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April 25, 2003

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**By Messenger**

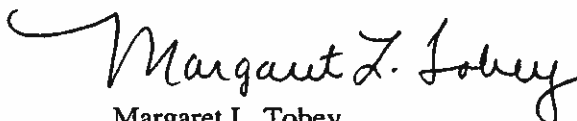
Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
TW-A325  
445 12th Street, S.W.  
Washington, DC 20554

Re: Station WTMU-LP, Boston, MA  
Facility ID No. 64996  
Station WNEU(TV), Merrimack, NH  
Facility ID No. 51864

Dear Ms. Dortch:

Transmitted herewith for filing on behalf of ZGS Boston, Inc., licensee of Station WTMU-LP, Boston, MA, and NBC Subsidiary (NH), Inc., licensee of Station WNEU(TV), Merrimack, NH, pursuant to 47 C.F. R. § 73.3613(d) of the Commission's Rules, is a Joint Sales and Time Brokerage Agreement executed by the parties on March 27, 2003. Confidential information has been redacted as authorized by Section 73.3613(d) but will be made available to the Commission upon request.

Very truly yours,

  
Margaret L. Tobey

cc: Peter Housman, Esq.  
(ZGS Boston, Inc.)

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JOINT SALES AND TIME BROKERAGE AGREEMENT

BY AND BETWEEN

NBC SUBSIDIARY (NH), INC. AND

ZGS BOSTON, INC. FOR

TELEVISION STATION WNEU, MERRIMACK, NEW HAMPSHIRE

AND

AMENDMENT TO AFFILIATION AND REPRESENTATION AGREEMENT

BY AND BETWEEN

TELEMUNDO NETWORK GROUP LLC

AND

ZGS BOSTON, INC.

March 27, 2003

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**JOINT SALES AND TIME BROKERAGE AGREEMENT AND AMENDMENT  
TO NETWORK AFFILIATION AND REPRESENTATION AGREEMENT**

**THIS JOINT SALES AND TIME BROKERAGE AGREEMENT AND AMENDMENT TO NETWORK AFFILIATION AND REPRESENTATION AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_ 2003, by and between NBC Subsidiary (NH), Inc. (the "Licensee"), ZGS Boston, Inc. ("ZGS") and, for purposes of Section 8.4(a), Telemundo Network Group, LLC.

**WHEREAS**, Licensee is the licensee of full-power television station WNEU, Merrimack, New Hampshire, ("WNEU");

**WHEREAS**, ZGS is the licensee of low-power television station WTMU-LP, Boston, Massachusetts ("WTMU"), and an affiliate of the Telemundo Network (the "Network") pursuant to an affiliation agreement dated as of March 1, 2001 ("Affiliation Agreement");

**WHEREAS**, Licensee and ZGS desire to jointly market and sell advertising time on WNEU and WTMU;

**WHEREAS**, Licensee desires to retain ZGS to provide programming for WNEU pursuant to the provisions hereof and the applicable rules and policies of the Federal Communications Commission ("FCC"); and

**WHEREAS**, ZGS desires to use WNEU's broadcast time for the presentation of programming.

**NOW, THEREFORE**, in consideration of the above recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**SECTION 1. PROVISION OF PROGRAMMING**

1.1. Lease of Station Air Time; ZGS Programming. Subject to Licensee's ultimate supervision and control and in consideration of the payment by ZGS to Licensee of the Fee (as hereinafter defined), ZGS shall be entitled to procure at its own expense and broadcast on WNEU programming of its own selection complete with commercial matter, news, public service announcements and other programming (the "ZGS Programming") during the following hours each week: 12:30 a.m. to 6:00 a.m. Tuesday through Saturday; 2:00 a.m. to 7:00 a.m. Sunday and Monday; and 10:00 a.m. to 12 noon Saturday and Sunday or, alternatively, those time periods specified by the Telemundo Network for use by its affiliates ("ZGS Hours"). ZGS shall deliver the ZGS Programming to WNEU's transmitter facilities as provided in Section 5.6(a). The ZGS Programming shall comply with the Communications Act of 1934, as amended (the "Act"), and the rules, regulations and written policies of the FCC (the "FCC Rules"). All

advertising spots and promotional material or announcements shall comply with applicable federal, state and local regulations and written policies.

1.2. Licensee's Programming. Licensee retains the right to broadcast programming of its own selection outside the ZGS Hours. It is currently anticipated that Licensee will broadcast the programming of the Telemundo Network outside the ZGS Hours. Licensee may broadcast programming of its own selection without any adjustment of the Fee, *provided, however*, that if Licensee wishes to broadcast programming of its own selection during 12:30 a.m. to 1:30 a.m. Tuesday through Saturday, it shall, subject to Section 1.3 hereof, give thirty (30) days notice to ZGS.

1.3. Licensee Control of Programming. ZGS acknowledges that Licensee retains ultimate authority over WNEU's programming. Licensee may, without financial penalty, preempt or delete any ZGS Programming which Licensee determines in its sole discretion is unsatisfactory, unsuitable or contrary to the public interest or to substitute programming which, in Licensee's opinion, is of greater local or national importance.

1.4. Licensee Review of Programming. Prior to the broadcast of ZGS Programming under this Agreement, ZGS shall acquaint Licensee with the nature and type of the programming to be provided. Licensee shall be entitled to review at its discretion from time to time prior to its broadcast any ZGS Programming. ZGS shall promptly provide Licensee with copies of all correspondence and complaints received from the public (including any telephone logs of complaints called in), and copies of all program logs and promotional materials. ZGS shall give Licensee at least seventy-two (72) hours notice of material changes in the ZGS Programming supplied to Licensee.

1.5. Conflict with Affiliation Agreement. In the event that any provision of this Section 1 conflicts or is inconsistent with any provision of the Affiliation Agreement, the provisions of this Agreement shall govern.

## **SECTION 2. MARKETING PLAN AND SALES OF ADVERTISING TIME**

2.1. Marketing Plan. ZGS shall promote WNEU and sell advertising time on WNEU and WTMU in accordance with the Marketing Plan set forth in Attachment I hereto. ZGS and Licensee shall retain revenues received, and pay expenses incurred, from the operation of WNEU and WTMU in accordance with Section 4 hereof.

2.2. Children's Television Advertising. ZGS shall not broadcast advertising within programs originally designed for children aged 12 years and under in excess of the amounts permitted under the FCC Rules.

2.3. Political Advertising. ZGS shall cooperate with Licensee to assist Licensee in complying with all rules of the FCC regarding political broadcasting. ZGS shall promptly supply to Licensee such information, including all inquiries concerning the broadcast of political advertising, as may be necessary to comply with FCC rules and policies, including the lowest unit rate, equal opportunities, reasonable access, political file and related requirements of federal law.

2.4. Payola. ZGS shall not 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 ZGS and merchants or advertisers, unless the payer is identified in the program for which such Consideration was provided as having paid for or furnished such Consideration, in accordance with the Act and the FCC Rules. ZGS shall annually, or more frequently at the request of Licensee, execute and provide Licensee with a Payola Affidavit from each of its employees involved with ZGS Programming or other programming aired on WNEU substantially in the form attached hereto as Attachment II.

### SECTION 3. TERM; OPTION TO RENEW

3.1. Effective Date; Initial Term. The effective date of this Agreement shall be April 7, 2003. This Agreement shall continue in force for an initial term of one (1) year unless terminated as set forth in Section 8 hereof (the "Initial Term").

3.2. Option to Renew. Subject to the termination provisions of Section 8 hereof, this Agreement may be renewed for additional terms, and upon such terms and conditions, as mutually agreed upon by the parties.

### SECTION 4. CONSIDERATION AND EXPENSES

4.1. Time Brokerage Consideration. As consideration for the air time on WNEU made available hereunder, ZGS shall pay Licensee a fee (the "Fee") of \_\_\_\_\_ for each month during the term hereof, subject to pro-ration for each partial month, due and payable by the fifth (5<sup>th</sup>) day of each month.

4.2. Split of Station Revenues. For each month during the term hereof and any renewal term, subject to pro-ration for each partial month, all revenues, net of actual commission and sales representation fees paid to agencies, advertisers and national sales representatives, derived from the sale of time on WNEU and WTMU, including, but not limited to advertising, paid programming and other time sales ("Net Revenues"), shall be distributed as follows: (a) ZGS shall retain 100 percent of the Net Revenues up to \_\_\_\_\_ (the "ZGS Share"), calculated by (i) deducting from a base amount of \_\_\_\_\_ the Telemundo network compensation paid to ZGS in the amount of \_\_\_\_\_ and (ii) adding the \_\_\_\_\_ Fee; and (b) any Net Revenues in excess of the ZGS Share shall be split equally between ZGS and Licensee.

4.3. Payment Method. Within ten (10) business days of the last calendar day of each month, ZGS shall provide to Licensee an accounting of the Net Revenues for the prior month. Such accounting shall include a statement of the gross revenues and the commissions deducted therefrom to determine the Net Revenues. If the Net Revenues exceed the ZGS Share, ZGS shall deliver a check equaling one-half the

amount by which the Net Revenues exceed the ZGS Share to Licensee at the address designated for notices within thirty (30) days of the close of the month. Licensee shall have the right to audit ZGS's accounting of the Net Revenues for any month, and any disputes over such accounting shall be subject to the arbitration procedures set forth herein. Revenue included in the Net Revenues which remains uncollected for more than ninety (90) days will be deleted from Net Revenues in a subsequent month. If such deleted revenue is subsequently collected, it will be included in Net Revenues in the month in which it is collected.

4.4. Payment of Individual Expenses. Licensee and ZGS each shall be solely responsible for the expenses incurred in operating their respective stations, including salaries and benefits for personnel employed by each respective party; lease payments; utilities; Taxes; programming expenses for programming supplied by each party to its respective station; ASCAP, BMI, SESAC, and any other music license fees for their respective stations; and insurance covering the transmission and studio facilities of the parties' respective stations (the "Individual Expenses"). In addition to the Individual Expenses attributable to WTMU, ZGS shall be solely responsible for payment of: (i) all expenses incurred in the procurement of the ZGS Programming; (ii) all ZGS Program Distribution Costs (as defined in Section 5.6); (iii) the commissions and sales representation fees due on any advertising carried on either WTMU or WNEU; and (iv) insurance identified in Section 9.1 hereof.

## **SECTION 5. LICENSEE CONTROL; STATION OPERATIONS**

5.1. Licensee Control. Licensee will retain ultimate control over the management and operations of WNEU during the term of this Agreement and during any renewal of such term and shall have full and exclusive control over all elections, negotiations and agreements with respect to the carriage of WNEU by any multichannel video programming distributors.

5.2. Required Announcements. Licensee shall coordinate with ZGS WNEU's hourly station identification and any other announcements required to be aired by the FCC Rules.

5.3. Licensee Main Studio, Assets and Staffing Obligations. Licensee shall maintain a main studio in compliance with the FCC Rules and written policies and shall employ at the main studio management level employees consisting of a Station Manager and such other personnel as Licensee determines may be required by the FCC Rules who will direct the day-to-day operations of WNEU and who will report to and be accountable to Licensee.

5.4. Licensee Public File Obligations. Licensee shall maintain its local public inspection file in accordance with the FCC Rules and shall prepare and place in such inspection file in a timely manner all material required by Section 73.3526 of the FCC Rules, including without limitation WNEU's quarterly issues and program lists, information concerning the broadcast of children's educational and informational programming and documentation of compliance with commercial limits applicable to

certain children's television programming. ZGS shall provide Licensee with such information concerning the ZGS Programming and advertising as is necessary to assist Licensee in the preparation of such information.

5.5. Legal Challenge. If this Agreement is challenged at the FCC, Licensee and ZGS shall jointly defend the Agreement and the parties' performance thereunder, with the expenses incurred thereby borne equally by Licensee and ZGS. If the FCC determines that all or any portion of this Agreement is inconsistent with or contrary to the FCC Rules or if subsequent legislative or regulatory action alters the permissibility of this Agreement under the FCC Rules, the parties hereto shall take such commercially reasonable actions, including reforming the Agreement to conform to the FCC Rules or, upon mutual agreement (with the expenses therefor to be borne equally by Licensee and ZGS), seek reversal of the FCC's decision through further review by the FCC or a court of law.

5.6. Station Operations.

(a) Subject to Section 5.6(b), ZGS may elect to deliver the ZGS Programming to WNEU's transmitter facilities by either (i) utilizing the master control of WTMU and delivering the signal directly to WNEU's transmitter facilities, in which case ZGS will be responsible for the cost of delivering the signal to the transmitter facilities; or (ii) utilizing the master control and related equipment of WNEU, in which case Licensee shall be responsible for the cost of maintaining WNEU's current microwave link to the transmitter facilities. In the event ZGS elects to deliver the programming from WTMU's master control directly to WNEU's transmitter facilities, ZGS shall, in cooperation with Licensee's engineer, install and license at its expense and in compliance with the FCC Rules a studio-to-transmitter link between WTMU's main studio and WNEU's transmitter site to enable ZGS to insert commercial matter and other programming into the WNEU signal through WTMU's master control facilities in accordance with this Agreement. The costs to be borne by ZGS pursuant to this Section 5.6(a) are referred to herein as "ZGS Program Distribution Costs." Except in the case of events of force majeure or required maintenance, and in addition to any other remedies provided hereunder, Licensee shall have the right to terminate this Agreement with no further liability to ZGS in the event that WNEU's broadcast transmission is interrupted for a period of twelve (12) consecutive hours or an aggregate of twenty-four (24) hours in any thirty (30) day period as a result of any act or failure to act by ZGS.

(b) In the event ZGS elects to deliver the ZGS Programming to WNEU as set forth in Section 5.6(a)(ii), ZGS shall have a non-exclusive license, limited to the term of this Agreement, to enter into the WNEU studio and transmitter facilities and to use the equipment located therein for the purpose of providing such ZGS Programming and, with the prior written approval of Licensee, for other purposes related to this Agreement. ZGS shall abide by Licensee's security requirements and procedures and shall not (i) cause, maintain or permit any nuisance or violation of applicable laws, regulations or ordinances with respect to the WNEU studio and transmitter facilities; (ii) bring into or store in the WNEU studio and transmitter facilities any dangerous, hazardous or toxic materials; and (iii) make any additions or alterations to the WNEU

studio and transmitter facilities unless approved in advance and in writing by Licensee. ZGS assumes all risk of loss or destruction of or damage to any of its equipment or other property (whether owned by ZGS or a third party) brought by it into the WNEU studio and transmitter facilities. Notwithstanding anything to the contrary contained in this Agreement, neither Licensee nor any of its affiliates shall be liable to ZGS, its officers, directors, employees, agents or contractors for any injury, loss or damage to any person or property in or about the WNEU studio and transmitter facilities by or from any cause whatsoever, and ZGS shall indemnify, defend and hold Licensee and its affiliates, employees and agents harmless from and against any and all loss, cost, expense, liability, damage, cause of action or claim (including, without limitation, attorneys' fees incurred in connection therewith) arising out of or resulting from ZGS's exercise of the non-exclusive license provided by this Section 5.6(b), including, but not limited to, damage to any of Licensee's equipment or property and injury to any person who enters into the studio or transmitter facilities by reason of this non-exclusive license. The indemnity provided for in this Section 5.6(b) shall not be subject to the ZGS Basket and shall survive the termination of this Agreement.

(c) Licensee shall operate and maintain in good working condition WNEU's transmission facility and broadcasting equipment and, subject to events of force majeure, shall maintain the operating power of WNEU at its maximum authorized level.

## **SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **6.1. Licensee Representations, Warranties and Covenants.**

(a) Licensee represents that it is legally qualified, empowered and able to enter into this Agreement and that the execution, delivery, and performance hereof shall not constitute a breach or violation of any material agreement, contract or other obligation to which it is subject or by which it is bound.

(b) Licensee shall not take any action or omit to take any action that would have a materially adverse impact upon WNEU or upon either party's ability to perform this Agreement.

(c) Licensee validly holds and will validly hold all licenses and other permits and authorizations necessary for the operation of WNEU, and such licenses, permits and authorizations are and will be in full force and effect throughout the term of this Agreement.

(d) There is not now pending, or to the knowledge of Licensee threatened, any action by the FCC or by any other party to revoke, cancel, suspend, refuse to renew or modify adversely any of such licenses, permits or authorizations.

(e) Licensee is not in material violation of any statute, ordinance, rule, regulation, policy, order or decree of any federal, state or local entity, court or authority having jurisdiction over it or WNEU, that would have a materially adverse effect upon Licensee, WNEU, or Licensee's ability to perform this Agreement.



(f) All reports and applications required to be filed with the FCC or any other governmental body have been, and during the course of the term of this Agreement or any renewal thereof, will be filed in a timely and complete manner.

## 6.2. ZGS Representations, Warranties and Covenants.

(a) ZGS represents that it is legally qualified, empowered and able to enter into this Agreement and that the execution, delivery, and performance hereof shall not constitute a breach or violation of any material agreement, contract or other obligation to which it is subject or by which it is bound.

(b) ZGS shall not take any action or omit to take any action that would have a materially adverse impact upon WTMU, WNEU or either party's ability to perform this Agreement. Licensee agrees that this Section 6.2(b) shall not prohibit ZGS from attempting to sell WTMU after Licensee has given notice of its intent to terminate this Agreement and the Affiliation Agreement as provided in Section 8 hereof or if Licensee enters into an agreement to sell WNEU to a third party.

(c) ZGS validly holds and will validly hold all licenses and other permits and authorizations necessary for the operation of WTMU, and such licenses, permits and authorizations are and will be in full force and effect throughout the term of this Agreement.

(d) There is not now pending, or to the knowledge of ZGS threatened, any action by the FCC or by any other party to revoke, cancel, suspend, refuse to renew or modify adversely any of such licenses, permits or authorizations.

(e) ZGS is not in material violation of any statute, ordinance, rule, regulation, policy, order or decree of any federal, state or local entity, court or authority having jurisdiction over it or WTMU, that would have a materially adverse effect upon ZGS, WTMU, WNEU or ZGS's ability to perform this Agreement.

(f) All reports and applications required to be filed with the FCC or any other governmental body have been, and during the course of the term of this Agreement or any renewal thereof, will be filed in a timely and complete manner.

## SECTION 7. INDEMNIFICATION

7.1. ZGS's Indemnification. ZGS shall indemnify and hold harmless Licensee and its officers, directors, employees and agents from and against any and all claims, losses, costs, liabilities, damages, FCC forfeitures and expenses (including reasonable legal fees and other expenses incidental thereto) of every kind, nature and description (collectively, "Damages") to the extent arising out of or resulting from (a) ZGS's breach of any representation, warranty, covenant or agreement contained in this Agreement or (b) any action taken by ZGS or its employees or agents with respect to WNEU, or any failure by ZGS or its employees or agents to take any action with respect to WNEU, including, without limitation, Damages relating to violations of the Act or any of the FCC Rules, slander, defamation, copyright infringement, idea misappropriation,

invasion of right of privacy or publicity or any other claims relating to the ZGS Programming and ZGS's sale and broadcast of advertising time on WNEU, *provided, however*, that ZGS shall not be required to indemnify Licensee under the foregoing Section 7.1(b) for any claims arising under programming provided by the Telemundo Network.

7.2. Licensee's Indemnification. Licensee shall indemnify and hold harmless ZGS and its officers, directors, employees and agents from and against any and all Damages to the extent arising out of or resulting from Licensee's breach of any representation, warranty, covenant or agreement contained in this Agreement.

7.3. Limitations on Indemnification.

(a) Notwithstanding anything herein to the contrary except as provided in Section 5.6(b), ZGS shall not be obligated to indemnify Licensee under this Section 7 unless the aggregate of all of Licensee's Damages exceeds ("ZGS Basket"), in which case Licensee shall be entitled to recover all of Licensee's Damages above that amount, *provided, however*, that the ZGS Basket shall not apply to any ZGS indemnification obligation arising out of, relating to or resulting from fraud or intentional misrepresentation by ZGS.

(b) Notwithstanding anything herein to the contrary, Licensee shall not be obligated to indemnify ZGS under this Section 7 unless the aggregate of all of ZGS's Damages exceeds ("Licensee Basket"), in which case ZGS shall be entitled to recover all of ZGS's Damages above that amount, *provided, however*, that the Licensee Basket shall not apply to any Licensee indemnification obligation arising out of, relating to or resulting from fraud or intentional misrepresentation by Licensee.

7.4. Procedures for Indemnification. The procedures for indemnification under this Agreement shall be as follows:

(a) The party claiming indemnification (the "Claimant") shall promptly give notice to the party from which indemnification is claimed (the "Indemnifying Party") of any claim for which indemnification is sought by Claimant under this Agreement, whether between the parties or brought by a third party, specifying in reasonable detail the factual basis for the claim. If the claim relates to an action, suit, or proceeding filed by a third party against Claimant, such notice shall be given by Claimant to Indemnifying Party within five (5) business days after written notice of such action, suit, or proceeding was received by Claimant. Claimant's failure to notify Indemnifying Party of a claim within the period specified in this Section 7.4(a) shall not relieve Indemnifying Party of any indemnification obligation under this Agreement, except to the extent that Indemnifying Party is materially prejudiced by such failure.

(b) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty days to make such investigation of the claim as the Indemnifying Party deems necessary

or desirable. For the purposes of such investigation, the Claimant agrees to make available to the Indemnifying Party and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of the thirty-day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim. If the Claimant and the Indemnifying Party do not agree within the thirty-day period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate remedy in accordance with the terms of this Agreement.

(c) With respect to any claim by a third party as to which the Claimant is entitled to indemnification under this Agreement, the Indemnifying Party shall have the right at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate fully in the defense of such claim at its own expense. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any third party claim, it shall be bound by the results obtained by the Claimant with respect to such claim. Notwithstanding anything herein to the contrary, the Indemnifying Party shall not effect any settlement relating to any claim under the indemnification of this Agreement that seeks in whole or in part any non-monetary relief or that could adversely affect the Claimant without the prior written consent of the Claimant.

7.5. Survival. This Section 7 shall survive the termination of this Agreement.

## **SECTION 8. TERMINATION AND REMEDIES UPON DEFAULT**

8.1. Termination by Either Party. In addition to other remedies available at law or equity, either Licensee or ZGS may terminate this Agreement, in whole or in part, upon written notice to the other party if the party seeking to terminate is not then in material default or breach hereof, upon the occurrence of any of the following:

(a) Subject to the provisions of Section 5.5 hereof, this Agreement is declared invalid or illegal in whole or substantial part by an order or decree of an 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;

(b) 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 (other than with respect to any payment obligation for which the cure period shall be fifteen (15) days);

(c) The mutual consent of the parties, which consent may be withheld in the sole discretion of each such party; or

(d) Subject to the provisions of Section 5.5 hereof, there has been a material change in FCC Rules, policies or precedent that would cause this Agreement to be in violation thereof, and such change is in effect and not the subject of an appeal or further administrative review, and this Agreement cannot be reformed, in a manner acceptable to Licensee and ZGS, to remove or eliminate the violation.

8.2. Termination by Licensee. Licensee may terminate this Agreement for any reason upon sixty (60) days prior written notice to ZGS.

8.3. Termination by ZGS. ZGS may terminate this Agreement for any reason upon one hundred eighty (180) days prior written notice to Licensee, *provided, however,* that if Licensee enters into an agreement to sell WNEU to a third party, ZGS shall be permitted to terminate this Agreement upon ninety (90) days prior written notice to Licensee following the release of a public notice by the FCC announcing the acceptance for filing of the assignment or transfer application with respect to such sale.

8.4. Effect of Termination.

(a) The termination provision set forth in Section 8.2 hereof shall replace in their entirety the termination provisions set forth in Section 8(b)(ii)-(iv) and (iv) of the Affiliation Agreement. Notwithstanding any provision to the contrary in this Agreement or the Affiliation Agreement, termination of the Affiliation Agreement in accordance with its terms, as amended hereby, shall result in termination of this Agreement, and termination of this Agreement in accordance with its terms shall result in termination of the Affiliation Agreement. All other provisions of the Affiliation Agreement shall remain in full force and effect.

(b) During any period prior to the effective date of any termination of this Agreement, ZGS and Licensee agree to cooperate in good faith to ensure that WNEU's operations will continue, to the extent possible, in accordance with the terms of this Agreement and that the termination of this Agreement is effected in a manner that will minimize, to the extent possible, any disruption of WNEU's ongoing operations.

(c) Within forty-five (45) days of the termination or expiration of this Agreement, the parties shall prepare a final accounting relating to the activities covered by this Agreement. All revenue (including accounts receivable) generated and expenses incurred pursuant to this Agreement shall be prorated through and including the date of termination of this Agreement. Appropriate payments shall be made by the parties to effectuate this accounting. Any disputes between the parties concerning such payments shall be subject to arbitration as set forth in Section 10.11.

8.5. Force Majeure. Any failure or impairment of WNEU's facilities or any delay or interruption in the broadcast of programs or failure at any time to furnish facilities, in whole or in part, for broadcast, due to Acts of God, acts of war or terrorism, civil riot, floods and any other cause not reasonably within the control of Licensee, or for power reductions necessitated for maintenance of WNEU or for maintenance of other

stations located on the tower from which WNEU will be broadcasting, shall not constitute a breach of this Agreement.

8.6. Remedies Cumulative. Except as otherwise set forth herein, the remedies provided for in this Agreement shall be cumulative and shall not preclude any party from asserting any other right, or seeking any other remedies, against the other party.

## SECTION 9. CONDUCT OF PARTIES

9.1. Insurance. ZGS shall maintain (a) adequate errors and omissions insurance to cover the programming it airs pursuant to this Agreement with Licensee named as an additional insured and (b) in the event ZGS elects to deliver the ZGS Programming to WNEU as set forth in Section 5.6(a)(ii), commercial general liability insurance and workers' compensation insurance in amounts satisfactory to Licensee, as evidenced by a certificate of insurance with Licensee named as an additional insured.

9.2. Operation. ZGS shall use commercially reasonable efforts to preserve and promote the business of WNEU and shall comply with all laws, rules and regulations applicable or relating to ZGS, including, without limitation, the Act and the FCC Rules.

9.3. Termination of Affiliate Relationship. Within thirty (30) days of execution of this Agreement, and upon request by either party, the parties shall, within thirty (30) days of such request, enter into good faith discussions concerning the unwinding of their operations in the Boston Designated Market Area, *provided, however,* that nothing contained in the preceding sentence or any other provision of this Agreement, the Affiliation Agreement or any other agreements or understandings between the parties obligates Licensee or any of its affiliates to provide any consideration, compensation or other accommodation in connection with the termination of such Affiliation Agreement.

## SECTION 10. MISCELLANEOUS

10.1. Assignment; Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party shall assign or transfer its rights, interests, or obligations hereunder without the prior written consent of the other party, which consent may be reasonably withheld, *provided, however,* that either Licensee or ZGS may assign this Agreement to an affiliate upon notice to the other party. For purposes of this Agreement, an affiliate is a party controlling, controlled by or under common control with ZGS or Licensee as the case may be.

10.2. Other Agreements. Neither party shall enter into any other agreement with any third party that would conflict with or result in a material breach of this Agreement by that party.

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

10.4. Entire Agreement. This Agreement and the Attachments hereto embody the entire agreement and understanding of the parties relating to the subject matter hereof. 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 parties.

10.5. Taxes. Each party shall pay the Taxes levied or assessed against such party. Without limiting the foregoing, ZGS shall pay all Taxes, if any, to which the consideration specified in Section 4.1 herein is subject, *provided* that Licensee shall be responsible for payment of its own income taxes. For purposes of this Agreement, the term "Taxes" means all federal, state, local, foreign and other taxes, franchise, including income, estimated income, gross receipts, employment, license, payroll, excise, stamp, social security, unemployment, real property, personal property, sales, use, transfer and withholding taxes, including interest, penalties and additions in connection therewith, whether disputed or not.

10.6. Headings. The headings in this Agreement are for convenience only and shall not control or affect the meaning or construction of the provisions of this Agreement.

10.7. Governing Law; Jurisdiction and Venue. The obligations of Licensee and ZGS are subject to applicable federal, state and local law, rules and regulations, including, but not limited to, the Act and the FCC Rules. The construction and performance of this Agreement shall be governed by the laws of the State of New York. The parties hereby submit to the exclusive jurisdiction of the state and federal courts located in the County of New York, State of New York.

10.8. Notices. All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) sent by telecopy (if confirmation of receipt is obtained), delivered by personal delivery, or sent by commercial delivery service or certified mail, return receipt requested, (iii) deemed to have been given on the date telecopied with receipt confirmed, the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt, and (iv) addressed as follows:

To ZGS:

Ronald J. Gordon  
President  
ZGS Broadcast  
Holdings, Inc.  
2000 N. 14<sup>th</sup> Street  
Suite 400

Facsimile: 703-526-0879  
Telephone: 703-528-5656

Arlington, VA 22201

With a copy to:

Peter Housman  
2203 Alhambra Circle  
Coral Gables, FL  
33134

Facsimile: 305-442-4529  
Telephone: 305-445-7795

To Licensee:

Michael Steib  
NBC Business  
Development  
30 Rockefeller Plaza  
New York, NY 10112

Facsimile: 212-664-7070  
Telephone: 212-664-3188

With a copy to:

NBC Legal Department  
30 Rockefeller Plaza  
New York, NY 10112  
Attn: Vice President,  
Corporate &  
Transactions Law

Facsimile: 212-664-2147  
Telephone: 212-664-4444

and

Alan Sokol  
Telemundo Network  
Group, LLC  
2290 W 8th Avenue  
Hialeah, FL 33010

Facsimile: 305-889-7953

or to any such other or additional persons and addresses as the parties hereto may from time to time designate in a writing delivered in accordance with this Section 10.8.

10.9. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law. In the event the FCC alters or modifies its rules or policies in a manner that would raise substantial and material question as to the validity of any provision of this Agreement, the parties hereto shall negotiate in good faith to revise any such provision of this Agreement with a view toward assuring compliance with all then

existing FCC rules and written policies that may be applicable, while attempting to preserve, as closely as possible, the intent of the parties as embodied in the provision of this Agreement that is to be so modified.

10.10. No Joint Venture. Nothing in this Agreement shall be deemed to create a joint venture between the Licensee and ZGS.

10.11. Arbitration of Disputes. This section concerns the resolution of any controversies or claims between or among the parties hereto arising under this Agreement or any renewals, extensions or modifications thereof. At the request of any party to this Agreement, any such controversies or claims shall be settled by arbitration in New York City in accordance with the laws of the State of New York for agreements made in and to be performed in that State and with the provisions of this Section 10.11. This section does not limit the right of either party to: (i) exercise any self-help remedies provided for herein; or (ii) file an action in a court of law, before, during, or after the arbitration proceeding to obtain a provisional or interim remedy, and/or any ancillary, additional or supplementary remedy.

(a) Appointment of Arbitrator. Any controversy between the parties regarding the construction or application of this Agreement, and any claim arising out of this Agreement or its breach, shall be submitted to confidential arbitration before a single arbitrator upon the written request of one party after service of that request on the other party. The parties shall jointly agree on the appointment of a single arbitrator, *provided, however,* that in the event they are unable to agree on the appointment of a single arbitrator, either party may petition the Supreme Court of the State of New York to appoint the arbitrator.

(b) Application of JAMS Arbitration Rules. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Notwithstanding the foregoing, neither party will be entitled to full discovery pursuant to the Federal Rules of Evidence. For purposes of the application of the statute of limitations, the filing of an arbitration pursuant to this paragraph is the equivalent of the filing of a lawsuit, and any claim or controversy which may be arbitrated under this paragraph is subject to any applicable statute of limitations. The arbitrator(s) will have the authority to decide whether any such claim or controversy is barred by the statute of limitations, and, if so, to dismiss the arbitration on that basis. If there is a dispute as to whether an issue is arbitrable, the arbitrator(s) will have the authority to resolve such dispute.

(c) Enforcement. The decision that results from an arbitration proceeding may be submitted to any authorized court of law to be confirmed and enforced. The judgment upon award of the arbitrators shall be final and binding and may be enforced in any court of competent jurisdiction, and each of the parties hereto unconditionally submits to the jurisdiction of such court for the purpose of any Proceeding seeking such enforcement. Subject to the provisions of applicable law, the procedure described in this Section 10.11 shall be the exclusive means of resolving disputes arising under this Agreement and all other agreements to be executed in accordance herewith.



(d) No Waiver. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the suing party, to submit the controversy or claim to arbitration or reference if the other party contests the lawsuit.

10.12. Specific Performance. In the event that any party is in material breach of this Agreement, any nonbreaching party in addition to any other remedies available to such nonbreaching party, may seek specific performance of those aspects of the Agreement that are capable of being specifically performed under FCC Rules as well as damages attributable to such breach.

[The next page is the signature page]

**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized officers to execute this Agreement as of the day and year first above written.

NBC SUBSIDIARY (NH), INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TELEMUNDO NETWORK GROUP, LLC  
(for purposes of Section 8.4(a) only)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ZGS BOSTON, INC.:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## DEFINITIONS

- “Act” has the meaning set forth in Section 1.1 hereto.
- “Affiliation Agreement” has the meaning set forth in the recitals hereto.
- “Claimant” has the meaning set forth in Section 7.4(a) hereof.
- “Consideration” has the meaning set forth in Section 2.4 hereof.
- “Damages” has the meaning set forth in Section 7.1 hereto.
- “FCC” has the meaning set forth in the recitals hereto.
- “FCC Rules” has the meaning set forth in Section 1.1 hereof.
- “Fee” has the meaning set forth in Section 4.1 hereof.
- “Indemnifying Party” has the meaning set forth in Section 7.4(a) hereof.
- “Initial Term” has the meaning set forth in Section 3.1 hereof.
- “Individual Expenses” has the meaning set forth in Section 4.3 hereof.
- “Licensee” has the meaning set forth in the recitals hereof.
- “Licensee Basket” has the meaning set forth in Section 7.3(b) hereof.
- “Net Revenues” has the meaning set forth in Section 4.2 hereof.
- “Network” has the meaning set forth in the recitals hereto.
- “Taxes” has the meaning set forth in Section 10.5 hereof.
- “ZGS” has the meaning set forth in the recitals hereto.
- “ZGS Basket” has the meaning set forth in Section 7.3(a) hereof.
- “ZGS Hours” has the meaning set forth in Section 1.1 hereof.
- “ZGS Program Distribution Costs” has the meaning set forth in Section 5.6 hereof.
- “ZGS Programming” has the meaning set forth in Section 1.1 hereof.
- “ZGS Share” has the meaning set forth in Section 4.2 hereof.

## ATTACHMENT I

### JOINT MARKETING PLAN

ZGS shall budget and expend an average of not less than cash per month over the term of this Agreement in marketing and promoting WNEU and WTMU in accordance with a marketing plan to be developed jointly by the parties and approved by Licensee. With the prior written approval of Licensee, a portion of the cash budget for proposed marketing and promotional activities in a given month may be offset by the actual cash value of advertising time and other promotional undertakings to be obtained during that month by ZGS on a trade and barter basis. Licensee's approval rights shall cover both the proposed promotional activities and the determination of the actual cash value of goods and services received through trade and barter.



- a. The publishing of music;
  - b. The production, distribution (including wholesale and retail sales outlets), manufacture or exploitation of music, films, tapes, recordings or electrical transcriptions of any program material intended for radio broadcast use;
  - c. The exploitation, promotion, or management of persons rendering artistic, production and/or other services in the entertainment field;
  - d. The ownership or operation of one or more radio or television stations;
  - e. The wholesale or retail sale of records intended for public purchase;
  - f. Advertising on Station or any other station owned by its licensee (excluding nominal stockholdings in publicly owned companies).
8. The facts and circumstances relating to such interest are none as follows

\_\_\_\_\_

Affiant

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_/