

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 13 2001

In re Applications of:)	
Minnesota Public Radio)	File No. BPED-19981215MB
Broadcasting for the Challenged, Inc.)	File No. BPED-19981215MG
LifeTalk Broadcasting Association)	File No. BPED-19981215MD
CSN International)	File No. BPED-19981215ME
Rochester Public Radio)	File No. BPED-19981211MB

To: Chief, Audio Services Division

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENTS

1. Minnesota Public Radio ("MPR"), Broadcasting for the Challenged, Inc. ("BFC"), CSN International ("CSN"), LifeTalk Broadcasting Association ("LifeTalk"), and Rochester Public Radio ("RPR"), hereby jointly petition the Commission pursuant to Section 73.3525 of the Commission's rules¹ to:

(a) Approve the Settlement Agreement between MPR and BFC appended hereto as Attachment A ("MPR-BFC Agreement");

(b) Approve the Settlement Agreement between MPR and LifeTalk appended hereto as Attachment B ("MPR-LifeTalk Agreement");

¹ 47 C.F.R. § 73.3525 (2000).

(c) Approve the Settlement and Option Agreement between MPR and CSN appended hereto as Attachment C ("MPR-CSN Agreement");²

(d) Dismiss with prejudice BFC's application for a construction permit for a new station on Channel 211 at Albert Lea, Minnesota, FCC File No. BPED-19981215MG ("BFC Application");

(e) Dismiss with prejudice LifeTalk's application for a construction permit for a new station on Channel 211 at Hayfield, Minnesota, FCC File No. BPED-19981215MD ("LifeTalk Application");

(f) Dismiss with prejudice CSN's application for a construction permit for a new station on Channel 211 at Albert Lea, Minnesota, FCC File No. 19981215ME ("CSN Application");

(g) Grant MPR's application for a construction permit for a new station on Channel 211 at Austin, Minnesota, FCC File No. 19980603MB ("MPR Application"), without requiring an opportunity for others to apply for the facilities in question; and

(h) Grant RPR's application for a construction permit to make changes to the licensed facilities of KRPR(FM) on Channel 210 at Rochester, Minnesota, FCC File No. BPED-19981211MB ("RPR Application"), without requiring an opportunity for others to apply for the facilities in question.

2. The MPR Application, the BFC Application, the LifeTalk Application, the CSN Application, and the RPR Application comprise MX Group 980606.³ Upon the dismissal of the

² The MPR-BFC Agreement, MPR-LifeTalk Agreement, and MPR-CSN Agreement are collectively referred to as the "Settlement Agreements."

LifeTalk Application, the BFC Application and the CSN Application, both the MPR Application and the RPR Application may be granted. As shown in the engineering statement at Attachment D, upon dismissal of the LifeTalk Application, the RPR Application would not be mutually exclusive with any other application in MX Group No. 980606.

3. MPR has reached separate agreements with: (1) BFC; (2) LifeTalk; and (3) CSN, pursuant to which BFC, LifeTalk and CSN have agreed to dismiss with prejudice their respective applications in exchange for consideration, subject to the terms and conditions of the Settlement Agreements. RPR will not receive from or pay to any other applicant any consideration in connection with the resolution of this MX group.

4. Appended hereto as Attachment E are declarations of each of the applicants, made pursuant to Section 73.3525(a)(1)-(2), (4) and (6)⁴ of the Commission's rules, 47 C.F.R. 73.3525(a), confirming that: (a) it did not file its respective application for the purpose of entering into or carrying out a settlement agreement; and (b) it has neither paid nor promised (or been paid or promised) any consideration to any party for entering into agreements, or for the dismissal of its application, except as set forth in the Settlement Agreements.

(...Continued)

³ See In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants, MM Docket No. 95-31, FCC 01-64, Appendix D at 49 (rel. Feb. 28, 2001) ("NCE Comparative Standards Order").

⁴ In the NCE Comparative Standards Order, the Commission stated that it would waive any of its rules, including section 73.3525(a)(3), which prohibit the receipt of money or consideration in excess of legitimate and prudent expenses in exchange for the dismissal of an application. See NCE Comparative Standards Order at ¶ 99. The waiver of section 73.3525(a)(3) renders Moot Section 73.3525(a)(5).

5. As shown in the statement at Attachment F, grant of the MPR Application and the RPR Application will result in a fair, efficient and equitable distribution of radio services as required by Section 307(b) of the Communications Act.

6. Approval of the Settlement Agreements would serve the public interest by conserving the resources of both the applicants and the Commission and facilitating the inauguration of a new FM broadcast service to Austin, Minnesota and an improved service in Rochester, Minnesota more quickly than otherwise would be possible.

Respectfully submitted,

MINNESOTA PUBLIC RADIO

By: _____

Todd M. Stansbury
Eve J. Klindera

of

Wiley, Rein & Fielding
1776 K Street, N.W.
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(202) 719-7000

Its Attorneys

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By: _____

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(202) 408-1035

Its Attorneys

5. As shown in the statement at Attachment F, grant of the MPR Application and the RPR Application will result in a fair, efficient and equitable distribution of radio services as required by Section 307(b) of the Communications Act.

6. Approval of the Settlement Agreements would serve the public interest by conserving the resources of both the applicants and the Commission and facilitating the inauguration of a new FM broadcast service to Austin, Minnesota and an improved service in Rochester, Minnesota more quickly than otherwise would be possible.

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Its Attorneys

July 13, 2001

LIFETALK BROADCASTING ASSOCIATION

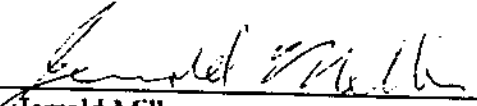
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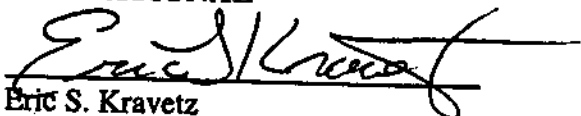
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July 13, 2001

ATTACHMENT A

**Agreement of
Minnesota Public Radio
and
Broadcasting for
the Challenged, Inc.**

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered as of this 30 day of June, 2001, by and between Minnesota Public Radio ("MPR") and Broadcasting for the Challenged, Inc. ("BFC").

WITNESSETH

WHEREAS, MPR has tendered to the Federal Communications Commission ("Commission") an application for a construction permit for a new station on Channel 211 at Austin, Minnesota, FCC File No. BPED-19980603MB ("MPR Application"); and

WHEREAS, BFC has tendered to the Commission an application for a construction permit for a new station on Channel 211 at Albert Lea, Minnesota, FCC File No. BPED-19981215MG ("BFC Application"); and

WHEREAS, the Commission has stated that the MPR Application and the BFC Application are mutually exclusive, and, along with the applications of (1) Rochester Public Radio ("RPR") for a construction permit to modify the licensed facilities of KRPR(FM) on Channel 210 at Rochester, Minnesota, FCC File No. BPED-19981211MB ("RPR Application"); (2) Lifetalk Broadcasting Association ("Lifetalk") for a construction permit for a new station on Channel 211 at Hayfield, Minnesota, FCC File No. BPED-19981215MD ("Lifetalk Application"); and (3) CSN International ("CSN") for a construction permit for a new station on Channel 211 at Albert Lea, Minnesota, FCC File No. BPED-19981215ME ("CSN Application"), comprise MX Group 980606; and

WHEREAS, BFC is willing to dismiss with prejudice the BFC Application, in exchange for the consideration and mutual covenants contained herein; and

WHEREAS, separate agreements are contemplated among the parties to MX Group 980606 that, together with this agreement, will result in the universal settlement of this proceeding; and

WHEREAS, MPR and BFC believe that the public interest will best be served if the uncertainty surrounding the applications in MX Group 980606 is resolved, because such resolution will conserve the resources of both the applicants and the Commission, by enabling settlement among the competing applicants for construction permits in MX Group 980606, thereby resulting in the inauguration of a new FM service to Austin, Minnesota more quickly than otherwise would be possible; and

WHEREAS, MPR and BFC understand that this Agreement will be submitted to the Commission for its approval with a Joint Request for Approval of Agreement, and as such this Agreement will constitute material representations to the Commission;

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set out below, and with the intention of being legally bound hereby, MPR and BFC agree as follows:

1. Joint Request: Within the period prescribed by the Commission's rules, MPR and BFC shall jointly request in writing ("Joint Request") that the Commission do all of the following:
 - (a) Approve the terms of this Agreement as provided for herein;
 - (b) Subject to the terms of this Agreement, dismiss with prejudice the BFC Application;
 - (c) Grant the MPR Application, without requiring provision of an opportunity for others to apply for the facilities in question; and

(d) Subject to the terms of the separate agreements between the parties to MX Group 980606, dispose of all other applications in a manner that results in the grant of the MPR Application.

MPR and BFC shall cause the preparation of all documentation needed to properly support the Joint Request. Each party shall fully cooperate with the other and the Commission by expeditiously and completely providing the other or the Commission with any additional information reasonably requested. MPR and BFC agree that should the Commission find any portion of this Agreement to be unlawful, contrary to public policy or otherwise objectionable, MPR and BFC shall examine the objections of the Commission and timely make individual and joint good faith effort to resolve all objections in a manner which reflects as closely as possible the intentions of the parties as set forth herein, in order to secure FCC approval. MPR and BFC shall each bear their own expenses in the prosecution of this Agreement and all filings contemplated herein.

2. Covenants by MPR: MPR agrees that, in exchange for the agreements and covenants of BFC herein, it shall pay to BFC the sum of ~~ONE HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$135,000.00)~~ ~~THIRTY FIVE THOUSAND DOLLARS (\$35,000.00)~~, or such lesser amount as approved by the Commission, by certified or cashier's check, or by wire transfer, no later than five (5) days from the date on which the Commission's approval of this Agreement, dismissal of the BFC Application and grant of the MPR Application become Final. For purposes of this Agreement, "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to

which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated. MPR agrees to take no action adverse to this Agreement, the Joint Request, or the dismissal of the BFC Application, the Lifetalk Application and the CSN Application. MPR further agrees to diligently prosecute the MPR Application.

MPR represents and warrants that: (a) it has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated herein; (b) the execution and delivery of this Agreement by MPR and the consummation by MPR of the transactions contemplated herein have been duly authorized by all necessary action on the part of MPR; (c) this Agreement constitutes a valid and binding obligation of MPR, enforceable against MPR in accordance with its terms; and (d) neither the execution, delivery nor performance by MPR of this Agreement conflicts with, results in a breach of or constitutes a default or ground for termination under any agreement or judicial or governmental order or decree to which MPR is a party or by which it is bound.

3. Covenants by BFC: BFC agrees that, in exchange for the agreements and covenants of MPR herein, it shall cause the dismissal with prejudice of the BFC Application. BFC agrees to take no action adverse to this Agreement, the Joint Request, the dismissal of the BFC Application, the Lifetalk Application and the CSN Application, any amendment which MPR may file with respect to the MPR Application, or the grant of the MPR Application.

BFC represents and warrants that: (a) it has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated herein; (b) the execution and delivery of this Agreement by BFC and the

consummation by BFC of the transactions contemplated herein have been duly authorized by all necessary action on the part of BFC; (c) this Agreement constitutes a valid and binding obligation of BFC, enforceable against BFC in accordance with its terms; and (d) neither the execution, delivery or performance by BFC of this Agreement conflicts with, results in a breach of or constitutes a default or ground for termination under any agreement or judicial or governmental order or decree to which BFC is a party or by which it is bound.

4. Notices: Unless otherwise provided herein, all notices, demands, payments and requests required or permitted by this Agreement must be in writing and shall be deemed to have been given when delivered by hand, overnight courier, or sent by facsimile transmission; or on the third day after mailing if mailed by express mail or its equivalent, postage prepaid, return-receipt requested, if available, as stated below:

To MPR:

Minnesota Public Radio
Attn: Mitzi T Gramling
Associate General Counsel
45 East Seventh Street
St. Paul, MN 55101
Fax: 651-290-1243

Copy to (which shall not
constitute notice):

Todd M. Stansbury
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Fax: 202-719-7207

To BFC:

George S. Flinn, Jr.
President
Broadcasting for the Challenged, Inc.
188 South Bellevue
Suite 222
Memphis, TN 38104
Fax: 901-726-8973

Copy to (which shall not
constitute notice):

Stephen Simpson
Law Offices of Stephen C. Simpson
1090 Vermont Avenue, NW
Suite 800
Washington, DC 20005
Fax: 202-408-1590

5. Integration: This Agreement contains the entire understanding of the parties with respect to the subject matter, and supersedes all previous oral or written agreements or understandings. This Agreement may be amended only by a written document duly executed by both parties.

6. Counterpart Signatures: This Agreement may be executed by the parties in counterpart with the same effect as if the signatures to both counterpart pages were upon the same copy of the Agreement.

7. Termination: In the event that the Commission has not approved the Joint Request within twelve (12) months from the date hereof, then either party hereto may, upon written notice to the other party, terminate this agreement without liability and the parties shall, in that event, return to the status quo ante, provided however, that the party seeking to terminate this Agreement is not in material breach hereof. MPR may terminate this Agreement in the event that MPR, Lifetalk, RPR and CSN do not execute agreements that, in combination, result in a universal settlement of MX Group 980606, by the deadline established by the Commission for

filing such settlement agreements in Public Notice DA 01-729 (rel. Mar. 22, 2001), including any extensions thereto.

8. Construction: This Agreement and any dispute arising hereunder shall be construed under the laws of the state of Minnesota without regard to any choice or conflict of law provision or rule.

9. Specific Performance as a Remedy: Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal and equitable remedies that may be available under this Agreement. The parties agree that any violation of the covenants contained herein shall constitute irreparable harm. If any party files a lawsuit seeking specific performance of this Agreement, the other party shall waive any defense that an adequate remedy exists at law.

10. Recovery of Costs: If, on account of any alleged breach or default by either party of its obligations under this Agreement, the other party shall take action to enforce its rights hereunder, the prevailing party shall be entitled to recover its reasonable costs incurred in such action, including, but not limited to, reasonable attorneys' fees and court costs.

[Signature Page Follows]

IN WITNESS WHEREOF, and intending to be legally bound, MPR and BFC have duly executed this Agreement, on the date first mentioned above.

MINNESOTA PUBLIC RADIO

BY Thomas J Klein
Name: THOMAS J KLEIN
Title: EVP

BROADCASTING FOR THE CHALLENGED, INC.

BY George S. Flinn, Jr.
Name: George S. Flinn, Jr.
Title: its President