

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 16 July 2008
SUBJECT: Agreement with Radio Hendersonville, Inc.
ATTACHMENT(S): Agreement

SUMMARY OF REQUEST:

The Board directed the County Attorney to attempt to reach agreement with Radio Hendersonville, Inc., regarding the simulcast of radio station WHKP on HCTV Channel 11, on much the same terms as the previous agreement.

Attached is a proposed agreement. It is substantially similar to the previous agreement, with an additional requirement on the radio station to certify monthly the running of the required disclaimers.

BOARD ACTION REQUESTED:

Consideration of the agreement.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the proposed agreement with Radio Hendersonville, Inc., and execute the agreement.



AGREEMENT

THIS AGREEMENT is made this the _____ day of July, 2008, by and between the Henderson County, North Carolina, a body politic and corporate (“the County”), and Radio Hendersonville, Inc., a North Carolina Corporation (“Radio”).

Facts and Circumstances

1. By virtue of a franchise contract with Mediacom Southeast, L.L.C. (“Mediacom”), the County operates a local government channel on Mediacom’s cable television system in Henderson County, North Carolina. The channel is known as HCTV-11 (“Channel 11”).

2. The County’s operation of Channel 11 includes recorded audiovisual programming, including videotaped broadcasts of meetings of the County’s Board of Commissioners and other bodies associated with the County. However, during other periods, the County’s broadcast on Channel 11 includes only video feed, of writing generated by a character generator, such writing containing general and specific information concerning the County.

3. The County does not presently have the technical equipment to provide complete audiovisual programming on Channel 11 twenty-four hours per day, seven days per week, due to technical limitations on equipment currently owned by the County.

4. During such periods in which the County does not provide audio programming to accompany the video character generator feed, the County desires to provide certain audio content specific to Henderson County, including news, weather, live sports events of particular local interest, and emergency information.

5. Radio is the owner, licensee and operator of the WHKP broadcast radio station (“WHKP”), located in Hendersonville, North Carolina.

6. WHKP broadcasts local news on the following daily schedule: 7:45 a.m.; 11:45 a.m.; 5:05 p.m.; 6:05 p.m.; and, 11:00 p.m.

7. WHKP broadcasts local weather on the following daily schedule: every hour at 20 minutes past the hour and fifty minutes past the hour.

8. WHKP broadcasts weekly live football games (during football season) of high schools located within Henderson County, and other sports events of particular local interest within Henderson County.

9. WHKP has regularly broadcast immediate news during emergent situations occurring within Henderson County.

10. During periods in which the County's broadcasts on Channel 11 includes only video feed, an audio feed of WHKP's broadcast is provided to the County, and has been broadcast by the County (along with the County's video feed created by character generator) on Channel 11.

11. The County and Radio entered into an agreement in July 2006 ("the 2006 agreement"), which agreement continued the arrangement stated above, on certain conditions.

12. The County and Radio wish to continue this arrangement, on the terms specified herein, which are largely those of the 2006 agreement, with certain modifications.

Statement of Agreement

The County and Radio agree as follows:

1. Term of Agreement. Unless otherwise terminated pursuant to the provisions hereof, the term of this agreement shall be for the period from the date hereof stated above and ending 30 June 2010. This agreement may be extended for additional periods of one (1) year at the option of the County. Should the County desire to exercise such option, it shall give notice to Radio not later than the 31st day of May prior to the expiration of the contract term (or any extension(s) thereof).

2. Operation. Radio will provide the County with a broadcast quality feed of WHKP audio during all hours WHKP broadcasts its signal. A "broadcast quality feed" shall mean a signal quality of at least the same quality as that currently provided by Radio to the County. The County shall be free to use the WHKP audio feed during any time in which audio programming does not otherwise accompany the video programming provided by the County on Channel 11. It is the intent of the County, recognized by Radio, to increase the amount of audiovisual programming on Channel 11 up to and including full-time programming, but there is not currently a timetable for when the same will be accomplished.

3. Payment. Neither the County nor Radio shall owe the other any payment or royalty because of the broadcast of WHKP audio feed over Channel 11, subject to the provisions hereof relating to indemnification.

4. Indemnification. Radio agrees and shall indemnify and hold harmless the County, and its elected officials, agents and employees, against any and all payments, losses, liabilities, damages, claims, and expenses (including without limitation, attorney's fees and expenses incurred in good faith) and costs whatsoever, from all sources whatsoever as a result of or on account of the broadcast of the WHKP audio feed over Channel 11 (including the past broadcast of such feed). Radio further agrees to pay all the costs of the defense of the County and its elected officials, agents and employees (including reasonable attorneys' fees) as a result of any such claims, or suits to enforce such claims.

5. Disclaimers. Radio shall insure that a disclaimer, notifying all listeners that "(1) the content of such programming does not necessarily contain the opinion of and is not either endorsed or disapproved by Henderson County government, its elected officials or employees, and (2) Radio, and not the County, has control over what programming is broadcast on WHKP", is broadcast immediately prior to and following any uninterrupted block of religious or political programming carried by WHKP.

Henderson County/Radio Hendersonville, Inc. Agreement

6. Certification of broadcast of disclaimers. At least once each month in which this agreement in effect, Radio shall provide to the County a certification that all disclaimers required by 5., above, have been in fact broadcast.

7. Editing of certain content. Paid political programs (as defined in this paragraph) broadcast on WHKP shall not be broadcast over Channel 11. Radio shall take whatever steps are necessary to insure that its feed to the County does not include any paid political programs. As used in this paragraph, "paid political programs" means program or other broadcasts containing political content for which compensation is paid, directly or indirectly, to WHKP or Radio, or any owner, agent or employee thereof, including, but not limited to, commercials and long-form programs.

8. Equal Opportunity. Radio shall insure that WHKP operates in compliance with all "equal opportunity" or "equal time" provisions required by Federal law.

9. The County's Policies for Channel 11. Radio shall insure that WHKP at all times operates in compliance with the County's applicable policies and procedures for broadcasting on Channel 11, or takes whatever steps are necessary to insure that its feed to the County does not include any programming not in compliance with the policies and procedures.

10. Without in any way waiving any other rights which the County may have hereunder, violations of the terms and provisions of the Agreement by the provider of the audio-only programming shall result in the immediate termination of the usage of all audio-only programming supplied by Radio.

11. Radio shall have the right to terminate this agreement upon thirty (30) days notice to the County.

12. The indemnification provided to the County by Radio under this Agreement shall survive any termination of this agreement, whether by expiration of term, voluntary termination by Radio, or termination for cause under agreement paragraph 10, above.

Agreed to the date stated above, and executed in two or more counterparts the dates shown below.

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Henderson County/Radio Hendersonville, Inc. Agreement

RADIO HENDERSONVILLE, INC.

Date:_____

By:_____
President

Attest:

Secretary

HENDERSON COUNTY BOARD OF COMMISSIONERS

Date:_____

By:_____
Chairman

Attest:

Secretary to the Board