

PROGRAM SERVICE AND TIME BROKERAGE AGREEMENT

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ED This Program Service And Time Brokerage Agreement ("Agreement") is entered into this 23rd day of August, 2001, by and between Duhamel Broadcasting Enterprises ("Programmer") and Steven E. Duffy, an individual, licensee of Radio Station KZLK-FM (the "Station").

WHEREAS, Licensee holds Licenses and Authorizations from the Federal Communications Commission ("FCC" or "Commission") authorizing it to operate the Station;

WHEREAS, Licensee has available for sale broadcast time on the Station; and

WHEREAS, Programmer desires to purchase time on Licensee's Station for the broadcast of programming on the Station and to sell advertising time for inclusion in that programming.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

1. Time Sale.

Subject to the provisions of this Agreement, Licensee agrees to make the Station's broadcasting transmission facilities available to Programmer for broadcast of Programmer's programs on the Station originating either from Programmer's own studios or from Licensee's studios. The Station's time made available to Programmer is described in Exhibit A hereto.

2. Payments.

Programmer hereby agrees to pay Licensee compensation for the broadcast of Programmer's programming in the amounts and at the times set forth in Exhibit B hereto.

3. Term.

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ED The initial term of this Agreement shall be for a period of three (3) years beginning the 4th day of September, 2001, (the "Effective Date").

4. Programs.

Programmer shall furnish or cause to be furnished the artistic personnel and materials for its programming. Programmer represents and warrants that all of the programming, advertising and promotional material it broadcasts on the Station shall be in accordance with the rules, regulations and policies of the Commission and the Communications Act of 1934, as amended ("Act"), and the reasonable standards established by Licensee.

5. Station Facilities.

(a) Licensee Responsibility. Licensee shall be responsible for, and pay in a timely manner, all costs associated with owning and controlling the Station, including, but not limited to, electricity, telephone at the transmitter site, insurance, and all engineering costs associated with maintenance and operation of the transmitter and transmitter building. Licensee shall be responsible for the Stations's compliance with all applicable provisions of the Communications Act of 1934, as amended, the rules, regulations and policies of the FCC and all other applicable laws. Licensee represents that it now holds all permits and authorizations necessary for the operation of the station including all FCC permits and authorizations. Licensee will continue to hold such permits and authorizations throughout the term of this Agreement. Licensee represents that there is not now pending or to Licensee's knowledge, threatened, any action by the FCC or other party to revoke, cancel, suspend, refuse to renew, or modify adversely any of the licenses, permits or authorizations necessary to the operation of the Station, and to Licensee's knowledge, no event has occurred that allows or, after notice or lapse of time or both, would allow, the revocation or termination of such licenses, permits or authorizations or the imposition of any restriction thereon of such a nature that may limit the operation of the Station as presently conducted. Licensee has no reason to believe that any such license, permit or authorization will not be renewed in its ordinary course. Licensee shall make its studio, transmitters, transmitter buildings and tower sites available to Programmer, at no additional charge, for the placement and use of broadcast equipment Programmer reasonably deems necessary to fulfill its responsibilities under this Agreement.

(b) Broadcast Output. Licensee represents that the Station's facilities and equipment do and will comply and are and will be operated in accordance with good engineering standards necessary to deliver a high-quality technical signal, comply with all applicable laws and regulations (including the requirements of the Communications Act and the rules, regulations, policies and procedures of the FCC) and broadcast to the full power and height authorized for it by the FCC. Licensee, to its knowledge, is not in material violation of any statute, ordinance, rule, regulation, order or decree of any federal, state, local or foreign governmental agency, court or authority having jurisdiction over it or over any part of its operations or assets, which material default or violation would have an adverse effect on Licensee or its assets or in its ability to perform this

Agreement. During the term hereof, Licensee agrees to maintain the transmission facility and the broadcast output in a high quality condition, with the same quality of output, normal wear and tear excepted, to broadcast to the same power and height as Licensee is presently authorized by the FCC, to make improvements in facilities as may be reasonably necessary to maintain the transmission facilities and broadcast output at a high quality level.

(c) Maintenance. Licensee shall maintain the ability to operate its maximum authorized facilities at all times. Any maintenance work, other than emergency repairs, which prevent the operation of the Station at full power and maximum facility, shall not be scheduled without giving at least FORTY-EIGHT (48) hours notice to Programmer, unless Programmer waives such notice.

6. Handling Of Mail And Complaints.

Programmer shall promptly forward to Licensee any mail which it may receive from any agency of government or any correspondence from members of the public relating to the Station or to any of Programmer's programming broadcast on the Station.

7. Programming And Operations Standards.

Programmer recognizes that the Licensee has full authority and a duty to control the operation of the Station. The parties agree that Licensee's authority includes, but is not limited to, the right to reject or refuse such portions of Programmer's programming which Licensee reasonably believes to be contrary to the public interest. Should Licensee reject any of Programmer's programming pursuant to this paragraph, the payments, reimbursements and fees provided for hereunder shall be pro-rated accordingly.

8. Responsibility For Employees And Expenses.

Programmer shall employ and be responsible for the salaries, commissions, taxes, insurance and all other related costs for all of its own employees, agents, contractors and personnel involved in the production and broadcast of its programming, including air personalities, salespersons, sales representatives, consultants, traffic personnel, board operators and other programming staff members. Programmer shall enter into separate license agreements with ASCAP, BMI and/or SESAC, and will be responsible for the payments of music licensing fees attributable to programming broadcast on the Station.

9. Advertising And Programming Revenues.

Programmer shall retain all revenues from the sale of advertising time on the programming it broadcasts on the Station. Programmer will provide, make available to and shall sell time to political candidates from the time it purchases from Licensee in strict compliance with the Act, the rules, regulations and policies of the Commission.

10. Operation Of Station.

Notwithstanding anything to the contrary in this Agreement, Licensee shall have full authority and power over the operation of the Stations during the term of this Agreement. Licensee shall be responsible for all programming it furnishes for broadcast on the Station and for the payment of the salaries of all of its employees, all of whom shall report solely to and be accountable solely to the Licensee. The Licensee's Manager shall direct the day-to-day operation of the Station, and the Licensee's Chief Operator shall oversee and direct the engineering and technical operation of the Station. Licensee shall retain the right to interrupt and discontinue Programmer's programming at any time if Licensee determines the programming is not in the public interest or violates this Agreement, or in case of an emergency or EAS system activation, or for the purpose of providing programming which Licensee in its sole discretion determines to be of greater national, regional or local importance, whereupon, the payments, reimbursements and fees provided for by Paragraph 2 hereof shall be reduced by a percentage amount equal to the percentage that the amount of Programmer's programming that is not carried bears to the total programming time allowed Programmer pursuant to Exhibit A hereof. Programmer shall properly prepare and promptly provide to Licensee (a) all its contracts, agreements and requests for time for political programming or programming addressing controversial issues of public importance; (b) all records, complaints and reports of every kind whatsoever which may be required by the FCC to be maintained or files with the FCC by the Station as a result of Programmer's programming over the Station; and (c) full information with respect to Programmer's programs and public service announcements which are responsible to issues of public concern in sufficient detail to enable Licensee to timely prepare all appropriate or necessary records and reports required by the Commission and its rules and policies concerning the Station's operations. Programmer will properly prepare and furnish to Licensee such information, records and reports relating to Programmer's programming, sales or employment practices at the Station in sufficient detail as is necessary to enable Licensee to comply with all rules and policies of the FCC or any other government agency.

11. Station Identification.

Licensee will be responsible for ensuring the proper broadcast of Station's identification announcements. However, Programmer will provide appropriate Station identification announcements which comply with FCC requirements in a form acceptable to Licensee.

12. Right To Use Programs.

The right to use Programmer's programs and to authorize their use in any manner and in any media whatsoever shall be, and remain, vested in Programmer.

13. Payola/Plugola.

Programmer agrees that neither it nor its agents, employees, consultants or personnel will accept any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, material, supplies or other merchandise, services or labor (collectively "Consideration"), whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the program for which Consideration was provided as having paid for or furnished such Consideration, in accordance with the Communications Act and FCC requirements.

14. Compliance With Law.

Programmer agrees that, throughout the term of this Agreement, Programmer will comply with all laws, rules, regulations and policies including, but not limited to, the FCC's technical, political broadcasting, obscenity and indecency regulations, fair trade practice regulations, lottery broadcast regulations, sponsorship identification rules, sales practice regulations, applicable to the operations of the Station and all FCC rules applicable to programming agreements of this kind. Programmer acknowledges that Licensee has not urged, advised or consented to or agreed in any way whatsoever to the use of any unfair business practice.

15. Indemnification.

(a) Programmer's Indemnification. Programmer shall indemnify and hold Licensee harmless for any material loss, damage or injury of any kind sustained by Licensee resulting from Programmer's breach of this Agreement, from any programming material broadcast by Programmer on the Station, from the sale of or attempt by Programmer to sell advertising or program time on the Station, and from any material act or omission of any kind whatsoever by Programmer.

(b) Licensee's Indemnification. Licensee shall indemnify and hold Programmer harmless for material loss, damage or injury of any kind sustained by Programmer resulting from licensee's breach of this Agreement, from the broadcast of programming on the Station furnished by Licensee, from the sale of or attempt by Licensee to sell advertising or program time on the Station (except the instant sale provided for in this Agreement to Programmer), and from any material act or omission of any kind whatsoever by Licensee.

(c) Survival. Neither Licensee nor programmer shall be entitled to indemnification pursuant to this section unless such claim for indemnification is asserted in writing delivered to the other party. The representations and covenants of Licensee and Programmer and their obligation to indemnify and hold each other harmless as set forth in this Agreement shall survive any termination of this Agreement and shall continue until the expiration of all applicable statutes of limitations as to the parties hereto and to claims of third parties.

16. Termination And Remedies Upon Default.

(a) Termination. In addition to other remedies available at law or equity, this Agreement may be terminated as set forth below by either Licensee or Programmer by written notice to the other if the party seeking to terminate is not then in material default or breach thereof, upon the occurrence of any of the following:

(i) This Agreement is declared invalid or illegal in whole or material part by an order or decree of the FCC or any other administrative agency or court of competent jurisdiction and such order or decree has become final and no longer subject to further administrative or judicial review;

(ii) The other party is in material breach of its obligations hereunder and has failed to cure such breach within THIRTY (30) days written notice from the non-breaching party;

(iii) The mutual consent of both parties;

(iv) The other party shall make a general assignment for the benefit of creditors, files or has filed against it a petition for bankruptcy, reorganization or an arrangement for the benefit of creditors, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which if filed against such party, has not been dismissed within SIXTY (60) days thereof;

(v) There has been a change in FCC rules, policies or case law precedent that would cause this Agreement or any provision thereof to be in violation thereof and such change is not the subject of an appeal or further administrative review.

Upon termination of this Agreement according to the provisions of this paragraph, the payments, reimbursements and fees provided for hereunder shall be prorated to the effective termination date of this Agreement. Licensee shall cooperate reasonably with the Programmer to the extent permitted to enable Programmer to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the carriage of such programming that which otherwise would have been paid to Programmer hereunder.

(b) Programmer's Additional Remedies For Licensee's Technical Operation Deficiencies. In addition to Programmer's right to terminate for reasons set forth in Paragraph (a) above, if the Station suffers any damage to its transmission facilities which results in the inability of the Station to operate with its presently authorized facilities and Licensee has not restored full-time operations of the Station with its presently authorized facilities within SEVEN (7) days of any such occurrence, Programmer may give notice to Licensee of Programmer's termination of this Agreement in which event this Agreement shall terminate upon the giving of such notice, any other provision of this Agreement notwithstanding. For each day that the Station is not operating at authorized facilities, the payments due pursuant to Section 2 hereof shall be reduced by a percentage amount equal to the percentage that the amount of time of reduced power operation bears to the number of hours Programmer may broadcast pursuant to Exhibit A hereof.

(c) Programmer's Additional Termination Rights. Notwithstanding anything herein to the contrary and in addition to Programmer's termination rights in Paragraphs (a) and (b) above, Programmer shall have the right, but not the obligation, to terminate this Agreement upon consummation of the sale of Station following FCC approval.

17. Notices.

All necessary notices, demands and requests permitted or required under this Agreement shall be in writing and shall be deemed given FOUR (4) days after being mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Programmer:

Duhamel Broadcasting Enterprises
P.O. Box 1760
Rapid City, South Dakota 57709-1760
Attention: William F. Duhamel

with cc:

Richard Zaragoza
ShawPittman
2300 N Street, NW,
Washington, D.C. 200037-1128

If to Licensee:

Steven E. Duffy
1622 West Boulevard
Rapid City, South Dakota 57701

18. Modification And Waiver:

No modification of any provision of this Agreement shall in any event be effective unless the same shall be in writing and then such modification shall be effective only in the specific instance and for the purpose for which given.

19. Construction.

This Agreement shall be construed in accordance with the laws of the State of South Dakota, and the obligations of the parties hereto are subject to all federal, state and local laws and regulations now or hereafter in force and to the rules, regulations and policies of the Commission and all other government entities or authorities presently or hereafter to be constituted.

20. Headings.

The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

21. Counterpart Signature.

This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart. This Agreement shall be effective as of the date first above written.

22. Entire Agreement.

This Agreement supersedes any prior agreements between the parties, other than the Tower Lease Agreement between Programmer and Licensee of even date herewith, and contains all of the terms agreed upon with respect to the subject matter hereof. This Agreement may not be altered or amended except by an instrument in writing signed by the party against whom enforcement of any such change is sought.

23. No Partnership Or Joint Venture Credited.

Nothing in this Agreement shall be construed to make Licensee and Programmer partners or joint venturers or to afford any rights to any third party other than as expressly provided herein.

24. Assignment.

Licensee may not assign this Agreement without the prior approval of Programmer. Programmer may freely assign this Agreement without Licensee's approval.


25. Certification.

(a) Licensee hereby certifies that it maintains ultimate control over the Station's facilities, including specifically control over the Station's finances, personnel and programming.

(b) Programmer hereby certifies that this Agreement complies with the provisions of paragraphs (a)(1) and (e)(1) of Section 73.3555 of the Commission's rules.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

DUHAMEL BROADCASTING ENTERPRISES

By: 
William F. Duhamel
Title: President

STEVEN E. DUFFY


By: 
Steven E. Duffy
An Individual

EXHIBIT A

PROGRAMMING

Subject to all other provisions of this Agreement, Programmer will have the right to broadcast on the Station up to TWENTY-FOUR (24) hours of programming each day during the term of this Agreement. Licensee reserves TWO (2) hours of Station time for its own use at a mutually agreeable time on Sunday morning.

EXHIBIT B

COMPENSATION PAYMENT SCHEDULE

During the term of the Agreement, Programmer shall pay to Licensee in cash or by check in advance on the first business day of each month, a fee in the amount of [REDACTED] per month; provided, however, the monthly compensation may be adjusted periodically as mutually agreed upon by Programmer and Licensee.

