

IN THE COURT OF COMMON PLEAS

STARK COUNTY, OHIO

2012CV00617

PATRICK DELUCA
840 Fairway Drive
Alliance, Ohio 44601,

and

CHARLOTTE DIFRANCO
305 Woodmoor Street
Louisville, Ohio 44641,

Plaintiffs,

v.

D.A. PETERSON, INC.
dba WDJQ/WDPN Radio
393 Smyth Avenue, N.E.
Alliance, Ohio 44601,

Defendant.

Case No.:

Judge:

BROWN

COMPLAINT FOR
DECLARATORY JUDGMENT AND
BREACH OF CONTRACT

2012 FEB 23 PM 2:50

CLERK OF COURT
STARK COUNTY, OHIO

First Claim: Declaratory Judgment

1. At all times complained of, the defendant D.A. Peterson, Inc., was a corporation organized under the laws of the State of Ohio, doing business in the State of Ohio, and specifically carrying on the business of the operation, promotion and marketing of commercial radio stations.

2. At all times complained of, the defendant had its principal place of business in Stark County, Ohio, making venue proper in this Court pursuant to Civ. R. 3(B)(2).

3. At all times complained of, the defendant acted by and through its employees and/or agents, who were acting within the scope of their employment and/or authority and in furtherance of the purposes of the defendant.

4. On or about August 18, 2008, the plaintiff Patrick DeLuca entered into a contract of employment with the defendant, under which the plaintiff DeLuca provided services as on-air talent for the defendant's radio stations in consideration for the payment of compensation.

5. On or about August 28, 2008, the plaintiff Charlotte DiFranco entered into a contract of employment with the defendant, under which the plaintiff DiFranco provided services as on-air talent for the defendant's radio stations in consideration for the payment of compensation.

6. In accordance with Civ. R. 10(D)(1), a copy of the DeLuca contract is attached as Plaintiffs' Exhibit 1, and a copy of the DiFranco contract is attached as Plaintiffs' Exhibit 2.

7. The plaintiffs' job duties consisted of "preparing and delivering a high-energy, content driven broadcast within the regulations outlined by the FCC." See ¶1.5(i) of the attached contracts.

8. Both of the contracts at issue expired on February 2, 2012.

9. Both of the contracts at issue contain the following non-compete provision and defined terms provisions:

7. AGREEMENT NOT TO COMPETE. While employed by the Company, and for one year after termination of such employment, Employee shall not directly or indirectly, within the Business Area, engage in any activities the same as Employee's Job Duties for any Competing Business.

1.3 "Competing Business" means any person (including Employee) or entity carrying on a business that is the same or essentially the same as the Company Business.

1.1 The "Company's Business" means the operation, promotion, and marketing of commercial radio stations, print and direct mail operations, and bulk mail facilities.

10. All of the language contained in the contracts was drafted and chosen solely by the defendant and was presented to the plaintiffs as non-negotiable and on a take-it-or-leave-it basis.

11. The provisions of paragraphs 7, 1.3 and 1.1 of the contracts purport to prohibit the plaintiffs, for a period of one year after termination of employment, from engaging in any activities the same as employee's job duties for any business that is the same or essentially the same as the operation, promotion, and marketing of "commercial radio stations."

12. Under the provisions of paragraphs 7, 1.3 and 1.1 of the contracts, the plaintiffs are free to engage in any activities for any business that is not the same or essentially the same as the operation, promotion, and marketing of "commercial radio stations."

13. In full compliance with the provisions of the contracts, the plaintiffs are currently engaging in the live and recorded streaming of newly created commentary, call-ins, contests and other content on the Internet, with the rights to such material being owned solely and exclusively by the plaintiffs. Such streaming or webcasting of the plaintiffs' own material on the Internet is not the same or essentially the same as the operation, promotion, and marketing of "commercial radio stations" under the contracts. While "commercial radio stations" require an FCC license and are subject to extensive regulations under Title 47 of the Code of Federal Regulations, streaming on the Internet involves no publicly owned radio frequencies, requires no FCC license, and is not even subject to FCC regulations. See *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010). The United States Supreme Court has distinguished the Internet from radio transmission in *Reno v. ACLU*, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997), in holding the attempted regulation of the Internet to be unconstitutional.

14. In violation of the terms of the contracts, the defendant is unlawfully demanding that the plaintiffs cease and desist from further streaming of the plaintiffs' material on the Internet, and the defendant is unlawfully threatening legal action to prevent the plaintiffs' lawful conduct.

15. The plaintiffs file this claim for declaratory judgment pursuant to R.C. 2721.01 – 2721.15 and Civ. R. 57, to obtain a declaration of the rights and other legal relations of the plaintiffs and the defendant, who are persons interested under a written contract.

16. The plaintiffs have fully, substantially and/or materially met and complied with all terms, conditions and duties under the contracts.

17. The plaintiffs request that the Court declare the rights and other legal relations of the parties under the contracts, and specifically declare that the non-compete provision of the contracts does not prohibit the plaintiffs from engaging in live and recorded streaming and webcasting of the plaintiffs' own material on the Internet.

18. In the alternative, and without waiving the above averments, if the Court should find that the non-compete provision of the contracts does include all live and recorded streaming and webcasting on the Internet, then the plaintiffs request that the Court specifically declare that the non-compete provision of the contracts is unreasonably broad, violates public policy, and is void and unenforceable as a matter of law.

Second Claim: Breach of Contract

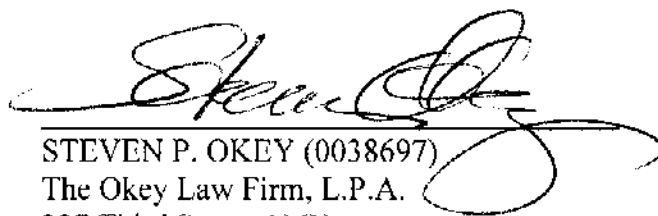
19. The plaintiffs incorporate all of the allegations of paragraphs 1-18 above into this Second Claim.

20. The defendant has breached the contract by wrongfully failing and refusing to pay to the plaintiffs for accrued, but unused, vacation days.

21. As a direct and proximate result of the defendant's breach of contract, the plaintiff DeLuca has sustained damages in the amount of \$2,261.28, and the plaintiff DiFranco has sustained damages in the amount of \$1,319.04.

WHEREFORE, the plaintiffs Patrick DeLuca and Charlotte DiFranco demand judgment against the defendant D.A. Peterson, Inc., for the following relief:

1. For the First Claim, a declaration that the non-compete provision of the contracts does not prohibit the plaintiffs from engaging in live and recorded streaming and webcasting of the plaintiffs' material on the Internet;
2. For the Second Claim, compensatory damages in the amount of \$2,261.28 to the plaintiff DeLuca, and in the amount of \$1,319.04 to the plaintiff DiFranco;
3. Costs incurred in this action; and
4. Other relief to which the plaintiffs may be entitled, even if not specifically requested in this complaint.



STEVEN P. OKEY (0038697)
The Okey Law Firm, L.P.A.
337 Third Street, N.W.
Canton, Ohio 44702-1786
Phone: 330-453-8261
Fax: 330-453-2715
E-mail: sokey@okeylawfirm.com

Trial Attorney for Plaintiffs

REQUEST FOR SERVICE

TO THE CLERK:

Please make service by certified mail, return receipt requested, in accordance with Civ.

R. 4.1(A) and Civ. R. 4.2(F), upon the defendant as follows:

D.A. Peterson, Inc.
393 Smyth Avenue, N.E.
Alliance, Ohio 44601


STEVEN P. OKEY
Trial Attorney for Plaintiffs

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("the Agreement") is effective as of the 18th day of August 2008, by and between D.A. Peterson, Inc. dba WDJQ/WDPN Radio (the "Employer" or the "Company"), and Pat Deluca (the "Employee") (collectively the "Parties" and individually a "Party").

WHEREAS the Company wants to employ or continue to employ Employee, and Employee wants to accept or continue such employment;

WHEREAS Employee and the Company agree that the approval, acceptance, and goodwill developed by the Company's radio employees with the Company's listening audience and customers/sponsors is a valuable asset of the Company's business, and essential to the Company's success in its highly competitive market;

WHEREAS Employee has developed or will develop such approval, acceptance, and goodwill for the Company and at the Company's expense;

Whereas Employee and the Company agree that the Company's confidential business information is also a valuable asset of the Company's business, and essential to the Company's competitive success;

WHEREAS Employee has or will have access to the Company's confidential business information;

WHEREAS the Company would suffer irreparable harm if Employee were to misuse the approval, acceptance, and goodwill that he/she develops on the Company's behalf, or the confidential information he/she obtains while in the Company's employ, to compete unfairly against the Company;

WHEREAS Employee has gained or will gain relationships with other Company employees and knowledge of the Company's relationships with other employees, which knowledge could be misused to disrupt the Company's operations if Employee were to solicit such other employees for employment by a competitor of the Company;

NOW, THEREFORE, in consideration of Employee's employment or continued employment by the Company and other valuable consideration, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. **DEFINITIONS.** For constructing this Agreement, including all exhibits and attachments, the following definitions shall apply.
 - 1.1 The "Company's Business" means the operation, promotion, and marketing of commercial radio stations, print and direct mail operations, and bulk mail facilities.



- 1.2 The "Business Area" means the primary broadcast area covered by the Company's radio stations in the Canton, OH broadcast market to include stations within a 60 mile radius from the facilities located on Smyth Ave. NE Alliance, OH, the print and direct mail business located in Canton, OH and the print and bulk mail business located in the Youngstown, OH market. Employee and the Company agree that Employee has carried out or will carry out the Company Business throughout the Business Area by broadcasting programming and advertising heard throughout the Business Area, by soliciting sponsors/customers from throughout the Business Area, and/or by organizing or conducting promotional events throughout the Business Area.
- 1.3 "Competing Business" means any person (including Employee) or entity carrying on a business that is the same or essentially the same as the Company Business.
- 1.4 "Confidential Information" means all information that: (i) the Company tries to keep secret and (ii) has commercial value to the Company or is of such a nature that its unauthorized disclosure would be detrimental to the Company's interest, including, for instance, the Company's information concerning price and discount arrangements with sponsors/customers, information concerning sponsors'/customers' particular needs, preferences, and interests (and how the Company uses such information to maintain a competitive advantage), marketing plans, business strategies, promotion plans, financial information, forecasts, and personal information. Confidential Information does not include information that (i) is in or enters the public domain other than by breach of this Agreement or (ii) is known or becomes known to Employee from a source other than the Company provided that the source does not make the information known to the Employee in violation of a contractual or other legal duty owed to the Company.
- 1.5 The "Job Duties" means the following: Employee is employed in the position of On-Air Talent for the Company's radio stations WDJQ/WDPN as deemed appropriate by station management at a time dictated by management not to exceed a reasonable on-air "shift", and an agent for the Company's print and direct mail business the Letter Shop, LLC and an agent for the Company's print and bulk mail business Postal Mail Sort LLC. The job duties consist of: (i) Preparing and delivering a high-energy, content driven broadcast within the regulations outlined by the FCC. Inappropriate show content or promotion (containing sexually explicit, socially unacceptable behavior such as burping, farting, or similar or related content, racial or ethnic slurs or making fun of physically or mentally challenged individuals) as deemed by DPM will result in the loss of the highest offered bonus opportunity for the first occurrence and the second occurrence and will result in the loss of the second level of bonus opportunity. The third such occurrence will result in the loss of the third level of bonus opportunity and the fourth will result in termination. (ii) Follow broadcast commercial and music logs as presented by the sales manager and program director (iii) continually promote and support the various business entities of the Company. Without limiting the generality of the foregoing, Employee shall make himself/herself reasonably

available to attend staff meetings, client remote broadcasts, station functions and any Company business all as directed by Company management. (iv) employee will continuously strive to gain listenership by utilizing production and promotional opportunities offered. A fair share of production is expected relative to the other station personalities. (v) station mandated appearances to be provided "pro bono" by employee not to exceed ten (10) (vi) Employee agrees that he/she has been assigned and will carry out these Job Duties on behalf of the Company.

2. EMPLOYEE'S SERVICE AND DUTIES.

2.1 Services. Upon and subject to the terms, conditions and other provisions of this Agreement, the Company shall employ Employee during the Employment Period as On-Air Talent. Employee shall commence his/her services hereunder as On-Air Talent reporting to the Program Director or to another person designated by the Company in the Company's sole discretion, and shall faithfully perform the Job Duties identified in Paragraph 1.5, above. In addition, Employee shall perform such reasonable duties and responsibilities related to the Job Duties as may from time to time be duly authorized or directed by the Company.

2.2 EMPLOYEE COMMITMENTS. Employee agrees to comply with all written policies of the Company throughout the Employment Period. Employee further agrees that neither he/she nor members of Employee's immediate family will accept money, merchandise, service or other item of value from any other person or company in exchange for the inclusion of any "plugs", endorsement or other matter in any broadcast by a Company station, except with the written consent of Company following Employee's full disclosure of facts. Employee further agrees that he/she will not retain or acquire any outside economic interest, which in the Company's reasonable judgment in any material way could compromise faithful and "best efforts" performance of Employee's duties or influence presentation of any broadcast or advertising matter; and the Employee will provide written disclosure of any economic interests to the Company that might be considered as having an effect.

2.3 SOLE EMPLOYMENT. During the Employment Period, Employee shall devote his/her full business time, energy, ability, attention and skill to Employee's employment hereunder. Employee agrees that, during the Employment Period, Employee will not provide services as an employee, consultant, independent contractor or otherwise to any individual or entity without the written consent of the Company.

3. TERM. The Term of the Employee's employment by the Company shall commence on August 18, 2008 encompassing the six months remaining on the existing agreement and shall continue ongoing, unless earlier terminated pursuant to the provisions of Paragraph 5 of this Agreement for a term of three years concluding on February 2nd, 2012.

4. **COMPENSATION AND OTHER BENEFITS.** Employee acknowledges and agrees that the Employee's right to compensation under this Agreement terminates at the end of the Employment Period, except as provided otherwise in this Agreement. As compensation in full for the services to be rendered by Employee hereunder, the Company shall pay to the Employee the following compensation:

- 4.1 **Salary.** The Company shall pay to Employee the amount of \$ _____ per annum, less all legally required and previously authorized deductions, payable every-other-week or on such other payment schedule as shall be applied to all situated employees, for work performed during the regular preceding pay period ("Base Salary").
- 4.2 **Remote Talent Fees.** Employee will receive compensation in the amount of \$150.00 for each remote broadcast successfully executed by Employee.
- 4.3 **Vacation.** Employee will be entitled to (3) three weeks paid vacation annually available upon employment. At year end, any accrued but unused vacation may not be rolled into the next calendar year and will be forfeited.
- 4.4 **Benefits.** Employee shall be entitled to participate in the benefit plans and programs generally available to its other similarly situated employees, provided that Employee meets all eligibility requirements under those plans and programs. Employee shall be subject to the terms and conditions of the plans and programs, including, without limitation, the Company's right to amend or terminate the plans at any time and without advance notice to the participants.
- 4.5 **Bonus Opportunity.** Employee will receive compensation for successfully achieving rating levels as defined by Arbitron in the Canton, OH radio market in the following manner:

1 st place Adults 12+ 6a-10a M-F	\$
2 nd place Adults 12+ 6a-10a M-F	\$
3 rd place Adults 12+ 6a-10a M-F	\$

AND

1 st place Adults 18-49 6a-10a M-F	\$
2 nd place Adults 18-49 6a-10a M-F	\$
3 rd place Adults 18-49 6a-10a M-F	\$

Bonus to be paid in 13 equal installments after the ratings book arrives at the station with the exception of the Spring 2008 results, in which case the employee will be compensated in "one lump sum" in an effort to assist the employee with outside financial obligations.

- 4.6 **Endorsement Fees.** Employee will receive \$100 per week for any client that would like to have you endorse their product.

- 4.7 "Live Read" fees. If a client desires a "live read", talent will be compensated \$10 per occurrence for this service. "Live Reads" not to exceed :60 seconds in length.

5. TERMINATION

- 5.1 **Death or Disability.** Upon the death of an Employee, this Agreement shall automatically terminate and all rights of Employee and his/her executors and administrators to compensation and other benefits under this Agreement shall cease.

The Company may, at its option, terminate this Agreement upon written notice to Employee if Employee, because of physical or mental incapacity or disability, fails to perform the essential functions of Employee's position hereunder for a continuous period of 90 days or any 120 days within a twelve-month period. In the event of any dispute regarding the existence of Employee's incapacity hereunder, the matter shall be resolved by the determination of a physician to be selected by the Company. Employee agrees to submit to appropriate medical examinations for purposes of such determination.

If Employee is terminated by reason of Employee's death or disability, Employee shall be entitled to receive any Base Salary to which Employee is entitled for work performed through the Date of Termination and not previously paid to Employee. Aside from the provisions of this paragraph, the Company shall have no further obligations to Employee after termination.

- 5.2 **The Company's Right to Terminate.** The Company may terminate this Agreement and Employee's employment thereunder at any time. If Employee is terminated: (i) on or before ninety (90) calendar days after the Effective Date, the Company will provide ten (10) business days' notice to employee; or (ii) at any time after ninety (90) days from the Effective Date, the Company will provide fifteen (15) days' notice to Employee. The Company may elect to pay employee for this notice period in lieu of permitting Employee to continue working. Notwithstanding this provision, the Company may at any time terminate Employee immediately without notice or pay in lieu of notice for: (i) deceit, dishonesty or wrongful appropriation for personal use or benefit of Company property or money; (ii) continued disregard of directions by senior management of the Company after notice; (iii) continued violations of Company policies or procedures after notice; (iv) excessive unexcused absences from work; (v) breach by Employee of this Agreement; (vi) inattention to or sub-performance of Employee's duties or obligations as defined in this agreement; (vii) assault or battery; (viii) conduct involving moral turpitude, including an arrest or conviction of Employee or a no contest plea by Employee for a crime of moral turpitude or a felony, or Employee's guilty plea to a lesser included offense or crime in exchange for withdrawal of a felony indictment, felony charge by information, or a charged crime involving moral turpitude, whether the charge arises under the United States or any other state within the United

States; (ix) actions by Employee which may be reasonably likely to jeopardize a FCC license of any broadcast station owned by the Company; and/or (x) violation of any FCC rule or regulation, or state or federal law. Aside from the provisions in this paragraph, the Company shall have no further obligations to Employee after termination.

6. PROTECTION OF CONFIDENTIAL INFORMATION

6.1 Retention and Return. Employee agrees that all Confidential Information is confidential to and the exclusive property of the Company. Upon request by the Company, and in any event upon Termination of Employee's employment with the Company for any reason, Employee shall promptly deliver to the Company all property belonging to the Company, including all Confidential Information then in Employee's possession, custody, or control.

6.2 Non-Disclosure. During Employee's employment by the Company, and for one year after termination of such employment, Employee shall not, directly or indirectly, disclose Confidential Information to any person or entity, or use or allow others to use through Employee any Confidential Information, except as necessary for performance of Employee's Job Duties.

7. **AGREEMENT NOT TO COMPETE.** While employed by the Company, and for one year after termination of such employment, Employee shall not directly or indirectly, within the Business Area, engage in any activities the same as Employee's Job Duties for any Competing Business.

8. **AGREEMENT NOT TO SOLICIT SPONSORS/CUSTOMERS.** During Employee's employment by the Company, and for one year after termination of such employment, Employee shall not, directly or indirectly, within the Business Area, for any Competing Business, solicit, for the purpose of selling radio advertising time, printing or bulk mail, any sponsor/customer of the Company whom Employee contacted on the Company's behalf during the two years preceding Employee's termination of Employment. For the purposes of this paragraph, 8, "contact" means any interaction between Employee and sponsor/customer that took place in an effort to establish or further the business relationship between the Company and the sponsor/customer.

9. **AGREEMENT NOT TO SOLICIT EMPLOYEES.** During Employee's employment by the Company, and for one year after termination of such employment, Employee shall not, directly or indirectly, solicit for employment by a Competing Business any of the Company's sales, programming, managerial, on-air or print/mail support staff or employee with whom the Employee dealt during the 12 months preceding Employee's termination of employment with the Company.

10. **SURVIVABILITY.** The provisions of Paragraphs 3.1, 3.2, 3.3, 6, 7, 8, and 9 survive the termination of this Agreement and Employee's employment thereunder and apply regardless of the reason for Employee's termination of

employment (including termination of employment at the end of the Employment Period), and regardless of whether or not such termination is initiated by the Company and regardless of whether or not Employee is receiving or has received any monetary compensation in connection with his/her separation from Company.

- 11. NO LIMITATION OF RIGHTS.** Nothing in this Agreement shall limit or prejudice any rights of the Company under Ohio Code or any other law.
- 12. INJUNCTIVE RELIEF.** Employee agrees that the provisions of Paragraph 6, 7, 8, and 9 of this Agreement are of the essence of this Agreement, that each of these provisions is reasonable and necessary to protect the Company's property and business, and that Employee's breach of any of those provisions may cause the Company to suffer irreparable loss and damage. Accordingly, Employee agrees that if Employee breaches or threatens to breach any of the provisions of Paragraphs 6, 7, 8, and 9 of this Agreement, the Company shall be entitled to immediate injunctive relief to enforce this agreement, money damages for whatever harm such breaches causes the Company, and whatever other remedies are available.
- 13. EMPLOYEE REPRESENTATIONS AND WARRANTIES.** Employee warrants, represents, and covenants with the Company that the execution, delivery, and performance of this Agreement by Employee does not conflict with, violate any provision of, or constitute a default under any agreement, judgment, award or decree to which Employee is a party or by which Employee is bound including, but not limited to, any implied or express agreement with any of the Employee's prior employers. In performing duties for the Company under this Agreement, Employee will not use or disclose any trade secrets that Employee learned from employment with any prior employer, and Employee will not use any files, documents, or other property belonging to a former employer, except as permitted in writing by such prior employer. Before using or disclosing such trade secrets, files, documents or other property, Employee will provide a copy of the written permission to the Company.
- 14. MOTOR VEHICLES.** As a condition of employment by the Company, Employee will be subject to a background check of Employee's driving record through the appropriate Department of Motor Vehicles, and such background check must be satisfactory to the Company in its sole and complete discretion. Continued employment under this agreement will be subject to Employee's maintaining a satisfactory driving record, and the Company may conduct further checks on driving records during the term of this Agreement. Violation of the automobile policy may result in termination.
- 15. INTANGIBLE RIGHTS.** Employee grants the Company the right to record and use Employee's name, voice, likeness, and biographical material for the purpose of advertising, promoting and publicizing the Company as well as its stations and services, and the products and services of advertisers; and Employee agrees that

this right shall be negotiated at the termination of this Agreement with respect to the material previously recorded or presented by Employee. Employee also acknowledges the Company's sole ownership of all rights to all material created, used or participated in by Employee and presented on behalf of the Company during the term of this Agreement.

- 16. NOTICES.** All notices and other communications required to be given in writing under this Agreement shall be deemed given when: (i) delivered personally or by overnight courier to the following address of the other party hereto (or such other address for such party as shall be specified by notice given pursuant this Section); or (ii) sent by facsimile to the following facsimile number of the other party hereto (or such other facsimile number for such party as shall be specified by notice given pursuant to this Section), with the confirming copy delivered by overnight courier to the address of such party:

If to the Company: DA Peterson, Inc
393 Smyth Ave. NE
Alliance, OH 44601
Attn: Don Peterson, III

If to the Employee: Pat Deluca
7101 Wren Ave. NW
North Canton, OH 44720

- 17. ENTIRE UNDERSTANDING; AMENDMENTS.** This Agreement, as well as any attachments or exhibits, constitutes the entire agreement and understanding between the parties with respect to the employment of Employee by the Company, and supersedes all prior agreements, representations and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement may not be modified or changed except by written instrument signed by both parties.
- 18. GOVERNING LAW.** This Agreement shall be governed by and constructed in accordance with the laws of the State of Ohio, without regard to the principles of conflicts of laws.
- 19. SEVERABILITY.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid, unenforceable or illegal in any respect applicable law or rule in any jurisdiction, such invalidity, unenforceability or illegality shall not affect the validity, legality, or enforceability of any other provision of this Agreement, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, unenforceable or illegal provision had never been contained herein.

20. FULL UNDERSTANDING. Employee represents and agrees that Employee fully understands Employer's right to discuss all aspects of this Agreement with Employee's private attorney, and that to the extent, if any, that Employee desired and/or utilized this right. Employee further represents and agrees that: (i) Employee has carefully read and fully understands all of the provisions of this Agreement; (ii) Employee is competent to execute this Agreement; (iii) Employee's agreement to execute this Agreement has not been obtained by any duress and that Employee freely and voluntarily enters into it; and (iv) Employee has read this document in its entirety and fully understands the meaning, intent and consequences of this document.

21. SURVIVABILITY. The following Sections/provisions shall survive termination of this Agreement: Sections 3.1, 3.2, 3.3, 6, 7, 8, 9, 11, 12, 13, 15, 16 and this Section 21.

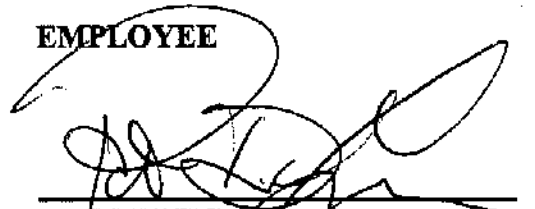
SIGNITURE PAGE FOLLOWS:

(SIGNATURE PAGE)

EMPLOYER


BA PETERSON, INC.

EMPLOYEE


PAT DELUCA

By: Donald A. Peterson, Inc.

August 18, 2008
EFFECTIVE DATE

August 18, 2008
EFFECTIVE DATE

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("the Agreement") is effective as of August 28, 2008, by and between D.A. Peterson, Inc. dba WDJQ/WDPN Radio (the "Employer" or the "Company"), and Charlotte DiFranco (the "Employee") (collectively the "Parties" and individually a "Party").

WHEREAS the Company wants to employ or continue to employ Employee, and Employee wants to accept or continue such employment;

WHEREAS Employee and the Company agree that the approval, acceptance, and goodwill developed by the Company's radio employees with the Company's listening audience and customers/sponsors is a valuable asset of the Company's business, and essential to the Company's success in its highly competitive market;

WHEREAS Employee has developed or will develop such approval, acceptance, and goodwill for the Company and at the Company's expense;

Whereas Employee and the Company agree that the Company's confidential business information is also a valuable asset of the Company's business, and essential to the Company's competitive success;

WHEREAS Employee has or will have access to the Company's confidential business information;

WHEREAS the Company would suffer irreparable harm if Employee were to misuse the approval, acceptance, and goodwill that he/she develops on the Company's behalf, or the confidential information he/she obtains while in the Company's employ, to compete unfairly against the Company;

WHEREAS Employee has gained or will gain relationships with other Company employees and knowledge of the Company's relationships with other employees, which knowledge could be misused to disrupt the Company's operations if Employee were to solicit such other employees for employment by a competitor of the Company;

NOW, THEREFORE, in consideration of Employee's employment or continued employment by the Company and other valuable consideration, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. **DEFINITIONS.** For constructing this Agreement, including all exhibits and attachments, the following definitions shall apply.
 - 1.1 The "Company's Business" means the operation, promotion, and marketing of commercial radio stations, print and direct mail operations, and bulk mail facilities.



- 1.2 The "Business Area" means the primary broadcast area covered by the Company's radio stations in the Canton, OH broadcast market to include stations within a 60 mile radius from the facilities located on Smyth Ave. NE Alliance, OH, the print and direct mail business located in Canton, OH and the print and bulk mail business located in the Youngstown, OH market. Employee and the Company agree that Employee has carried out or will carry out the Company Business throughout the Business Area by broadcasting programming and advertising heard throughout the Business Area, by soliciting sponsors/customers from throughout the Business Area, and/or by organizing or conducting promotional events throughout the Business Area.
- 1.3 "Competing Business" means any person (including Employee) or entity carrying on a business that is the same or essentially the same as the Company Business.
- 1.4 "Confidential Information" means all information that: (i) the Company tries to keep secret and (ii) has commercial value to the Company or is of such a nature that its unauthorized disclosure would be detrimental to the Company's interest, including, for instance, the Company's information concerning price and discount arrangements with sponsors/customers, information concerning sponsors'/customers' particular needs, preferences, and interests (and how the Company uses such information to maintain a competitive advantage), marketing plans, business strategies, promotion plans, financial information, forecasts, and personal information. Confidential Information does not include information that (i) is in or enters the public domain other than by breach of this Agreement or (ii) is known or becomes known to Employee from a source other than the Company provided that the source does not make the information known to the Employee in violation of a contractual or other legal duty owed to the Company.
- 1.5 The "Job Duties" means the following: Employee is employed in the position of On-Air Talent for the Company's radio stations WDJQ/WDPN as deemed appropriate by station management at a time dictated by management not to exceed a reasonable on-air "shift", and an agent for the Company's print and direct mail business the Letter Shop, LLC and an agent for the Company's print and bulk mail business Postal Mail Sort LLC. The job duties consist of: (i) Preparing and delivering a high-energy, content driven broadcast within the regulations outlined by the FCC. Inappropriate show content or promotion (containing sexually explicit, socially unacceptable behavior such as burping, farting, or similar or related content, racial or ethnic slurs or making fun of physically or mentally challenged individuals) as deemed by DP/III will result in the loss of the highest offered bonus opportunity for the first occurrence and the second occurrence and will result in the loss of the second level of bonus opportunity. The third such occurrence will result in the loss of the third level of bonus opportunity and the fourth will result in termination. (ii) Follow broadcast commercial and music logs as presented by the sales manager and program director (iii) continually promote and support the various business entities of the Company. Without limiting the generality of the foregoing, Employee shall make himself/herself reasonably

available to attend staff meetings, client remote broadcasts, station functions and any Company business all as directed by Company management. (iv) employee will continuously strive to gain listenership by utilizing production and promotional opportunities offered. A fair share of production is expected relative to the other station personalities. (v) station mandated appearances to be provided "pro bono" by employee not to exceed ten (10) per year (vi) Employee will work one four hour shift, live, on weekends "in book" as scheduled by the Program Director (vii) Employee agrees that he/she has been assigned and will carry out these Job Duties on behalf of the Company.

2. EMPLOYEE'S SERVICE AND DUTIES.

2.1 **Services.** Upon and subject to the terms, conditions and other provisions of this Agreement, the Company shall employ Employee during the Employment Period as Account Executive. Employee shall commence his/her services hereunder as On-Air Talent reporting to the Program Director or to another person designated by the Company in the Company's sole discretion, and shall faithfully perform the Job Duties identified in Paragraph 1.5, above. In addition, Employee shall perform such reasonable duties and responsibilities related to the Job Duties as may from time to time be duly authorized or directed by the Company.

2.2 **EMPLOYEE COMMITMENTS.** Employee agrees to comply with all written policies of the Company throughout the Employment Period. Employee further agrees that neither he/she nor members of Employee's immediate family will accept money, merchandise, service or other item of value from any other person or company in exchange for the inclusion of any "plugs", endorsement or other matter in any broadcast by a Company station, except with the written consent of Company following Employee's full disclosure of facts. Employee further agrees that he/she will not retain or acquire any outside economic interest, which in the Company's reasonable judgment in any material way could compromise faithful and "best efforts" performance of Employee's duties or influence presentation of any broadcast or advertising matter; and the Employee will provide written disclosure of any economic interests to the Company that might be considered as having an effect.

2.3 **SOLE EMPLOYMENT.** During the Employment Period, Employee shall devote his/her full business time, energy, ability, attention and skill to Employee's employment hereunder. Employee agrees that, during the Employment Period, Employee will not provide services as an employee, consultant, independent contractor or otherwise to any individual or entity without the written consent of the Company.

3. **TERM.** The Term of the Employee's employment by the Company shall commence on August 28, 2008 and shall continue ongoing, unless earlier terminated pursuant to the provisions of Paragraph 5 of this Agreement for a term expiring with co-host Pat DeLuca in February 2012.

4. **COMPENSATION AND OTHER BENEFITS.** Employee acknowledges and agrees that the Employee's right to compensation under this Agreement terminates at the end of the Employment Period, except as provided otherwise in this Agreement. As compensation in full for the services to be rendered by Employee hereunder, the Company shall pay to the Employee the following compensation:

- 4.1 **Salary.** The Company shall pay to Employee the amount of \$ _____ per annum, less all legally required and previously authorized deductions, payable every-other-week or on such other payment schedule as shall be applied to all situated employees, for work performed during the regular preceding pay period ("Base Salary"). Employee will receive a cost of living increase of 3% at the beginning of each year for one calendar year until the agreement expires.
- 4.2 **Remote Talent Fees.** Employee will receive compensation in the amount of \$150.00 for each remote broadcast successfully executed by Employee.
- 4.3 **Vacation.** Employee will be entitled to (2) two weeks paid vacation annually available upon employment. At year end, any accrued but unused vacation may not be rolled into the next calendar year and will be forfeited.
- 4.4 **Benefits.** Employee shall be entitled to participate in the benefit plans and programs generally available to its other similarly situated employees, provided that Employee meets all eligibility requirements under those plans and programs. Employee shall be subject to the terms and conditions of the plans and programs, including, without limitation, the Company's right to amend or terminate the plans at any time and without advance notice to the participants.
- 4.5 **Bonus Opportunity.** Employee will receive compensation for successfully achieving rating levels as defined by Arbitron in the Canton, OH radio market in the following manner:

1 st place Adults 12+ 6a-10a M-F	\$
2 nd place Adults 12+ 6a-10a M-F	\$
3 rd place Adults 12+ 6a-10a M-F	\$

AND

1 st place Adults 18-49 6a-10a M-F	\$
2 nd place Adults 18-49 6a-10a M-F	\$
3 rd place Adults 18-49 6a-10a M-F	\$

Bonus to be paid in 13 equal installments after the ratings book arrives at the station. In the event the station is "tied" with another station(s), the bonus money will be "split" based on the position tied. For example, if the station ties for first, the Employee would receive one half of the first and second place money combined. If it a tie for second, the Employee would receive

one half of second and third place money combined. The same if there are more than two stations tied for a position.

- 4.6 Endorsement Fees. Employee will receive \$100 per week for any client that would like to have you endorse their product.
- 4.7 "Live Read" fees. If a client desires a "live read", talent will be compensated \$10 per occurrence for this service. "Live Reads" not to exceed :60 seconds in length.

5. TERMINATION

- 5.1 **Death or Disability.** Upon the death of an Employee, this Agreement shall automatically terminate and all rights of Employee and his/her executors and administrators to compensation and other benefits under this Agreement shall cease.

The Company may, at its option, terminate this Agreement upon written notice to Employee if Employee, because of physical or mental incapacity or disability, fails to perform the essential functions of Employee's position hereunder for a continuous period of 90 days or any 120 days within a twelve-month period. In the event of any dispute regarding the existence of Employee's incapacity hereunder, the matter shall be resolved by the determination of a physician to be selected by the Company. Employee agrees to submit to appropriate medical examinations for purposes of such determination.

If Employee is terminated by reason of Employee's death or disability, Employee shall be entitled to receive any Base Salary to which Employee is entitled for work performed through the Date of Termination and not previously paid to Employee. Aside from the provisions of this paragraph, the Company shall have no further obligations to Employee after termination.

- 5.2 **The Company's Right to Terminate.** The Company may terminate this Agreement and Employee's employment thereunder at any time. If Employee is terminated: (i) on or before ninety (90) calendar days after the Effective Date, the Company will provide ten (10) business days' notice to employee; or (ii) at any time after ninety (90) days from the Effective Date, the Company will provide fifteen (15) days' notice to Employee. The Company may elect to pay employee for this notice period in lieu of permitting Employee to continue working. Notwithstanding this provision, the Company may at any time terminate Employee immediately without notice or pay in lieu of notice for: (i) deceit, dishonesty or wrongful appropriation for personal use or benefit of Company property or money; (ii) continued disregard of directions by senior management of the Company after notice; (iii) continued violations of Company policies or procedures after notice; (iv) excessive unexcused absences from work; (v) breach by Employee of this Agreement; (vi) inattention to or sub-performance of Employee's duties or obligations as defined in this agreement; (vii) assault or battery; (viii) conduct involving moral turpitude, including an arrest or conviction of Employee or a no contest plea by Employee for a crime of

moral turpitude or a felony, or Employee's guilty plea to a lesser included offense or crime in exchange for withdrawal of a felony indictment, felony charge by information, or a charged crime involving moral turpitude, whether the charge arises under the United States or any other state within the United States; (ix) actions by Employee which may be reasonably likely to jeopardize a FCC license of any broadcast station owned by the Company; and/or (x) violation of any FCC rule or regulation, or state or federal law. Aside from the provisions in this paragraph, the Company shall have no further obligations to Employee after termination.

6. PROTECTION OF CONFIDENTIAL INFORMATION

- 6.1 Retention and Return. Employee agrees that all Confidential Information is confidential to and the exclusive property of the Company. Upon request by the Company, and in any event upon Termination of Employee's employment with the Company for any reason, Employee shall promptly deliver to the Company all property belonging to the Company, including all Confidential Information then in Employee's possession, custody, or control.
- 6.2 Non-Disclosure. During Employee's employment by the Company, and for one year after termination of such employment, Employee shall not, directly or indirectly, disclose Confidential Information to any person or entity, or use or allow others to use through Employee any Confidential Information, except as necessary for performance of Employee's Job Duties.

7. **AGREEMENT NOT TO COMPETE.** While employed by the Company, and for one year after termination of such employment, Employee shall not directly or indirectly, within the Business Area, engage in any activities the same as Employee's Job Duties for any Competing Business.

8. **AGREEMENT NOT TO SOLICIT SPONSORS/CUSTOMERS.** During Employee's employment by the Company, and for one year after termination of such employment, Employee shall not, directly or indirectly, within the Business Area, for any Competing Business, solicit, for the purpose of selling radio advertising time, printing or bulk mail, any sponsor/customer of the Company whom Employee contacted on the Company's behalf during the two years preceding Employee's termination of Employment. For the purposes of this paragraph, 8, "contact" means any interaction between Employee and sponsor/customer that took place in an effort to establish or further the business relationship between the Company and the sponsor/customer.

9. **AGREEMENT NOT TO SOLICIT EMPLOYEES.** During Employee's employment by the Company, and for one year after termination of such employment, Employee shall not, directly or indirectly, solicit for employment by a Competing Business any of the Company's sales, programming, managerial, on-air or print/mail support staff or employee with whom the Employee dealt during the 12 months preceding Employee's termination of employment with the Company.

- 10. SURVIVABILITY.** The provisions of Paragraphs 3.1, 3.2, 3.3, 6, 7, 8, and 9 survive the termination of this Agreement and Employee's employment thereunder and apply regardless of the reason for Employee's termination of employment (including termination of employment at the end of the Employment Period), and regardless of whether or not such termination is initiated by the Company and regardless of whether or not Employee is receiving or has received any monetary compensation in connection with his/her separation from Company.
- 11. NO LIMITATION OF RIGHTS.** Nothing in this Agreement shall limit or prejudice any rights of the Company under Ohio Code or any other law.
- 12. INJUNCTIVE RELIEF.** Employee agrees that the provisions of Paragraph 6, 7, 8, and 9 of this Agreement are of the essence of this Agreement, that each of these provisions is reasonable and necessary to protect the Company's property and business, and that Employee's breach of any of those provisions may cause the Company to suffer irreparable loss and damage. Accordingly, Employee agrees that if Employee breaches or threatens to breach any of the provisions of Paragraphs 6, 7, 8, and 9 of this Agreement, the Company shall be entitled to immediate injunctive relief to enforce this agreement, money damages for whatever harm such breaches causes the Company, and whatever other remedies are available.
- 13. EMPLOYEE REPRESENTATIONS AND WARRANTIES.** Employee warrants, represents, and covenants with the Company that the execution, delivery, and performance of this Agreement by Employee does not conflict with, violate any provision of, or constitute a default under any agreement, judgment, award or decree to which Employee is a party or by which Employee is bound including, but not limited to, any implied or express agreement with any of the Employee's prior employers. In performing duties for the Company under this Agreement, Employee will not use or disclose any trade secrets that Employee learned from employment with any prior employer, and Employee will not use any files, documents, or other property belonging to a former employer, except as permitted in writing by such prior employer. Before using or disclosing such trade secrets, files, documents or other property, Employee will provide a copy of the written permission to the Company.
- 14. MOTOR VEHICLES.** As a condition of employment by the Company, Employee will be subject to a background check of Employee's driving record through the appropriate Department of Motor Vehicles, and such background check must be satisfactory to the Company in its sole and complete discretion. Continued employment under this agreement will be subject to Employee's maintaining a satisfactory driving record, and the Company may conduct further checks on driving records during the term of this Agreement. Violation of the automobile policy may result in termination.

15. INTANGIBLE RIGHTS. Employee grants the Company the right to record and use Employee's name, voice, likeness, and biographical material for the purpose of advertising, promoting and publicizing the Company as well as its stations and services, and the products and services of advertisers; and Employee agrees that this right shall be negotiated at the termination of this Agreement with respect to the material previously recorded or presented by Employee. Employee also acknowledges the Company's sole ownership of all rights to all material created, used or participated in by Employee and presented on behalf of the Company during the term of this Agreement.

16. NOTICES. All notices and other communications required to be given in writing under this Agreement shall be deemed given when: (i) delivered personally or by overnight courier to the following address of the other party hereto (or such other address for such party as shall be specified by notice given pursuant this Section); or (ii) sent by facsimile to the following facsimile number of the other party hereto (or such other facsimile number for such party as shall be specified by notice given pursuant to this Section), with the confirming copy delivered by overnight courier to the address of such party:

If to the Company: DA Peterson, Inc
 393 Smyth Ave. NE
 Alliance, OH 44601
 Attn: Don Peterson, III

If to the Employee: Charlotte DiFranco
 305 Woodmore Ave.
 Louisville, OH 44641

17. ENTIRE UNDERSTANDING; AMENDMENTS. This Agreement, as well as any attachments or exhibits, constitutes the entire agreement and understanding between the parties with respect to the employment of Employee by the Company, and supersedes all prior agreements, representations and understandings, both written and oral, between the parties with respect to the subject matter hereof. This Agreement may not be modified or changed except by written instrument signed by both parties.

18. GOVERNING LAW. This Agreement shall be governed by and constructed in accordance with the laws of the State of Ohio, without regard to the principles of conflicts of laws.

19. SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid, unenforceable or illegal in any respect applicable law or rule in any jurisdiction, such invalidity, unenforceability or illegality shall not affect the validity, legality, or

enforceability of any other provision of this Agreement, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, unenforceable or illegal provision had never been contained herein.

20. FULL UNDERSTANDING. Employee represents and agrees that Employee fully understands Employer's right to discuss all aspects of this Agreement with Employee's private attorney, and that to the extent, if any, that Employee desired and/or utilized this right. Employee further represents and agrees that: (i) Employee has carefully read and fully understands all of the provisions of this Agreement; (ii) Employee is competent to execute this Agreement; (iii) Employee's agreement to execute this Agreement has not been obtained by any duress and that Employee freely and voluntarily enters into it; and (iv) Employee has read this document in its entirety and fully understands the meaning, intent and consequences of this document.

21. SURVIVABILITY. The following Sections/provisions shall survive termination of this Agreement: Sections 3.1, 3.2, 3.3, 6, 7, 8, 9, 11, 12, 13, 15, 16 and this Section 21.

SIGNITURE PAGE FOLLOWS:

(SIGNATURE PAGE)

EMPLOYER

EMPLOYEE


DA PETERSON, INC.


CHARLOTTE DIFRANCO

By: Donald A. Peterson III

September 3, 2008
EFFECTIVE DATE

9.3.08
EFFECTIVE DATE