely filed, or caused to be filed, with the appropriate Governmental Entities all material applications, reports, statements, fees, documents, registrations, filings or submissions with respect to the business or operations of the Stations and the ownership thereof, including, without limitation, applications for renewal of authority required to be filed by applicable law. All such filings complied in all material respects with applicable laws when made, and no material deficiencies have been asserted with respect to any such filings.

(ii) Schedule 1.1(a) lists (i) all licenses, permits and other authorizations (including all broadcast auxiliary licenses, construction permits and all grants of Special Temporary Authority) issued by the FCC relating to the Stations as of the date of this Agreement and (ii) all licenses, permits or authorizations issued to Sellers by any other Governmental Entities which are material to the technical operations of the Stations and held by any Seller as of the date of this Agreement. Such licenses, permits and authorizations, and all applications for modification, extension or renewal thereof or for new licenses, permits, permissions or authorizations that would be material to the technical operations of the Stations are collectively referred to herein as the Station Licenses (as defined in Section 1.1). Except as described in Schedule 1.1(a), each Station License is in full force and effect. The Stations have been operated in all material respects in accordance with the terms of the Station Licenses. All towers and other structures located on the Owned Real Property are constructed and operated in accordance with the rules and regulations of the FAA, the FCC and other governmental entities (including, without limitation, all rules regulating hazards to air navigation, registration of radio towers, and exposure of humans to non-ionizing radio frequency radiation). Except for proceedings affecting the radio broadcast industry generally, there are no proceedings pending or, to the Sellers' knowledge, threatened with respect to Sellers' ownership or operation of the Stations which could result in the revocation, material adverse modification, non-renewal or suspension of any of the Station Licenses, the issuance against any Seller of any cease and desist order, or the imposition of any administrative actions by the FCC or any other Governmental Entity with respect to the Station Licenses, or which could adversely affect the Stations' ability to

operate as currently operated or the Buyer's ability to obtain assignment of the Station Licenses. WPXC(FM) presently has an FCC application pending for an upgrade in its facilities (FCC File No. BPH-20010413AAI), and Sellers are not making any warranty, representations or covenants whatsoever with respect to such application. In addition, the broadcast tower upon which WPXC(FM) is presently situated, as presently owned by Pinnacle Towers, is scheduled to be replaced with a like tower at no cost to Sellers in early to mid-2003, and notwithstanding anything to the contrary in this Agreement, any time periods for which WPXC(FM) is off the air for the purpose of the move of WPXC(FM) to the replacement tower shall not be a breach or default of this Agreement, and Buyer shall be solely responsible for any due diligence necessary to inform itself with respect to the replacement procedures regarding such tower. Notwithstanding the foregoing, Sellers shall take such commercially reasonable measures as may be necessary to obtain requisite authority from the FCC to commence operations from the new tower expeditiously including, without limitation, by promptly submitting such request for special temporary authority, facilities modification application or license application as might be necessary to permit operation from the replacement tower.

(e) Litigation.

Except as stated in Schedule 7.1(e), there is no action, suit, litigation, inquiry, judicial or administrative proceeding, or arbitration pending or, to the knowledge of Sellers, threatened against any Seller or the Stations or any of their respective properties or assets.

(f) Insurance.

Schedule 7.1(f) accurately lists all fire, liability and other forms or policies of insurance and all fidelity bonds held by or applicable to the Stations setting forth in respect of each such policy the policy name, policy number, carrier, term, type of coverage and annual premium, each of which is in full force and effect on the date hereof, is valid and enforceable in accordance with its terms and is in an amount consistent with past practices. No event or claim has occurred, including, without limitation, the failure by any Seller to give any notice or information, or the delivery of any inaccurate or erroneous notice or information, or any reservation of rights, which limits or impairs, or could limit or impair, the rights of the insured parties under any such insurance policies. Sellers shall cause comparable policies of insurance to remain in effect for acts, omissions and events occurring on or prior to the Closing Date. Copies of the policies of insurance and bonds listed in Schedule 7.1(f) have been provided to Buyer by Sellers and such copies are complete and correct.

(g) Assets.

Sellers own no assets other than the Station Assets and the Excluded Assets.

(h) Real Property.

(i) Schedule 1.1(h) accurately lists and describes all of the real property owned by the Sellers and the Trust which is used or held for use by the Stations. Radio Falmouth, Inc. possesses good and clear record and marketable fee simple title to the real

property consisting of the WCIB(FM) transmitter site (including the improvements thereon), free and clear of all Liens, foreclosure, condemnation, eminent domain, possession or eviction proceedings, and encumbrances except for a mortgage of record which will be satisfied and released at Closing and except for Permitted Liens. Except as disclosed in Schedule 1.1(h), the Trust possesses good and clear record and marketable fee simple title to the real property consisting of the building at 154 Barnstable Road, Hyannis, Massachusetts (including the improvements thereon), free and clear of all Liens, foreclosure, condemnation, eminent domain, possession or eviction proceedings, and encumbrances except for a mortgage of record which will be satisfied and released at Closing and except for Permitted Liens. Sellers or the Trust, as applicable, own, or have a valid right to use, adequate routes of vehicular and pedestrian ingress and egress to, from and over all of the Real Property necessary to operate the Stations. To Sellers' or the Trust's, as applicable, knowledge, no fact or condition exists which could result in the termination or impairment of the furnishing of utility services to the Owned Real Property. All real estate taxes, assessments and use charges pertaining to the Owned Real Property that have become due have been paid in full.

(ii) Schedule 1.1(c)(iii) accurately lists the street address of the real property leased in the operation of the Stations. Each lease of real property (a "Real Property Lease") is in full force and effect and is binding and enforceable in accordance with its terms. The Sellers have timely performed their respective obligations under the Real Property Leases. There is no default or claim of default or breach against any Seller or, to each Seller's knowledge, any event or circumstance that, with the passage of time or the giving of notice or both, would result in a default by any Seller. Sellers have made no claim of default against the lessors under the Real Property Leases and have no knowledge of any event or circumstance that, with the passage of time or the giving of notice or both, would result in any of the lessors under the Real Property Leases being in default thereof. Schedule 1.1(c)(iii) lists those parties to the Real Estate Leases who, to Sellers' knowledge, are in bankruptcy. To each Seller's knowledge, no notice of termination, foreclosure, eviction, or possession, condemnation or eminent domain, has been issued with respect to any Real Property Lease. The Real Property Leases are assignable to Buyer on substantially the same terms and conditions as Sellers now enjoy under such Real Property Leases.

(iii) Except as set forth on Schedule 1.1(h), no Seller or the Trust has received any notice of violation of any statute, code, rule, ordinance or regulation with regard to the Owned Real Property, the improvements on the Owned Real Property, the improvements constructed by Sellers on the Leased Real Property or the use by Sellers or the Trust of the Real Property. Sellers or the Trust, as applicable, have no knowledge of any eminent domain proceedings pending or threatened against the Owned Real Property.

(i) Personal Property.

Schedule 1.1(b) contains a list of all material tangible personal property and assets owned or held by Sellers and used or held for use in the conduct of the business and operations of the Stations. Except as stated in Schedule 1.1(b), Sellers own and possess good and marketable title to all property referred to in the immediately preceding sentence and none of such property is subject to any Liens, other than Permitted Liens. The tangible personal property and fixtures

owned or used by Sellers and necessary for the business or operations of the Stations are being delivered "as-is," but in working condition sufficient to achieve the operating parameters specified in the FCC Licenses. At the Closing, Sellers shall own all of the tangible personal property listed in Schedule 1.1(b) and this shall include all of the tangible personal property and fixtures necessary to conduct the business of the Stations as presently conducted. Except for the Excluded Assets listed in Section 1.2, the Station Assets to be transferred hereunder constitute all of the assets, rights and properties that are used for the business and operations of the Stations. The Station Assets to be transferred are sufficient to operate the Stations in the manner in which they are being operated as of the date of this Agreement and in accordance with the terms of the Station Licenses and applicable law, including, without limitation, the rules and regulations of the FCC.

(j) Environmental Matters.

No Seller is aware of any applicable federal, state or local statutes, codes, rules, ordinances or regulations or common law decisions relating to the environment, natural resources and public or employee health and safety with respect to which the Owned Real Property or the operations thereon do not comply. To the extent that the Trust is aware of any applicable federal, state or local statutes, codes, rules, ordinances or regulations or common law decisions relating to the environment, natural resources and public or employee health and safety with respect to which the Owned Real Property or the operations thereon do not comply, Sellers shall be deemed to be aware of such non-compliance.

(k) Liens and Encumbrances.

Except as described in Schedule 1.1, as of the Closing, all of the Station Assets will be free and clear of all Liens except Permitted Liens.

(l) Taxes.

(i) All Tax Returns (as defined below) that are required to be filed on or before the execution of this Agreement by any Seller or the Trust have been duly filed on a timely basis under the statutes, rules and regulations of each applicable jurisdiction and Sellers will file or will cause to be duly and timely filed all Tax Returns required to be filed by any Seller or the Trust as of the Closing Date and with respect to any taxable period prior to or which includes the Closing Date. All such Tax Returns are (or will be) complete and accurate in all material respects. Except as stated in Schedule 7.1(l), all Taxes which are due with respect to any Seller have been timely paid by Sellers, except for such Taxes which are disputed and listed on Schedule 7.1(l).

(ii) No claim, judgment, Lien, settlement, writ, or order for assessment or collection of Taxes has been asserted against any Seller or the Trust. Neither Sellers nor the Trust are party to any pending audit, action, suit, claim, litigation, proceeding or investigation by any Governmental Entity for the assessment or collection of Taxes, nor does any Seller or the Trust have knowledge of any threatened audit, suit, claim, litigation, action, proceeding or investigation.

(iii) For purposes of this Agreement, the terms "Tax" and "Taxes" shall mean all federal, state, local, or foreign income, payroll, Medicare, Medicaid, withholding, unemployment insurance, social security, Federal Insurance Contribution Act, sales, use, service, service use, leasing, leasing use, excise, franchise, gross receipts, value added, alternative or add-on minimum, estimated, occupation, real and personal property, stamp, duty, document, transfer, workers' compensation, severance, windfall profits, environmental, or other tax, charge, fee, levy or assessment of the same or of a similar nature, including any interest, penalty, or addition thereto, whether disputed or not. The term "Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes or any amendment thereto, and including any schedule or attachment thereto.

(m) Personnel.

Schedule 7.1(m) includes a complete and correct list as of the date hereof of the names, positions and locations of all employees or any other Station and broadcast personnel (whether employees or independent contractors or employees of a time broker) of the Stations which sets forth the current salaries of all such employees and any other compensation arrangements with all General Managers, Station Managers, General Sales Managers, Local Sales Managers, National Sales Managers, Program Directors, Business Managers and Traffic Managers (collectively, "Station Management") and all on-air broadcast personnel of the Stations and indicates which of those employees, Station Management or on-air broadcast personnel is a party to an employment or consulting or similar contract.

(n) Employee Benefits.

(i) Except as set forth on Schedule 7.1(n)(i), neither any Seller, nor any person who would be considered a single employer with any Seller pursuant to Section 414(b), (c), (m) or (o) of the Internal Revenue Code ("Code") (an "ERISA Affiliate"), maintains or contributes to or has any obligation to contribute to, any employment, consulting or deferred compensation agreement, or an executive compensation, bonus, pension, profit-sharing, savings, retirement, stock option or other equity-based compensation, severance pay, life, medical, dental, death benefit, disability or accident insurance plan or any other "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (individually, a "Seller Plan", and collectively, the "Seller Plans").

(ii) Neither any Seller nor any ERISA Affiliate maintains or contributes to, nor has ever had any obligation to maintain or contribute to, any Seller Plan that is (A) subject to Title IV of ERISA or Section 412 of the Code, (B) a "multiemployer plan" within the meaning of Section 3(37) or 4001(a)(3) of ERISA, (C) a "multiple employer plan" within the meaning of the Code or ERISA, (iv) any "employee benefit plan" (as defined in Section 3(3) of ERISA) which provides welfare benefits to or in respect of former employees, except as may be required pursuant to Section 4980B of the Code and Section 601, et seq. of ERISA ("COBRA") and the cost of which are fully paid by such former employees.

(iii) With respect to each Seller Plan (A) each Seller and each ERISA Affiliate has complied with, and each such Seller Plan conforms in form and operation to, all

applicable laws and regulations, including, but not limited to, ERISA and the Code, in all material respects; (B) each such Seller Plan that is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) and intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS with respect to such qualification; and (C) there are no actions, suits or claims pending (other than routine claims for benefits) or threatened with respect to any Seller Plan or against the assets of any Seller Plan.

(iv) With respect to each Seller Plan listed on Schedule 1.2(g), each Seller has delivered to Buyer a current, accurate and complete copy thereof and, to the extent applicable: (A) any related trust agreement or other funding instrument; (B) the most recent IRS determination letter, if applicable; (C) any summary plan description and other written communication by the Seller to its employees concerning the benefits provided under the Seller Plan; and for the three most recent years (x) the Form 5500 and attached schedules, (y) audited financial statement and (z) actuarial valuation reports.

(v) The consummation of the transactions contemplated by this Agreement will not (A) accelerate the time of the payment or vesting of, or increase the amount of, compensation due to any employee or former employee, (B) reasonably be expected to result in any "excess parachute payment" under Section 280G of the Code, (C) result in any liability to any present or former employee, including, but not limited to, as a result of the Worker Adjustment Retraining and Notification Act or any similar state law, or (D) entitle any employee or former employee to severance pay.

(vi) No Seller has announced any plan or legally binding commitment to create any additional Seller Plans or to amend or modify any existing Seller Plan (except as may be required under applicable law).

(o) Employment and Labor Matters.

(i) No Seller is a party to any contract with any labor organization with respect to employees of the Stations, nor has any Seller agreed to recognize any union or other collective bargaining unit with respect to employees of the Stations, nor has any union or other collective bargaining unit been certified as representing any of the Station's employees. Sellers have no knowledge of any organizational effort currently being made or threatened by or on behalf of any labor union with respect to employees of the Stations. During the last five years, the Stations have not experienced any strikes, work stoppages, grievance proceedings, claims of unfair labor practices filed, or other significant labor difficulties.

(ii) With respect to the Stations, no Seller has materially violated any provision of federal or state law or any governmental rule or regulation, or any order, decree, judgment arbitration award of any court, arbitrator or any government agency regarding the terms and conditions of employment of employees, former employees or prospective employees or other labor related matters, including, without limitation, laws, rules, regulations, orders, rulings, decrees, judgments and awards relating to discrimination, fair labor standards and occupational health and safety, wrongful discharge or violation of the personal rights of employees, former employees or prospective employees.

(p) Patents, Trademarks, Etc.

Schedule 1.1(d) lists the Intellectual Property principally used by the Stations and all Intellectual Property used in the operation of the Stations with respect to which Sellers hold registrations under federal or state law. To the extent that the Intellectual Property of the Sellers may be transferred or assigned to Buyer without Sellers incurring any cost or expense payable to third parties for such assignment, and to the extent that Sellers have good and marketable title to such Intellectual Property, such Intellectual Property will be transferred to Buyer free and clear of any and all Liens except for Permitted Liens. Sellers have not received any notice of any claimed conflict, notice of cease and desist, suit, complaint, settlement, litigation, judgment, claim, proceeding, action, violation or infringement pertaining to such Intellectual Property rights. To the knowledge of each of the Sellers, no material Intellectual Property rights are being infringed by any third party. To the knowledge of each of the Sellers, the operation of Sellers' businesses do not infringe on the Intellectual Property rights of any other person. To the extent that the operations of the Stations uses or holds for use Intellectual Property to which Sellers do not have good and marketable title, such as computer software which is shareware or for which licenses may have expired or for which licenses can no longer be located, or logos or slogans for which ownership cannot be claimed, any such rights as Sellers may have in such Intellectual Property will be transferred to Buyer without any warranty or other representation as to any rights that shall repose in the Buyer subsequent to such transfer.

(q) Broker, Commission or Finder's Fees.

Except with respect to a brokerage fee to be charged by Chaisson & Company Incorporated, with respect to which Sellers, provided Closing occurs, will pay fifty percent (50%) of such fee up to a maximum payment by Sellers at Closing of \$150,000.00 and an additional payment of \$10,000 at the time that the Junior Preferred Stock is redeemed, and the remainder of which fee will be paid by Buyer, none of Sellers or the Trust nor any entity acting on behalf of any Seller or the Trust has agreed to pay a broker's commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto.

(r) Full Disclosure.

No representation or warranty by any Seller contained in this Agreement (including the schedules) or in any certificate furnished pursuant to this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

(s) Sellers' Financial Condition.

Except as stated in Schedule 7.1(s) or Schedule 1.1(h), no insolvency proceedings of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting any Seller or any of its respective assets or properties are pending, or threatened, and Sellers have made no assignment for the benefit of creditors, fraudulent conveyances, preferences, or transfers, nor has any Seller taken

any action with a view to, or which would constitute a basis for, the institution of any such insolvency proceedings. Sellers shall use the proceeds received under this agreement to pay, satisfy, or discharge, or to make appropriate provision for the payment of any and all creditors of Sellers prior to making any distribution to its shareholders or managers or members.

(t) Station Contracts.

The Sellers have timely performed their respective obligations under the Station Contracts other than contracts for the provision of air time. There is no default or claim of default or breach against any Seller or, to each Seller's knowledge, any event or circumstance that, with the passage of time or the giving of notice or both, would result in a default by any Seller. Sellers have made no claim of default against any party under the Station Contracts other than contracts for the provision of air time. Sellers have no knowledge of any event or circumstance that, with the passage of time or the giving of notice or both, would result in any of the parties under the Station Contracts (other than contracts for the provision of air time) being in default thereof. Originals or true, correct and complete copies of all of the Station Contracts have been provided to Buyer. Schedule 1.1(c)(ii) lists those parties leasing space from any of the Sellers or the Trust who are in bankruptcy. To each Seller's knowledge, no notice of termination, foreclosure, eviction, or possession, condemnation or eminent domain has been issued with respect to any to the leases pursuant to which WPXC(FM) or WRZE(FM) are being provided with space for their respective transmission facilities. Such leases are assignable to Buyer on substantially the same terms and conditions as Sellers now enjoy under such leases.

(u) Barter Arrangements.

All Trade Agreements are set forth in Schedule 1.1(c)(ii). All Trade Agreements may be preempted by advertising time that is sold for cash. All Trade Agreements have been entered into in the ordinary course of business consistent with past practices.

(v) No Third Party Options.

There are no existing agreements with, options or other rights of purchase granted to, or commitments to any person other than Buyer to acquire any of the Station Assets or any interest therein.

(w) Investment Intent.

Each Seller or Shareholder Designee is acquiring the Junior Preferred Stock for investment purposes only for their own account and not with a view to the resale or distribution of any part thereof within the meaning of Section 2(11) of the Securities Act of 1933, as amended (the "Securities Act"), and regulations and rules issued pursuant thereto.

(x) Sophistication.

Each Seller is, and each Shareholder Designee as of the Closing will be, an "accredited investor" as defined in Rule 501(a) of the rules promulgated under the Securities Act. Each Seller has, and each Shareholder Designee as of the Closing will have, such knowledge and experience



in financial and business matters as to be capable of evaluating the merits and risks of such party's investment in Buyer. Each Seller has, and each Shareholder Designee as of the Closing will have, the ability to bear the economic risks of such investment. Each Seller has, and each Shareholder Designee as of the Closing will have, the capacity to protect its own interests in connection with the transactions contemplated by this Agreement. Each Seller has had, and each Shareholder Designee as of the Closing will have had, a full opportunity to obtain such financial and other information from the Buyer as such party deems necessary or appropriate in connection with evaluating the merits of the investment in the Buyer and to conduct whatever due diligence such party has deemed appropriate. Each Seller has made, and each Shareholder Designee as of the Closing will have made, an independent investigation and evaluation of the Buyer and is and will be relying on such investigation and evaluation.

7.2. No Other Representations or Warranties by Sellers.

Buyer agrees that, except for the representations and warranties (including the schedules with respect thereto) made by the Sellers, Trust, and the Trust's Trustees and Beneficiaries set forth in ARTICLE 7 hereof, no Seller, Trust, Trust Trustee or Beneficiary nor any representative of any Seller, Trust, or Trust Trustee or Beneficiary has made and shall be construed as having made to the Buyer or to any representative of Buyer, and neither the Buyer nor any representative of Buyer has relied upon, any other representation or warranty of any kind.

**ARTICLE 8.**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

8.1. Representations and Warranties of Buyer.

Buyer hereby makes the following representations and warranties to Sellers and Trust, each of which is true and correct as of the date hereof, and shall be true and correct as of the Closing Date, and shall be unaffected by any investigation heretofore or hereafter made by Sellers or Trust.

(a) Organization and Standing.

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

(b) Authorization and Binding Obligation.

Buyer has all requisite corporate power and authority to enter into and perform this Agreement and the transactions contemplated hereby, and to own or lease the Station Assets and to carry on the business and operations of the Stations upon the consummation of the transactions contemplated by this Agreement. Buyer's execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on behalf of Buyer and constitutes the valid and binding obligation of Buyer, enforceable in accordance with its terms.

(c) Qualification.

Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Stations under the Communications Act and the rules, regulations and policies of the FCC. There are no facts that would disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Stations. There is no action, suit or proceeding pending or threatened against Buyer which could materially adversely affect Buyer's ability to perform its obligations hereunder.

(d) Capitalization and Voting Rights.

As of the date of this Agreement, the authorized capital of the Buyer consists of:

(i) Preferred Stock. 12,000 shares of Preferred Stock, par value \$0.01 per share, of which 6,270 shares are designated as "Series A-1 Preferred Stock" and 5,730 shares are designated as "Series A-2 Preferred Stock."

(ii) Common Stock. 6,000 shares of Class A Voting Common Stock, par value \$0.01 per share; 5,730 shares of Class B Non-Voting Common Stock, par value \$0.01 per share; 1,000 shares of Class C Non-Voting Common Stock, par value \$0.01 per share; and 3,270 shares of Class D Non-Voting Common Stock, par value \$0.01 per share, of which (a) 270 shares shall be designated as "Class D-1 Common Stock", (b) 1000 shares shall be designated as "Class D-2 Common Stock", (c) 1000 shares shall be designated as "Class D-3 Common Stock", and (d) 1000 shares shall be designated as "Class D-4 Common Stock".

(iii) Outstanding Shares. The outstanding shares of Common Stock are owned by the stockholders and in the numbers specified in Schedule 8.1(d)(iii) hereto.

Except as set forth in the Restated Certificate (as defined below), Investor Rights Agreement (as defined in Schedule 4.3(b)) or Schedule 8.1(d)(iii) hereto, there are no other outstanding options, warrants, rights (including conversion or preemptive rights) or agreements for the purchase or acquisition from the Buyer of any shares of its capital stock. Except as set forth in the Investor Rights Agreement, the Buyer is not a party or subject to any agreement or understanding, and, with the exception of the Investor Rights Agreement, there is no agreement or understanding between any persons or entities that affects or relates to the voting or giving of written consents with respect to any security of the Buyer. Buyer may enter into agreements with third parties in the future whereby the Corporation may issue stock in the Buyer provided such issuance does not violate the terms of this Agreement.

(e) Subsidiaries.

Except as set forth in Schedule 8.1(i), the Buyer does not presently own or control, directly or indirectly, or hold any rights to acquire, any interest in any other corporation, association or other business entity nor has the Buyer ever held such interest. The Buyer is not a participant in any joint venture, partnership or similar arrangement nor has the Buyer ever been a participant in any such arrangement. Buyer will be creating subsidiaries to hold the Station Assets, however, and

will be creating additional subsidiaries on an "as needed" basis to effectuate additional transactions in the future.

(f) Valid Issuance of Preferred Stock.

The shares of Junior Preferred Stock that are being issued to Sellers hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable.

(g) Offering.

The offer, sale and issuance of the Junior Preferred Stock, as contemplated by this Agreement, are exempt from the registration requirements of the Securities Act of 1933, as amended (the "Act"), and the qualification or registration requirements of other applicable blue sky laws. Neither the Buyer nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemptions. Nothing in this Subsection or elsewhere in this Agreement shall be construed to prevent Quantum Communications Corporation from issuing an initial public offering.

(h) Financial Statements.

The Buyer has delivered to Sellers its unaudited financial statements (balance sheet and statement of operations, statement of stockholders' equity and statement of cash flows) as of September 30, 2002 (the "Buyer Financial Statements"). Each of the foregoing Buyer Financial Statements is accurate and complete in all material respects, is consistent with the books and records of the Buyer (which, in turn, are accurate and complete in all material respects) and has been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated, except that unaudited Buyer Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Buyer Financial Statements fairly present the financial condition and operating results of the Buyer as of the dates, and for the periods, indicated therein, subject in the case of unaudited Buyer Financial Statements to normal year-end audit adjustments. Except as set forth in the Buyer Financial Statements, the Buyer does not have any liabilities (whether accrued, absolute, unliquidated, contingent or otherwise, whether or not known to the Buyer, whether due or to become due and regardless of when asserted) arising out of transactions entered into at or prior to the Closing, or any action or inaction at or prior to the Closing or any state of facts existing at or prior to the Closing other than: (i) liabilities and obligations that have arisen after September 30, 2002 in the ordinary course of business (none of which is a liability resulting from breach of contract, breach of warranty, tort, infringement, claim or lawsuit); and (ii) obligations under contracts and commitments incurred in the ordinary course of business that would not be required to be reflected in financial statements prepared in accordance with generally accepted accounting principles. Except as disclosed in the Buyer Financial Statements, the Buyer is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation. The Buyer maintains and will continue to maintain a standard system of accounting established and administered in accordance with generally accepted accounting principles.

(i) Changes.

Since September 30, 2002, the date of the latest quarterly financial statements delivered, or as set forth in Schedule 8.1(d)(iii) or Schedule 8.1(i), there has not been, except as may be a consequence of the transactions contemplated by this Agreement:

(i) any adverse change in the assets, liabilities, financial condition or operating results of the Buyer, except changes in the ordinary course of business that have not been, in the aggregate, materially adverse;

(ii) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the assets, properties, financial condition, operating results or business of the Buyer;

(iii) any waiver by the Buyer of a valuable right or of a debt owed to it;

(iv) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Buyer, except in the ordinary course of business and that is not material to the assets, properties, financial condition, operating results or business of the Buyer;

(v) any declaration, payment, setting aside or other distribution of cash or other property to its stockholders with respect to its capital stock or other equity securities (including without limitation, any warrants, options or other rights to acquire its capital stock or other equity securities) other than in the ordinary course of business;

(vi) any mortgage, pledge, transfer of a security interest in, or lien, created by the Buyer, with respect to any of its properties or assets, except liens for taxes not yet due or payable;

(vii) to the best of the Buyer's knowledge, any other event or condition of any character that might materially and adversely affect the assets, properties, financial condition, operating results or business of the Buyer; or

(viii) any agreement or commitment by the Buyer to do any of the things described in this Section 8.1(i).

(j) Disclosure.

The Buyer has fully provided Sellers with all the information that Sellers have requested for deciding whether to purchase the Junior Preferred Stock. Neither this Agreement (including all the Exhibits and Schedules hereto) nor any other statements or certificates made or delivered in connection herewith contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they were made.

(k) Corporate Documents.

Buyer has delivered to Sellers a copy of its Restated Certificate and bylaws. Except for amendments necessary to satisfy representations, warranties, covenants or conditions contained herein (the forms of which amendments have been approved by the Sellers), the Restated Certificate and bylaws of the Buyer are in the form previously provided to the Sellers.

(l) Absence of Conflicting Agreements or Required Consents.

Except for the FCC Consent contemplated in this Agreement, the execution, delivery and performance of this Agreement by Buyer shall not: (i) violate or conflict with any of the terms, conditions or provisions of the Restated Certificate or Bylaws of Buyer; (ii) require the consent of any third party not affiliated with Buyer, other than consents which will be received prior to Closing; (iii) violate any applicable statute, ordinance, law, judgment, settlement, order, injunction, decree, rule, regulation or ruling of any Governmental Entity applicable to Buyer; and (iv) either alone or with the giving of notice or the passage of time, violate the terms, conditions or provisions of, or constitute a default or breach under, any agreement, instrument, license or permit to which Buyer is now subject.

(m) Litigation: Compliance with Law.

There is no action, suit, proceeding or investigation pending or to Buyer's knowledge currently threatened against the Buyer that questions the validity of this Agreement or the right of the Buyer to enter into such agreement or to consummate the transactions contemplated hereby. Other than orders and decrees of general applicability to the broadcasting industry, the Buyer is not a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality.

(n) Broker, Commission or Finder's Fees.

Except with respect to a brokerage fee to be charged by Chaisson & Company Incorporated, with respect to which Sellers, provided Closing occurs, will pay fifty percent (50%) of such fee up to a maximum payment by Sellers at Closing of \$150,000.00 and an additional payment of \$10,000 at the time that the Junior Preferred Stock is redeemed, and the remainder of which fee will be paid by Buyer, neither Buyer nor any entity acting on behalf of Buyer has agreed to pay a broker's commission, finder's fee or similar payment in connection with this agreement or any matter related hereto.

(o) Junior Preferred Stock.

The Junior Preferred Stock shall possess the rights, privileges and preferences, and be issued subject to the restrictions and conditions, set forth in Schedule 4.3(b) hereto.

**ARTICLE 9.**  
**COVENANTS OF SELLERS AND THE TRUST**

9.1. Covenants of Sellers and the Trust.

Sellers, acting jointly and severally, and the Trust, only to the extent explicitly stated, covenant and agree with Buyer that, pending the Closing and except as otherwise agreed to in writing by Buyer:

(a) Conduct Prior To The Closing Date.

From and after the date hereof through the Closing Date:

(i) Each Seller shall continue to use commercially reasonable efforts to maintain its present business organization, with the exception of Makkay family members keep available the services of its present employees and independent contractors, preserve its relationships with its customers and others having business relationships with the Stations, and refrain from materially and adversely changing any of its business practices and policies (including, but not limited to, advertising, marketing, promotion, pricing, purchasing, personnel, sales and budget practices and policies);

(ii) Each Seller shall maintain its books of account and records in the usual and ordinary manner consistent with past practice;

(iii) Sellers shall notify Buyer if the regular broadcast transmission of any of the Stations from its main transmitting facilities at full authorized effective radiated power is interrupted for a time period of more than four (4) hours;

(iv) Each Seller shall operate in the usual and ordinary course of business in accordance with past practices and conduct its business in all material respects in compliance with the terms of the Station Licenses and all applicable laws, rules, and regulations, including, without limitation, the applicable rules and regulations of the FCC;

(v) Each Seller shall use, repair, and, if necessary, replace any of the Stations' studio and transmission assets in a reasonable manner consistent with historical practice and maintain the Station Assets in substantially their current condition, ordinary wear and tear excepted;

(vi) Each Seller and the Trust shall maintain its respective insurance in accordance with Section 7.1(f);

(vii) Each Seller and the Trust shall not lease, sell, convey, transfer, assign, license, encumber, mortgage, pledge, or subject to a Lien, claim, or encumbrance (other than Permitted Liens) any of the Station Assets attributable to it or sell or transfer any of the

Station Assets attributable to it without replacing such Station Assets attributable to it with assets of substantially the same value and utility;

(viii) Each Seller shall not (A) modify or extend any Station Contract or (B) enter into any new Station Contracts the payments under which exceed Ten Thousand Dollars (\$10,000) per annum individually or Twenty-Five Thousand Dollars (\$25,000) in the aggregate;

(ix) Each Seller shall not, except in the ordinary course of business consistent with past practices, increase the compensation of any employee; and

(x) Each Seller shall not establish or increase the benefits under, or promise to establish, modify or increase the benefits under any Seller Plan, or to establish, adopt or enter into any collective bargaining agreement;

(xi) The Trust shall operate in the usual and ordinary course of business in accordance with past practices and conduct its business in all material respects in compliance with all applicable laws, rules, and regulations. The Trust and the Sellers shall maintain the Real Property located at 154 Barnstable Road in its present good operating condition, repair and order, reasonable wear and tear in ordinary usage excepted. The Trust shall not waive or cancel any claims or rights of substantial value with respect to the Barnstable Road Real Property or transfer or otherwise dispose of such Real Property.

(b) Access.

Sellers and the Trust shall give, or cause the Stations to give, Buyer and Buyer's engineers and environmental consultants reasonable access during normal business hours to all of Sellers' properties and to all real estate, buildings and equipment relating to the Stations in order that Buyer may have full opportunity to make such investigation as Buyer deems appropriate, including, but not limited to, environmental assessments and the performance of surveys. The rights of Buyer under this Section shall not be exercised in such a manner as to interfere unreasonably with the business of the Stations. Such investigations shall not adversely affect or diminish the effect of any and all representations and warranties made by Sellers in this Agreement nor alter any obligations or rights of Buyer in this Agreement;

(c) Monthly Financial Statements.

During the period from the date of this Agreement through the Closing Date, each calendar month or part thereof, Sellers shall prepare and promptly deliver (in any event no more than 30 days following the end of the relevant calendar month) to Buyer financial statements relating to the Stations' business and operations. Such monthly financial statements shall fairly and accurately present the financial position and results of the business and operations of the Stations in the same manner and with the same qualifications as set forth in Section 7.1(c) as of the dates and for the periods indicated and shall adhere to the representations and warranties set forth in Section 7.1(c);

(d) Other Consents.

Sellers and the Trust, as applicable, will use their commercially reasonable efforts to obtain all consents, authorizations, or approvals, in each case, required pursuant to the Station Contracts or otherwise required for its consummation of the transactions contemplated by this Agreement; and

(e) No Inconsistent Action.

No Seller nor the Trust shall take any action which is inconsistent with its obligations under this Agreement.

9.2. Updating of Schedules.

From time to time prior to the Closing, Sellers and the Trust, as applicable only to the Station Assets attributable to it, will supplement or amend the schedules delivered in connection with this Agreement with respect to any matter which exists or occurs after the date of this Agreement and which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the schedules or which is necessary to correct any information therein. The provisions of this Section are informational only and Buyer shall not be bound to the terms of any changed schedules unless they are incorporated into this Agreement by a written amendment signed by Buyer and such changes to the schedules shall not have any effect on the validity of the representations made by Sellers or the Trust in this Agreement.

9.3. Enforcement of Agreements.

During the period prior to Closing, Sellers and the Trust, as applicable only to the Station Assets attributable to it, shall enforce, if necessary, the terms of any and all Contracts.

9.4. FCC Filings.

Sellers shall file or cause to be filed on a current basis until the Closing Date all applications, fees, reports and documents required to be filed with the FCC with respect to the Stations. Copies of each such application, fee filing, report and document filed between the date hereof and the Closing Date shall be furnished to Buyer promptly after its filing. Radio Nantucket shall promptly file its application for license for the facilities specified in FCC Construction Permit File No. BPH-20020528AAB. Such license application shall specify operation of WRZE(FM) at an ERP of 50 kW.

9.5. Notification.

Sellers or the Trust, as applicable only to the Station Assets attributable to it, shall promptly notify Buyer in writing of (i) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against any Seller or the Trust which challenges the transactions contemplated by this Agreement, (ii) the failure of any Seller, the Trust or any employee or agent of any Seller or the Trust to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or be satisfied by it hereunder or (iii) the occurrence,



to its knowledge, of any event that would entitle Buyer to terminate this Agreement pursuant to Section 18.1.

9.6. Post-Closing Access.

Following Closing for a time period of three (3) years, upon reasonable request by Buyer and at Buyer's expense, Sellers and the Trust, as applicable only to the Station Assets attributable to it, shall make available during normal business hours, for any reasonable purpose and upon reasonable notice, any records, files, documents and correspondence relating to the Stations and access to any officer of any Seller or principal of the Trust, as applicable.

9.7. Taxes.

Sellers and the Trust, as applicable only to the Station Assets attributable to it, shall pay or cause to be paid when due all property and all other taxes relating to the Stations and the Station Assets and employees of the Stations required to be paid to city, county, state, federal and other governmental entities through the Closing Date; provided, however, Sellers and the Trust may appeal or contest any such tax, it being understood that Sellers shall, jointly and severally, indemnify and hold harmless Buyer, its successors and assigns, from any and all liabilities relating to or in respect of taxes (including any interest or penalties assessed in connection therewith) relating to operation of the Stations or the Barnstable Road Real Property prior to the Closing Date.

9.8. Non-competition Agreement.

For a period of five (5) years following the Closing Date, Sellers, their present shareholders, any trusts that hold the stock in Sellers, the trustees of such trusts and the beneficiaries of such trusts will not hold any equity interest in, be employed by, or act as consultant to, any FM station that is licensed to communities within Bristol, Plymouth, Barnstable, Dukes or Nantucket Counties, Massachusetts. Such non-competition agreements shall not apply to stock ownership of less than one percent (1%) in a publicly traded company. The total monetary consideration to be paid to Sellers and their principals by Buyer in connection with the non-competition agreements shall be One Hundred Dollars (\$100.00). In recognition of this agreement not to compete, Sellers and their principals shall deliver Non-competition Agreements in the form of Exhibit B hereto at the Closing.

9.9. Environmental Actions

Between the date that Buyer completes its environmental inspections of the Owned Real Property and the Closing Date, neither Sellers nor the Trust shall take any action which has the result of releasing or depositing on the Owned Real Property in violation of any federal, state, or local environmental laws substances, materials or waste regulated as hazardous, toxic, or a pollutant or contaminant, or any petroleum or petroleum derived product or otherwise take action that to the Sellers' or the Trust's knowledge would be in violation of any applicable federal, state or local statutes, codes, rules, ordinances or regulations or common law decisions relating to the environment.

9.10. Non-Solicitation.

As long as this Agreement is in effect and Buyer is not in default or breach of this Agreement and except as otherwise provided in this Agreement, no Seller or the Trust shall directly or indirectly solicit, entertain, negotiate with any Person (other than a party hereto) or accept any proposal to acquire any Seller, the Trust, any Station or any of the Station Assets in whole or in part, including without limitation an acquisition of all or substantially all of the assets of any Seller or the Trust or any equity in a Seller or the Trust.

**ARTICLE 10.  
COVENANTS OF BUYER**

10.1. Buyer Covenants.

Buyer covenants and agrees that, pending the Closing and except as otherwise agreed to in writing by Sellers,:

(a) Notification.

Buyer shall promptly notify Sellers in writing of (i) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against Buyer which challenges the transactions contemplated by this Agreement, (ii) the failure of Buyer, or any employee or agent of Buyer to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or be satisfied by it hereunder or (iii) the occurrence, to its knowledge, of any event that would entitle Sellers to terminate this Agreement pursuant to Section 18.1; and

(b) No Inconsistent Action.

Buyer shall not take any action which is inconsistent with its obligations under this Agreement.

10.2. Updating of Schedules.

From time to time prior to the Closing, Buyer will supplement or amend the schedules delivered in connection with this Agreement with respect to any matter which exists or occurs after the date of this Agreement and which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the schedules or which is necessary to correct any information therein. The provisions of this Section are informational only and Sellers shall not be bound to the terms of any changed schedules unless they are incorporated into this Agreement by a written amendment signed by Sellers and such changes to the schedules shall not have any effect on the validity of the representations made by Buyer in this Agreement.

10.3. Post-Closing Access.

Buyer, for the lesser of (i) seven (7) years following Closing or (ii) the applicable statute of limitations under applicable tax codes, shall make available during normal business hours for audit and inspection by Sellers and Sellers' representatives, for any reasonable purpose and upon

reasonable notice, all records, files, documents and correspondence transferred to it hereunder relating to the pre-closing period. All information, records, files, documents and correspondence made available or disclosed under this Section 10.3 shall be kept confidential.

#### 10.4. Other Consents.

Buyer will use commercially reasonable efforts to obtain all necessary consents, authorizations, or approvals, in each case, required for Buyer's consummation of the transactions contemplated by this Agreement. Without limitation, Buyer shall obtain all requisite approvals required under its corporate documents and the Investor Rights Agreement for the issuance of the Junior Preferred Stock, the payment of the dividends to be paid to the holders of the Junior Preferred Stock and the redemption of the Junior Preferred Stock.

#### 10.5. Other Transactions and FCC Applications.

Until FCC Consent is received by Sellers and Buyer, Buyer shall not enter into any agreement for the purchase of any other broadcast stations in the markets served by the Stations nor make any filing at the FCC that causes or has the potential under the FCC's current rules, policies or processing guidelines to cause delay in the FCC's processing of the FCC Applications, including but not limited to an agreement or filing that causes the FCC to issue a public notice with its concentration of control screen or flag with respect to the FCC Applications as described at Paragraph 18 of the FCC's document entitled *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, 16 FCC Rcd 19861, 19870 (2001), that violates Section 73.3555 of the FCC's Rules, forms the basis for the filing of a petition to deny or other objection against the FCC Applications, or causes a Department of Justice objection or inquiry.

#### 10.6. Financing

Buyer shall provide Sellers with access to representatives of Buyer's equity participants for purposes of confirming Buyer's financial ability to consummate the transactions contemplated by this Agreement.

#### 10.7. Issuance of Junior Preferred Stock.

Buyer shall take such corporate action as may be necessary to permit Buyer to issue to Sellers or the Shareholder Designees on the Closing Date 20,000 shares of Junior Preferred Stock, par value \$.01 per share. The Junior Preferred Stock shall, with respect to dividend rights and rights on liquidation, dissolution or winding up, rank junior to all series of preferred stock of the corporation now or hereafter authorized, including, without limitation, the Preferred Stock (as such term is defined in the Investor Rights Agreement), which does not expressly rank junior to or pari passu with the Junior Preferred Stock, provided, however, that any series of preferred stock issued by Buyer to the seller of any station which Buyer may purchase while the Junior Preferred Stock is outstanding shall rank junior to the Junior Preferred Stock with respect to dividend rights and rights on liquidation, dissolution or winding up. The rights, restrictions, privileges and preferences of the Junior Preferred Stock being issued to Sellers pursuant to this

Agreement are further subject to the Restated Certificate and the Investor Rights Agreement. No changes shall be made to the Investor Rights Agreement that are inconsistent with the terms of this Agreement without the prior consent of the parties hereto. The Junior Preferred Stock shall rank senior to all series of common stock of the corporation with respect to dividend rights, redemption rights (excluding redemption rights under the Investor Rights Agreement) and rights on liquidation, dissolution or winding up. Buyer shall not permit the conversion of its common stock into preferred stock that is senior or pari passu with the Junior Preferred Stock. In the event of any liquidation, dissolution or winding up of the corporation, either voluntary or involuntary, each holder of the Junior Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of the common stock or that preferred stock junior to it as set forth above, but subject to the senior rights of the holders of the Preferred Stock (as defined in the Investor Rights Agreement) as set forth in the Restated Certificate, the amount of One Hundred Dollars (\$100.00) per share (subject to adjustment for stock splits, stock dividends, reverse stock splits and other similar corporate reorganizations) plus any previously declared or accumulated but unpaid dividends thereon, including without limitation the accrued but unpaid dividends thereon, including without limitation the accrued but unpaid Junior Dividend. The provisions of this Section 10.7 shall terminate as of Closing, at which point the rights, privileges and preferences of, and the restrictions and conditions on, the Junior Preferred Stock shall be as set forth in Quantum Communications Corporation's Amended and Restated Certificate of Incorporation or Certificate of Designation, as filed with the Secretary of State of the State of Delaware.

## **ARTICLE 11. JOINT COVENANTS**

### **11.1. Joint Covenants.**

Buyer and Sellers, jointly and severally, covenant and agree that, pending the Closing and except as otherwise agreed to in writing, they shall act in accordance with the following:

#### **(a) Confidentiality.**

Buyer and Sellers have entered into a Confidentiality Agreement dated October 15, 2002 whereby certain confidential information disclosed by the parties to one another and information concerning the negotiations leading to this Agreement are not to be disclosed by the parties. That Confidentiality Agreement remains in effect.

#### **(b) Cooperation.**

Buyer and Sellers shall cooperate fully with one another in taking any actions, including actions to obtain the required consent of any governmental instrumentality or any third party necessary or helpful to accomplish the transactions contemplated by this Agreement.

#### 11.2. Control of Stations.

Prior to Closing, Buyer shall not, directly or indirectly, control or direct the business or operations of the Stations.

#### 11.3. Bulk Sales Laws.

Buyer hereby waives compliance by Sellers with the provisions of the "bulk sales" or similar laws of any state. Sellers shall defend and indemnify Buyer and hold it forever harmless from any and all losses, settlements, judgments, actions, suits, claims, costs, damages and expenses (including, but not limited to, reasonable attorneys' fees at all levels) sustained by Buyer as a result of any failure of Sellers to comply with any "bulk sales" or similar laws. The indemnification of Buyer by Sellers under this Section 11.3 shall not be subject to the limitations on indemnification set forth elsewhere in this Agreement. This covenant shall survive the Closing Date and the expiration or termination of this Agreement.

#### 11.4. Public Announcements.

Prior to the Closing, neither Buyer nor Sellers shall issue any press release or make any public disclosure with respect to the transactions contemplated by this Agreement without the prior written approval of the other party, except (a) Buyer and Sellers may make any disclosure as may be required by applicable law or by obligations pursuant to any listing agreement with any securities exchange or any stock exchange regulations; and (b) Buyer and Sellers may each continue such communications with employees, customers, suppliers, franchises, lenders, lessors, shareholders, and other particular groups as may be legally required or necessary or appropriate and not inconsistent with the best interests of the other party or the prompt consummation of the transactions contemplated herein. The parties agree that, except as may otherwise be required by law, no public announcement of this transaction shall be made until after Radio Nantucket has filed its application for license for the facilities specified in FCC Construction Permit File No. BPH-20020528AAB.

#### 11.5. Employee Matters.

(a) Sellers will use commercially reasonable efforts to retain existing employees, other than Sellers' principals or family members of such principals, listed on Schedule 7.1(m) and Sellers shall, prior to the Closing Date, provide Buyer, to the extent permitted by law, with access to its personnel records and any other related information as Buyer may reasonably request with respect to any of the Station personnel. Buyer will offer employment, at or prior to Closing, to each of Sellers' employees listed on Schedule 7.1(m) other than Sellers' stockholders or family members of such stockholders and, with respect to each such employee who continues to be an employee of one of the Sellers as of the Closing Date, either (a) offer employment to such employee for ninety (90) days from the Closing Date at the salary being paid to such employee as of the Closing Date, or (2) pay to such employee on the Closing Date a lump sum payment equivalent to such employee's salary for ninety (90) days at such employee's salary as of the Closing Date. If an employee who is offered employment pursuant to the preceding sentence declines such employment, resigns from Buyer's employ within such

ninety (90) day period or is terminated with cause during such ninety (90) day period, that employee will be entitled to no lump sum payment from Buyer. If Buyer terminates such employee's employment within such ninety (90) day period without cause, Buyer shall pay such employee a pro rata portion of the lump sum payment based upon the number of days remaining within the ninety (90) day period as of the day of such employee's termination. The date on which the employment of any Station employee who accepts Buyer's offer of employment or whose employment agreement the Buyer assumes shall become effective shall be the Closing Date (the "Effective Time of Employment"). Each employee who becomes employed by Buyer pursuant to this Section shall be considered a "Transitioned Employee" from and after the time of his or her Effective Time of Employment.

(b) Buyer shall be solely responsible for all liabilities for any paid time off of any Transitioned Employees to the extent that there is any Sellers obligation existing to such employees on the Closing Date under Sellers' existing paid time off policies as set forth in the employee manual appended hereto as Schedule 4.4. Sellers shall be solely responsible for all liabilities relating to or arising in connection with any actual, constructive or deemed termination of employment (including any COBRA obligation, severance or separation pay or benefits or other similar compensation or benefits under any applicable law, regulation or Seller Plan) (i) to or with respect to any employee other than a Transitioned Employee, whether as a result of the consummation of the transactions contemplated by this Agreement or otherwise, and whether before, on or after the Closing Date, or (ii) to any Transitioned Employee, whether as a result of (A) the consummation of the transactions contemplated by this Agreement, (B) any event occurring before the Closing Date, or (C) any action or failure to act on the part of any Seller. Except as provided in Section 11.5(a), Buyer shall be solely responsible for all liabilities relating to or arising in connection with any actual, constructive or deemed termination of employment of any Transitioned Employee with the Buyer after such Transitioned Employee's Effective Time of Employment. Except for the provisions of this Section 11.5(a), anything to the contrary in this Agreement notwithstanding, Sellers explicitly agree and acknowledge that Buyer is not assuming any obligations for severance payments to be made to any employee of any of the Sellers under any contract of employment or otherwise.

#### 11.6. Payroll Tax.

For purposes of payroll taxes with respect to all employees of the Stations that become Transitioned Employees, Sellers and Buyer shall treat the transactions contemplated herein as a transaction described in Treas. Reg. Sections 31.3121(a)(1)-1(b)(2) and 31.3306(b)(1)-1(b)(2).

#### 11.7. Buyer's Audit.

Between the date of this Agreement and the Closing Date, Buyers' accountants shall have the right to audit the Sellers' financial statements for the fiscal years 2000, 2001 and 2002 and to review any accountants' work papers in connection with the preparation of such financial statements. Such audit shall be conducted at Buyer's expense. Sellers will cooperate in the conducting of such audit including by providing such management representation letters as may be reasonably requested by the auditors. No such audit shall expand or in any way broaden or increase the scope of the representations and warranties made by Sellers in this Agreement.

**ARTICLE 12.**  
**CONDITIONS OF CLOSING BY BUYER**

The obligations of Buyer hereunder are, at its option (other than with respect to the condition that the FCC Consent shall have been issued, which condition may not be waived), subject to satisfaction at or prior to the Closing Date of all of the following conditions:

12.1. Representations and Warranties.

All representations and warranties of Sellers made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement;

12.2. Compliance with Agreement.

All of the terms, covenants and conditions to be complied with and performed by Sellers on or prior to the Closing Date shall have been complied with or performed in all material respects to the reasonable satisfaction of the Buyer;

12.3. Third Party Consents and Approvals.

Sellers shall have obtained third-party consents and approvals, if any, required for the transfer or continuance, as the case may be, of the leases for the Stations' transmitter sites and the Leased Real Property;

12.4. Closing Certificates.

Buyer shall have received a certificate, dated as of the Closing Date, from the Sellers, executed by authorized officers of Sellers, certifying, in such detail as Buyer may reasonably request, that the conditions set forth in this ARTICLE 12 have been fulfilled;

12.5. Governmental Consents.

(a) FCC.

The FCC Consent shall have been issued by the FCC without any conditions that would otherwise permit Buyer to terminate this Agreement pursuant to Section 18.1, and each such FCC Consent shall have become a Final Order;

(b) Other Consents.

All other material authorizations, consents, approvals, and clearances of any Governmental Entity required to permit the consummation of the transactions contemplated by this Agreement shall have been obtained;

12.6. Adverse Proceedings.

No injunction, order, stipulation, settlement, writ, decree or judgment of any court, agency or other Governmental Entity shall have been rendered against any Seller or Buyer which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms;

12.7. Closing Documents.

Sellers shall have delivered or caused to be delivered to Sellers, on the Closing Date, the Closing documents specified in Section 14.1; and

12.8. No Material Adverse Change.

No material adverse change in the Station Licenses or the Station Assets shall have occurred

**ARTICLE 13.  
CONDITIONS OF CLOSING BY SELLER**

The obligations of Sellers and Trust hereunder are, at their option (other than with respect to the condition that the FCC Consent shall have been issued, which condition may not be waived), subject to satisfaction at or prior to the Closing Date of all of the following conditions:

13.1. Representations, Warranties and Covenants.

All representations and warranties of Buyer made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement and except those given as of a specified date;

13.2. Compliance with Agreement.

All the terms, covenants, and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects to the reasonable satisfaction of the Seller;

13.3. Certifications, etc.

Sellers shall have received a certificate, dated as of the Closing Date, from the Buyer, executed by an authorized officer of Buyer certifying, in such detail as Sellers may reasonably request that the conditions set forth in this ARTICLE 13 have been fulfilled;



13.4. Governmental Approval.

(a) FCC.

The FCC Consent shall have been issued by the FCC and each such FCC Consent shall have become a Final Order; and

(b) Other Consents.

All other material authorizations, consents, approvals, and clearances of any Governmental Entity required to permit the consummation of the transactions contemplated by this Agreement shall have been obtained;

13.5. Adverse Proceedings.

No injunction, order, stipulation, settlement, decree, judgment, or writ of any court, agency or other Governmental Entity shall have been rendered against Buyer or any Seller which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; and

13.6. Closing Documents.

Buyer shall have delivered or caused to be delivered to Sellers, on the Closing Date, the Closing documents specified in Section 14.2.

**ARTICLE 14.  
DOCUMENTS TO BE DELIVERED AT THE CLOSING**

14.1. Documents to be Delivered by Sellers.

At the Closing, Sellers and Trust, as applicable, will deliver to Buyer the following, at the expense of Sellers and in proper form for recording when appropriate:

(a) Transfer Documents.

Such bills of sale, assignments, Massachusetts quit claim deeds for real property (also known as special warranty deeds) and other good and sufficient instruments of transfer as Buyer may reasonably request in order to convey and transfer to Buyer title to the Station Assets (collectively, the "Transfer Documents");

(b) Certified Resolutions.

Certified resolutions of each Seller approving the execution and delivery of this Agreement and each of the other documents delivered by Sellers pursuant thereto and authorizing the consummation of the transactions contemplated hereby and thereby;

(c) Officer's Certificate.

A certificate, dated as of the Closing Date, executed on behalf of Sellers in the form described in Section 12.4;

(d) Opinions.

Written opinions of counsel in substantially the form attached hereto as Exhibit C, dated as of the Closing Date;

(e) Good Standing Certificates.

Governmental certificates showing that each Seller is duly incorporated and in good standing in the Commonwealth of Massachusetts;

(f) Non-competition Agreements.

The Non-competition Agreements executed by each Seller and each Seller's principals in the form attached hereto as Exhibit B;

(g) FIRPTA Affidavits.

Sellers shall provide an affidavit of an officer of each Seller, sworn to under penalty of perjury, setting forth such Seller's name, address and federal tax identification number and stating that such Seller is not a "foreign person" within the meaning of Section 1445 of the Code;

(h) Shareholder Designation.

If Sellers choose to direct Buyer to issue the Junior Preferred Stock to the Shareholder Designees as described in Section 4.3(b), above, the Shareholder Designation; and

(i) Other Documents.

Such additional information and materials as Buyer shall reasonably request.

14.2. Documents to be Delivered by Buyer.

At the Closing, Buyer will deliver to Sellers and Trust, at the expense of Buyer:

(a) Purchase Price.

A wire transfer in immediately available funds of the amount specified in Section 4.3(a), subject to any adjustments;

(b) Stock Certificates.

Junior Preferred Stock of Buyer to Sellers or the Shareholder Designees as specified in Section 4.3(b);

(c) Assumption Agreement.

An assumption agreement relating to Buyer's assumption of the Assumed Liabilities in form and substance mutually agreeable to the parties hereto;

(d) Certified Resolutions.

Certified resolutions of the Board of Directors or similar body of Buyer approving the execution and delivery of this Agreement and each of the other documents delivered by Buyer pursuant hereto and authorizing the consummation of the transactions contemplated hereby and thereby;

(e) Officer's Certificate.

A certificate, dated the Closing Date, executed on behalf of the Buyer in the form described in Section 13.3;

(f) Opinion.

Written opinion of counsel in substantially in the form attached hereto as Exhibit D dated as of the Closing Date;

(g) Good Standing Certificates.

Governmental certificates showing that Buyer is in good standing in the State of Delaware and duly qualified and in good standing in the Commonwealth of Massachusetts; and

(h) Other Documents.

Such additional information and materials as Sellers shall reasonably request.

**ARTICLE 15.**  
**TRANSFER TAXES: FEES AND EXPENSES**

15.1. Expenses.

Each party to this Agreement 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.

15.2. Transfer Taxes and Similar Charges.

All recordation, transfer and documentary taxes and fees, stamps, and any excise, sales or use taxes, and all similar costs of transferring the Station Assets in accordance with this Agreement, shall be paid by Sellers.

15.3. Governmental Filing or Grant Fees.

Any filing or grant fees imposed by any Governmental Entity, the consent of which is required for the consummation of the transactions contemplated hereby, including, but not limited to, the FCC, shall be borne one half by Buyer and one half by Sellers.

**ARTICLE 16.**  
**ACCOUNTS RECEIVABLE**

16.1. Accounts Receivable.

All accounts receivable arising prior to the Closing Date in connection with the operation of the Stations, including but not limited to accounts receivable for advertising revenues for programs and announcements performed prior to the Closing Date and other broadcast revenues for services performed prior to the Closing Date shall remain the property of Sellers (the "Accounts Receivable") and Buyer shall not acquire any right or interest therein. For a period of one hundred twenty (120) days from the Closing Date (the "Collection Period"), Buyer shall collect the Accounts Receivable in the normal and ordinary course of Buyer's business and shall apply all such amounts collected to the debtor's oldest account receivable first, unless the account debtor thereon otherwise directs and the Sellers in writing approve. Buyer's obligation shall not extend to the institution of litigation, employment of counsel or a collection agency or any other extraordinary means of collection. During the Collection Period, neither Sellers nor their agents shall make any direct solicitation of any such account debtor for collection purposes or institute litigation for the collection of amounts due. Any amounts relating to the Accounts Receivable that are paid directly to Sellers shall be retained by Sellers (and they shall inform Buyer thereof). Within ten (10) calendar days after the end of each month during the Collection Period, Buyer shall make a payment to Sellers equal to the amount of all collections of Accounts Receivable during the preceding month. Any accounts remaining uncollected after the Collection Period, shall be reassigned to Sellers without recourse and Sellers shall be solely responsible for the collection of such remaining Accounts Receivable.

**ARTICLE 17.**  
**SURVIVAL; INDEMNIFICATION**

17.1. Survival.

The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except (a) those representations and warranties contained in Sections 7.1(a), 7.1(b), 7.1(w), 7.1(x), 8.1(a), 8.1(b), 8.1(d), 8.1(f) and 8.1(o), which shall survive indefinitely, (b) those representations and warranties contained in Section 7.1(l), which shall survive until the termination of any applicable statute of limitations, and (c) those claims under this ARTICLE 17 that relate to Damages (as defined in Section 17.2) for which written notice is given by the indemnified party to the indemnifying party prior to the expiration, which shall survive until resolved. All covenants and agreements shall survive the Closing indefinitely.

### 17.2. Indemnification.

(a) From and after the Closing, each Seller, jointly and severally, shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Buyer arising out of or resulting from a third party claim regarding: the Retained Obligations; or the business or operation of the Stations before Closing.

(b) From and after the Closing, Buyer shall defend, indemnify and hold harmless Sellers from and against any and all Damages incurred by Sellers arising out of or resulting from a third party claim regarding; the Assumed Obligations; or the business or operation of the Stations after Closing.

### 17.3. Procedures.

The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties or other circumstances that could give rise to an indemnification obligation hereunder against the indemnifying party (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's right to indemnification and the indemnifying party's obligation to indemnify as set forth in this Agreement, except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced. The obligations and liabilities of the parties with respect to any Claim shall be subject to the following terms and conditions:

(a) The indemnifying party shall have the right to undertake, by counsel or other representatives of its own choosing, the defense or opposition to such Claim;

(b) In the event that the indemnifying party shall elect not to undertake such defense or opposition, or, within twenty (20) days after written notice (which shall include description of background information explaining the basis for such Claim) of any such Claim from the indemnified party, the indemnifying party shall fail to undertake to defend or oppose, the indemnified party (upon further written notice to the indemnifying party) shall have the right to undertake the defense, opposition, compromise or settlement of such Claim, by counsel or other representatives of its own choosing, at the expense of and for the account and risk of the indemnifying party (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof);

(c) Anything herein to the contrary notwithstanding: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim; (ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the indemnified party of a release from all liability in respect of such Claim; and (iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost

and expense, shall have the right to consult with the indemnifying party and its counsel or other representatives concerning such Claim and the indemnifying party and the indemnified party and their respective counsel or other representatives shall cooperate in good faith with respect to such Claim; and

(d) All claims not disputed shall be paid by the indemnifying party within thirty (30) days after receiving notice of the Claim. "Disputed Claims" shall mean claims for Damages by an indemnified party which the indemnifying party objects to in writing within thirty (30) days after receiving notice of the Claim. In the event there is a Disputed Claim with respect to any Damages, the indemnifying party shall be required to pay the indemnified party the amount of such Damages for which the indemnifying party has, pursuant to a final determination, been found liable within ten (10) days after there is a final determination with respect to such Disputed Claim. A final determination of a Disputed Claim shall be (i) a judgment of any court determining the validity of a Disputed Claim, if no appeal is pending from such judgment and if the time to appeal therefrom has elapsed; (ii) an award of any arbitration determining the validity of such disputed claim, if there is not pending any motion to set aside such award and if the time within which to move to set aside such award has elapsed; (iii) a written termination of the dispute with respect to such claim signed by the parties thereto or their attorneys; (iv) a written acknowledgment of the indemnifying party that it no longer disputes the validity of such claim; or (v) such other evidence of final determination of a disputed claim as shall be acceptable to the parties. No undertaking of defense or opposition to a Claim shall be construed as an acknowledgment by such party that it is liable to the party claiming indemnification with respect to the Claim at issue or other similar Claims.

## **ARTICLE 18. TERMINATION**

### **18.1. Termination.**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of Sellers, Trust and Buyer;
- (b) provided that none of the Sellers nor the Trust is then in breach of this Agreement and that all the conditions to closing set forth in Article 12 have been met, by written notice of Sellers to Buyer if Buyer: (i) does not appear at the Closing Location on the Closing Date ready, willing and able to consummate the transactions; (ii) does not satisfy the conditions or perform the obligations to be satisfied or performed by it on the Closing Date; or (iii) otherwise breaches in any material respect any of its representations or warranties or defaults in any material respect in the performance of any of its covenants or agreements herein contained and such breach or default is not cured within the Cure Period (defined below);
- (c) provided the Buyer is not then in breach of this Agreement, by written notice of Buyer to Sellers if Sellers or the Trust (i) do not satisfy the conditions or perform the obligations to be satisfied or performed by any of them on, or prior to, the Closing Date; or (ii) otherwise breach in any material respect any of their representations or warranties or default in

any material respect in the performance of any of their covenants or agreements herein contained and such breach or default is not cured within the Cure Period (defined below);

(d) by written notice of either party to the other if the FCC denies the FCC Application and the party seeking to terminate the Agreement is not then in breach of this Agreement;

(e) provided the Buyer is not then in breach of this Agreement, by written notice of Buyer to Sellers if FCC Consent is not obtained for all three Stations;

(f) provided the Buyer is not then in breach of this Agreement, by written notice of Buyer to Sellers under the circumstances specified in Sections 18.2 or 19.2 dealing with Interruption of Broadcast Transmission and Risk of Loss; and

(g) by written notice of either party (with the Sellers and the Trust being considered a single party hereunder) to the other if the Closing shall not have been consummated on or before the date nine (9) months after the date of this Agreement and the party seeking to terminate this Agreement is not then in breach of this Agreement.

The term "Cure Period" as used herein means a period commencing on the date of receipt by Buyer or Sellers of written notice from the other party (with the Sellers and the Trust being considered a single party hereunder) of breach or default hereunder and continuing for a period of thirty (30) days thereafter; provided, however, that if the breach or default cannot reasonably be cured within such period, but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date.

#### 18.2. Interruption of Broadcast Transmission.

With the exception of the replacement of the tower for WPXC(FM) described in Section 7.1(d)(ii) of this Agreement, if, prior to Closing, any event occurs which prevents broadcast transmission by any Station with substantially full licensed power and antenna height (as described in the applicable FCC License) and in the manner it has heretofore been operating and such Station's facilities are not restored so that operation is resumed with a signal that substantially replicates the Station's licensed signal within five (5) days of such event, or, in the case of more than one event the aggregate number of days preceding such restoration from all such events is more than eight (8) days, or if any Station is off the air for more than three days or for more than five (5) periods exceeding eight hours, Buyer shall have the right, in its sole discretion, to terminate this Agreement by giving notice to the Sellers.

#### 18.3. Liquidated Damages.

If this Agreement is terminated by Sellers in accordance with Section 18.1(b) of this Agreement, then the Deposit or the proceeds of the Letter of Credit, as applicable, will be disbursed to Sellers as set forth in Section 4.2, above, and shall constitute liquidated damages for Buyer's failure. Such liquidated damages shall be Sellers' sole and exclusive remedy hereunder for breach by Buyer of the terms of this Agreement. It is understood and agreed that such

liquidated damages amount represents the parties' reasonable estimate of actual damages and does not constitute a penalty.

#### 18.4. Specific Performance.

Sellers and Trust agree that the Stations are unique and cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, in the event that Buyer institutes any action specifically to enforce Sellers' and Trust's performance under this Agreement with respect to the sale of the Station Assets, Sellers and Trust agree to waive the defense that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. Buyer shall not be entitled to receive any money damages in addition to receiving specific performance as a result of Sellers' or the Trust's failure to close on the sale of the Station Assets. In the event that Buyer forgoes a claim of specific performance, Buyer is not foreclosed from pursuing a claim for damages under this Agreement.

### ARTICLE 19. MISCELLANEOUS PROVISIONS

#### 19.1. Casualty Loss.

In the event any non-material loss or damage of the Station Assets exists on the Closing Date, the parties shall consummate the Closing and after Closing the parties shall cooperate to repair or replace (as appropriate under the circumstances) the lost or damaged items at Sellers' reasonable expense.

#### 19.2. Risk of Loss.

The risk of loss or damage to the Station Assets shall be upon Sellers at all times prior to Closing. In the event of such loss or damage, Sellers will promptly notify Buyer and may repair, replace or restore the Station Assets to their former condition. If material damage has occurred that precludes the operation of any of the Stations within the terms of its license and the Station Assets have not been repaired or restored prior to the Closing Date, Buyer may, at its option:

(a) elect to consummate the Closing and accept the Station "as is," in which event Sellers will pay over to Buyer any proceeds of insurance received by Sellers and attributable to damage to the Stations or the Station Assets, in which case Sellers will have no further obligation to repair, replace or restore the damaged property; or

(b) elect to postpone the Closing Date for a period of up to ninety (90) days, with prior consent of the Commission if necessary, to permit Sellers, at their option, to make such repairs, replacements, or restoration as are required to restore the property to the equivalent of its former condition. If after the expiration of the extension period the property has not been repaired, replaced or restored in a manner sufficient to permit the Station to resume operation within the terms of its license, Buyer may terminate this Agreement. If the Parties disagree whether the property has been adequately repaired, replaced or restored, the matter will be referred to a mutually acceptable qualified consulting communications engineer, who shall be a



member of the Association of Federal Communications Consulting Engineers, whose decision will be final, and whose fees and expenses will be split equally by the Parties.

19.3. Further Assurances.

After the Closing, 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 and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby to exchange assets and assume obligations as contemplated by this Agreement.

19.4. Assignment.

Neither party may assign this Agreement without the prior written consent of the other party hereto, provided that Buyer may assign its right to acquire the Stations to one or more affiliates of Buyer if such assignment does not delay the governmental consents contemplated by ARTICLE 6 (or otherwise delay Closing), the representations made by Buyer under this Agreement are true with respect to the assignee(s), Buyer gives Sellers prior written notice thereof, and no such assignment shall relieve Buyer of any obligation or liability under this Agreement; and provided further that the Sellers may prior to Closing create a Massachusetts Business Trust ("MBT") and each of Sellers' stockholders may exchange his or her shares in the Sellers for a like number of shares in the MBT and after the reorganization, the Sellers stockholders will own the same percentage of the MBT as they now do in the Sellers and the MBT will own all of the shares of the Sellers if such assignment does not delay the governmental consents contemplated by ARTICLE 6 (or otherwise delay Closing), the representations made by Sellers under this Agreement remain true except with respect to this ownership change, Sellers give Buyer prior written notice thereof, and no such transaction shall relieve Sellers of any obligation or liability under this Agreement. Buyer may also collaterally assign all of its rights under this Agreement and any related documents to one or more of Buyer's lenders. With respect to any permitted assignment, the parties shall take all such actions as are reasonably necessary to effectuate such assignment, including but not limited to cooperating in any appropriate filings with the FCC or other governmental authorities. All covenants, agreements, statements, representations, warranties and indemnities in this Agreement by and on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

19.5. Amendments.

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.

19.6. Headings.

The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

19.7. Governing Law and Venue.

The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to the choice of law provisions thereof. Sellers and Buyer hereby submit to the exclusive jurisdiction of the courts of the State of Massachusetts or the federal courts of the United States of America located in Boston, Massachusetts in respect of the interpretation and enforcement of the provisions hereof and of the documents referred to herein, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that they are not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that this Agreement or any of such documents may not be enforced in or by said courts, that the suit, action or proceeding is brought in an inconvenient forum, or that the venue of the suit, action or proceeding is improper.

19.8. Notices.

Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, including by facsimile, and shall be deemed to have been received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery or when delivered by facsimile transmission, and shall be addressed as follows (or to such other address as any party may request by written notice):

If to Buyer:                    Quantum Communications Corporation  
                                      3 Stamford Landing  
                                      Suite 210  
                                      46 Southfield Avenue  
                                      Stamford, Connecticut 06902  
                                      Attn: Michael F. Mangan  
                                      Facsimile: (203) 388-0054

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

                                      John M. Pelkey, Esq.  
                                      Garvey Schubert Barer  
                                      5<sup>th</sup> Floor  
                                      1000 Potomac Street, NW  
                                      Washington, DC 20007  
                                      Facsimile: 202-965-1729

If to Sellers:           Albert Makkay  
                                  154 Barnstable Road  
                                  Hyannis, Massachusetts 02601  
                                  Facsimile: (508) 428-3139

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

John F. Garziglia, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, N.W. Suite 700  
Washington, DC 20005  
Facsimile: (202) 261-0055

19.9. Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

19.10. No Third Party Beneficiaries.

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.

19.11. Attorneys Fees.

In the event of a default by either Sellers, Trust or Buyer which results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party or parties shall be entitled to reimbursement from the other party or parties of its reasonable legal fees and expenses.

19.12. Severability.

The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

19.13. Entire Agreement.

This Agreement, including its Schedules and Exhibits, and the Confidentiality Agreement embody the entire agreement and understanding of the parties hereto and thereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein.


19.14. Interpretation.

In this Agreement, the singular includes the plural and the plural the singular; the word “it” shall include all pronouns connoting other genders, as the context requires; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation;” references to Sections or Exhibits are to those of this Agreement unless otherwise indicated; references to laws and regulations, unless otherwise specified, shall be deemed to include all corresponding provisions of subsequent or superseding laws and regulations affecting the same; references to agreements and other contractual instruments, unless otherwise specified, shall be deemed to include all subsequent amendments and other modifications to such instruments in accordance with the terms thereof; the phrase “and/or” shall be deemed to mean the words both preceding and following such phrase, or either of them; and “days” refers to calendar days unless otherwise indicated.

**[The next page is the signature page]**

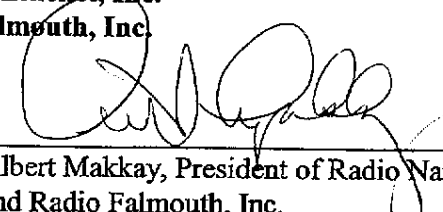
**IN WITNESS WHEREOF**, each of the parties has caused this Asset Purchase Agreement to be duly executed and delivered as of the date first above written.

**Radio Hyannis, Inc.**

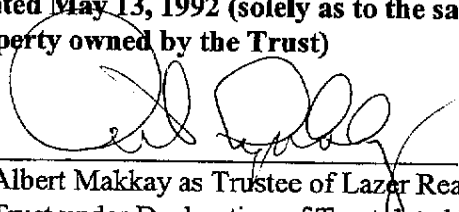
By:   
Maureen Makkay, President of Radio Hyannis, Inc.

**Radio Nantucket, Inc.**

**Radio Falmouth, Inc.**

By:   
Albert Makkay, President of Radio Nantucket, Inc.  
and Radio Falmouth, Inc.

**Lazer Real Estate Trust under Declaration of  
Trust dated May 13, 1992 (solely as to the sale of the  
real property owned by the Trust)**

By:   
Albert Makkay as Trustee of Lazer Real Estate  
Trust under Declaration of Trust dated May 13,  
1992

**Quantum Communications Corporation**

By: \_\_\_\_\_  
Michael F. Mangan  
Chief Financial Officer

**IN WITNESS WHEREOF**, each of the parties has caused this Asset Purchase Agreement to be duly executed and delivered as of the date first above written.

**Radio Hyannis, Inc.**

By: \_\_\_\_\_  
Maureen Makkay, President of Radio Hyannis, Inc.

**Radio Nantucket, Inc.**


**Radio Falmouth, Inc.**

By: \_\_\_\_\_  
Albert Makkay, President of Radio Nantucket, Inc.  
and Radio Falmouth, Inc.

**Lazer Real Estate Trust under Declaration of  
Trust dated May 13, 1992 (solely as to the sale of the  
real property owned by the Trust)**

By: \_\_\_\_\_  
Albert Makkay as Trustee of Lazer Real Estate  
Trust under Declaration of Trust dated May 13,  
1992

**Quantum Communications Corporation**

By:   
Michael F. Mangan  
Chief Financial Officer

## **Schedules and Exhibits Omitted**

Other than the Schedule listing the Licensee's FCC authorizations and the Exhibit containing the contemplated Non-Competition Agreement, the Exhibits and Schedules to the Asset Purchase Agreement are not being provided with this application. Pursuant to the Commission's *Public Notice* of August 22, 2002, the following information is hereby provided with respect to those omitted Schedules and Exhibits:

### Omitted Schedules and Reasons for Exclusion:

Schedule 1.1 – Liens - The existence of liens on the Sellers' real and personal property is not relevant to the FCC's review of an assignment of license application

Schedule 1.1(b) – Tangible Personal Property – The identification of Sellers' specific items of personal property that are being sold is not relevant to the FCC's review of an assignment of license application. The Asset Purchase Agreement states that sufficient assets are being sold to operate the Stations in the manner in which they are now being operated.

Schedule 1.1(c)(ii) – Trade Agreements – A description of Sellers' agreements for the trade or barter of merchandise for airtime is not relevant to the FCC's review of an assignment of license application.

Schedule 1.1(c)(iii) – Leased Real Property – A description of Sellers' leased real property is not relevant to the FCC's review of an assignment of license application.

Schedule 1.1(c)(iv) – Station Contracts – A listing of Sellers' business contracts is not relevant to the FCC's review of an assignment of license application.

Schedule 1.1(d) – Intellectual Property – A listing of Sellers' intellectual property is not relevant to the FCC's review of an assignment of license application.

Schedule 1.2(g) – Excluded Seller Plans - A listing of excluded retirement and other of Sellers' benefit plans for its employees is not relevant to the FCC's review of an assignment of license application.

Schedule 1.1(h) – Owned Real Property - A description of Sellers' real property is not relevant to the FCC's review of an assignment of license application.

Schedule 1.2(i) – Excluded Assets – A listing of Sellers' assets being excluded from the transaction is not relevant to the FCC's review of an assignment of license application. The Asset Purchase Agreement states that sufficient assets are being sold to operate the Stations in the manner in which they are now being operated.

Schedule 4.3(b) – Rights, Preferences and Privileges of Junior Preferred Stock – The Buyer has described in this application its ownership structure. Information in this Schedule is either duplicative of such information or is not relevant to the FCC's review of an assignment of license application.

Schedule 4.4 – Employee Manual – Information contained in Sellers' employee manual is not relevant to the FCC's review of an assignment of license application.

Schedule 7.1(a) – Sellers' Officers, Directors and Shareholders – Sellers' ownership information, to the extent required by the FCC rules, is on file with the Commission. Information in this Schedule would either be duplicative of such information or is not relevant to the FCC's review of an assignment of license application.

Schedule 7.1(c) – Sellers’ Financial Statements – Sellers’ financial condition and proprietary information concerning Sellers’ operations is not relevant to the FCC’s review of an assignment of license application.

Schedule 7.1(e) – Litigation – Litigation required to be listed by the FCC application has been stated in the application. Any other litigation that may be existing or threatened is not relevant to the FCC’s review of an assignment of license application.

Schedule 7.1(f) – Insurance – Insurance carried by Sellers is not relevant to the FCC’s review of an assignment of license application.

Schedule 7.1(l) – Taxes – Violation of laws or non-payment of taxes required to be listed by the FCC application has been stated in the application. Any other issue surrounding the payment of taxes is not relevant to the FCC’s review of an assignment of license application.

Schedule 7.1(m) – Personnel; Liability of Sellers for Accrued Vacation and Sick Leave – The amount of vacation and sick leave accrued by Sellers’ employees is not relevant to the FCC’s review of an assignment of license application.

Schedule 7.1(n)(i) – Seller Plans - A listing of retirement and other of Sellers’ benefit plans for its employees is not relevant to the FCC’s review of an assignment of license application.

Schedule 7.1(s) – Insolvency Proceedings – A listing of any existing or threatened insolvency proceedings is not relevant to the FCC’s review of an assignment of license application except to the extent such a filing has occurred by a licensee and an appointment of a receiver, trustee or debtor-in-possession has taken place, in which case if such case occurs it will be reported to the FCC on the appropriate applications.

Schedule 8.1(d)(iii) – Outstanding Shares of Common Stock Owned by Shareholders of Buyer - Buyer has described in this application its ownership structure. Information in this Schedule is either duplicative of such information or is not relevant to the FCC’s review of an assignment of license application.

Schedule 8.1(i) – Buyer’s Changes – Certain changes to Buyer’s representations in the Asset Purchase Agreement are listed in this Schedule. If this information is called for in the FCC application, it is provided. Information in this Schedule would be either be duplicative of such information or not relevant to the FCC’s review of an assignment of license application.

#### Omitted Exhibits and Reasons for Exclusion:

Exhibit A – Escrow Agreement – The agreement between Sellers, Buyer and the specified escrow agent to hold certain security in escrow pending the closing of the transaction is not relevant to the FCC’s review of an assignment of license application.

Exhibit C – Sellers’ Opinions of Counsel – The opinions of counsel that will be rendered by lawyers in conjunction with the transaction are not relevant to the FCC’s review of an assignment of license application.

Exhibit D – Buyer’s Opinion of Counsel - The opinions of counsel that will be rendered by lawyers in conjunction with the transaction are not relevant to the FCC’s review of an assignment of license application.



## **Schedule 1.1(a) – Station Licenses**

### **Radio Hyannis, Inc.:**

FCC Renewal Authorization for WPXC(FM), Hyannis, Massachusetts (FCC File No. BRH-19971110S5).

FCC FM Broadcast Station License for WPXC(FM), Hyannis, Massachusetts (FCC File No. BLH-19950727KF).

Pending FCC 301 Minor Modification Application seeking one-step upgrade from Channel 275A to Channel 275B1 for WPXC(FM)), Hyannis, Massachusetts (FCC File No. BPH-20010413AAI).<sup>1</sup>

FCC Broadcast Auxiliary Radio Station License for Studio Transmitter Link WPNF808 associated with WPXC(FM), Hyannis, Massachusetts (FCC File No. Not Available).

FCC Antenna Structure Registration No. 1010209, owned by Pinnacle Towers Inc.

### **Radio Nantucket, Inc.:**

FCC Renewal Authorization for WRZE(FM), Nantucket, Massachusetts (FCC File No. BRH-19971110S4).

FCC FM Broadcast Station License for WRZE(FM), Nantucket, Massachusetts (FCC File No. BLH-19861020XC).

FCC FM Broadcast Station Construction Permit for WRZE(FM), Nantucket, Massachusetts (FCC File No. BPH-20020528AAB).

Pending FCC 302-FM Application for License to Cover FCC FM Broadcast Station Construction Permit No. BPH-20020528AAB (FCC File No. BLH-20021203AAY).<sup>2</sup>

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<sup>1</sup> Pursuant to Section 7.1(d)(ii) of the Asset Purchase Agreement, Sellers are not making any warranty, representations or covenants whatsoever with respect to this application. In addition, the broadcast tower upon which WPXC(FM) is presently situated, as presently owned by Pinnacle Towers, is scheduled to be replaced with a like tower at no cost to Sellers in early to mid-2003, and notwithstanding anything to the contrary in the Asset Purchase Agreement, any time periods for which WPXC(FM) is off the air for the purpose of the move of WPXC(FM) to the replacement tower shall not be a breach or default of this Agreement, and Buyer shall be solely responsible for any due diligence necessary to inform itself with respect to the replacement procedures regarding such tower. Notwithstanding the foregoing, Sellers shall take such commercially reasonable measures as may be necessary to obtain requisite authority from the FCC to commence operations from the new tower expeditiously including, without limitation, by promptly submitting such request for special temporary authority, facilities modification application or license application as might be necessary to permit operation from the replacement tower.

<sup>2</sup> Sellers are not making any warranty, representations or covenants whatsoever with respect to the procedural aspects of increasing power to 50 kilowatts in this application.

FCC Broadcast Auxiliary Radio Station License for Studio Transmitter Link WLD333 associated with WRZE(FM), Nantucket, Massachusetts (FCC File No. 931008MK).

FCC Broadcast Auxiliary Radio Station License for Studio Transmitter Link WLD332 associated with WRZE(FM), Nantucket, Massachusetts (FCC File No. BPLST-931008ML).

FCC Broadcast Auxiliary Radio Station License for Studio Transmitter Link WHQ349 associated with WRZE(FM), Nantucket, Massachusetts (FCC File No. 930401MF). (This Studio Transmitter Link may not be used by Sellers in connection with the operation WRZE(FM). However, this authorization will be assigned to Buyer as per Buyer's request.)

FCC Broadcast Auxiliary Radio Station License for Studio Transmitter Link WLD334 associated with WRZE(FM), Nantucket, Massachusetts (FCC File No. 0001049041). (This Studio Transmitter Link may not be used by Sellers in connection with the operation WRZE(FM). However, this authorization will be assigned to Buyer as per Buyer's request.)

FCC Antenna Structure Registration No. 1234182, owned by the Town of Nantucket [for the transmitter site specified in pending FCC 302-FM Application for License to Cover FCC FM Broadcast Station Construction Permit No. BPH-20020528AAB (FCC File No. BLH-20021203AAY)].

**Radio Falmouth, Inc.:**

FCC Renewal Authorization for WCIB(FM), Falmouth, Massachusetts (FCC File No. BRH-19971110S2).

FCC FM Broadcast Station License for WCIB(FM), Falmouth, Massachusetts (FCC File No. BLH-19911028KA).

FCC Broadcast Auxiliary Radio Station License for Remote Pickup WHE832 associated with WCIB(FM), Falmouth, Massachusetts (FCC File No. 860317MM).

FCC Broadcast Auxiliary Radio Station License for Remote Pickup WHE830 associated with WCIB(FM), Falmouth, Massachusetts (FCC File No. 820720MK).

FCC Antenna Structure Registration No. 1004088, owned by Radio Falmouth, Inc.

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## **NON-COMPETITION AGREEMENT**

This NON-COMPETITION AGREEMENT ( "Non-Competition Agreement" ) is entered into as of \_\_\_\_\_, 2003, by and among Radio Hyannis, Inc., a Massachusetts corporation ("Radio Hyannis"); Radio Nantucket, Inc., a Massachusetts corporation ("Radio Nantucket"); Radio Falmouth, Inc., a Massachusetts corporation ("Radio Falmouth") (each of Radio Hyannis, Radio Nantucket, and Radio Falmouth being individually referred to herein as a "Seller" and collectively referred to herein as "Sellers"); Radio Hyannis Business Trust, a Massachusetts Business Trust ("RHBT"); Radio Nantucket Business Trust, a Massachusetts Business Trust ("RNBT"); Radio Falmouth Business Trust, a Massachusetts Business Trust ("RFBT") (RHBT, RNBT and RFBT being referred to herein individually as a "Trust" and collectively as the "Trusts"); Albert J. Makkay, Sr.; Maureen Makkay; Allison Makkay Davis; Albert J. Makkay, Jr.; Colleen Makkay Mulgrew; Lea Sorgi; Jean Sorgi Alessandro, David Sorgi, Charles W. Sullivan; Charles W. Sullivan, Jr.; Anne Sullivan Valentine; Maryelise S. Moran; Carolyn Wegman; Laura Sorgi; Marianne Sorgi; Peter Sorgi (each of the foregoing individuals being referred to herein as an "Individual Covenantor" and the Sellers, the Trusts and the Individual Covenantors being referred to herein individually as a "Covenantor" and collectively as the "Covenantors") and Qantum Communications Corporation, a Delaware corporation ("Buyer"). Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Purchase Agreement (as defined below).

WHEREAS, Buyer and Sellers have previously entered into an Asset Purchase Agreement dated as of February \_\_, 2003 (the "Purchase Agreement") providing for Sellers' sale to Buyers of substantially all of the assets of WPXC(FM), Hyannis, Massachusetts; WRZE(FM), Nantucket, Massachusetts; and WCIB(FM), Falmouth, Massachusetts (each a "Station" and collectively, the "Stations"); and

WHEREAS, each of the Individual Covenantors is a trustee or beneficiary of one or more of the Trusts and each Trust holds all of the outstanding stock of the licensee of one of the Stations, with the result that each of the Individual Covenantors will receive substantial economic benefits upon the consummation of the transactions contemplated by the Purchase Agreement (the "Contemplated Transactions"); and

WHEREAS, pursuant to Section 9.8 of the Purchase Agreement, each Seller has agreed as a condition precedent to Closing that each Covenantor would enter into this Non-Competition Agreement; and

WHEREAS, each of the Covenantors wishes to enter into this Non-Competition Agreement in order to induce Buyer to consummate the Contemplated Transactions, and Buyer would not have been willing to enter into the Purchase Agreement, nor would Buyer be willing to consummate the Contemplated Transactions at Closing absent such inducement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. As used herein, "Covenant Area" shall mean Bristol, Plymouth, Barnstable, Dukes and Nantucket Counties, Massachusetts.

2. Non-Competition Covenant. During the five (5) year period commencing on the date hereof, each of the Covenantors agrees not to:

(a) directly or indirectly, own, have any financial interest in, be engaged in the operation of, or be connected with, as an officer, director, employee, manager, agent, stockholder, partner, member, co-venturer, investor, creditor, consultant or advisor, or in any other capacity (except as the holder of not more than 1% of the outstanding capital securities of a company whose shares or other equity interests are registered pursuant to Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and whose shares or other equity interests are listed on any securities exchange, quoted on the NASDAQ national market or traded in the over-the-counter market and except as the holder of interests in Buyer), any business entity or venture that engages or proposes to engage in the business of owning or operating an FM radio broadcast station that is licensed to a community within the Covenant Area; or

(b) induce or attempt to induce any person, business or entity that is an advertiser with or supplier of any of the Stations, or that otherwise is a contracting party with any of the Covenantors, as of the date of this Non-Competition Agreement, or at any time during the term of this Non-Competition Agreement, to terminate any written or oral agreement or understanding with any of the Stations or the Buyer.

3. Covenant Consideration. Each Covenantor acknowledges that (i) Buyer is not obligated, and would not otherwise agree, to consummate its purchase under the Purchase Agreement without each Covenantor's execution and delivery of this Non-Competition Agreement, and (ii) each Covenantor is directly benefited by the payment by Buyer to Sellers of the consideration in the Purchase Agreement on the date hereof.

4. Injunctive Relief. Each Covenantor acknowledges that Buyer will be irreparably harmed in the event of a breach by any Covenantor of the covenants contained in Section 2 hereof, and that in such event, Buyer shall be entitled to injunctive relief to secure enforcement of such covenants.

5. Representations and Warranties of Sellers. Each Seller, Trust and Individual Covenantor, as applicable, hereby represents and warrants that:

(a) Organization and Good Standing. Such Seller or Trust is a corporation or business trust duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts.

(b) Authorization and Binding Effect of Documents. Each Seller's and Trust's execution and delivery of, and the performance of its obligations under, this

Non-Competition Agreement have been duly authorized and approved by all necessary corporate or trust action on the part of each Seller or Trust, as applicable. This Non-Competition Agreement has been duly executed and delivered by each Covenantor. This Non-Competition Agreement constitutes the legal and valid obligation of each Covenantor enforceable against each Covenantor in accordance with its terms, except as limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

(c) Governmental Consents and Consents of Third Parties. Each Covenantor's execution and delivery of, and the performance of its obligations under, this Non-Competition Agreement do not require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority, or the consent of any person under any agreement, arrangement or commitment of any nature to which any Covenantor is a party or by which any Covenantor is bound that has not been obtained or the failure of which to obtain would have a material adverse effect on the ability of any Covenantor to perform its obligations hereunder.

6. Benefited Parties and Assignment. This Non-Competition Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors-in-interest. The rights and obligations created by this Non-Competition Agreement may not be assigned, except that Buyer may assign its rights under this Non-Competition Agreement to a permitted assignee under the Purchase Agreement or to a subsequent purchaser of the Stations.

7. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed given if delivered personally or sent by facsimile (if a duplicate copy of such notice is also sent by first class mail to the addressee of such facsimile), by prepaid certified mail with return receipt requested, or by overnight delivery service, and addressed as follows:

(a) if to Buyer to:

Quantum Communications Corporation  
3 Stamford Landing  
Suite 210  
46 Southfield Avenue  
Stamford, Connecticut 06902  
Attn: Michael F. Mangan  
Facsimile: (203) 388-0054

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

John M. Pelkey, Esq.  
Garvey Schubert Barer  
5<sup>th</sup> Floor  
1000 Potomac Street, NW  
Washington, DC 20007  
Facsimile: 202-965-1729

(b) if to any of the Covenantors:

Albert Makkay  
154 Barnstable Road  
Hyannis, Massachusetts 02601  
Facsimile: (508) 428-3139

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

John F. Garziglia, Esq.  
Womble Carlyle Sandridge & Rice, PLLC  
1401 I Street, N.W. Suite 700  
Washington, DC 20005  
Facsimile: (202) 261-0055

or such other address with respect to any party hereto as such party may from time to time notify (as provided above) the other parties hereto. Notice shall be deemed to have been received on the date of personal delivery; on the date of transmission of the facsimile (if a duplicate copy of such notice is also sent by first class mail to the addressee of such facsimile); on the third day after deposit in the U.S. mail if mailed by certified mail, postage prepaid and return receipt requested; or on the first business day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next day delivery.

7. Entire Agreement. This Non-Competition Agreement and the Purchase Agreement constitute the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede any prior negotiations, agreements, understandings or arrangements among the parties hereto with respect to the subject matter hereof.

8. Governing Law. This Non-Competition Agreement shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without giving effect to the conflict of law provisions thereof.

9. Severability. The parties acknowledge and agree that the restrictive covenants contained in Section 2 hereof are reasonable and valid in geographical and

temporal scope and in all other respects. Any provision of this Non-Competition Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

10. Counterparts. This Non-Competition Agreement may be executed in any number of counterparts, and by each party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. This Non-Competition Agreement may not be modified or amended except by an agreement in writing signed by the party against whom the modification or amendment is sought to be enforced.

12. Waivers. The failure of any party at any time to require strict performance by another party of any provision hereof shall not waive or diminish such party's right to demand strict performance thereafter of such provision or any other provision hereof.

14. Interpretation. In this Non-Competition Agreement, the singular includes the plural and the plural the singular; the words "it" and "its" shall include all pronouns connoting other genders, as the context requires; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation;" references to Sections are to those of this Non-Competition Agreement unless otherwise indicated; references to laws and regulations, unless otherwise specified, shall be deemed to include all corresponding provisions of subsequent or superseding laws and regulations affecting the same; references to agreements and other contractual instruments, unless otherwise specified, shall be deemed to include all subsequent amendments and other modifications to such instruments in accordance with the terms thereof; and "days" refers to calendar days unless otherwise indicated.

15. Headings. The headings are for convenience only and will not control or affect the meaning or construction of the provisions of this Non-Competition Agreement.

16. Attorneys Fees. In the event of a default by either Covenantors or Buyer which results in a lawsuit or other proceeding for any remedy available under this Non-Competition Agreement, the prevailing party (i.e., either the Covenantors or Buyer) shall be entitled to reimbursement from the other party (i.e., either the Covenantors or Buyer) of its reasonable legal fees and expenses.

**IN WITNESS WHEREOF**, each of the parties has caused this Non-Competition Agreement to be duly executed and delivered as of the date first above written.