

ORIGINAL
FILE

Original
RECEIVED

JUL - 1 1992

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
ROSAMOND RADIO, INC.)
)
JAMIE LEE COBERLY)
)
DIANE K. HITT)
)
For construction permit for a)
New FM Station on Channel 228A)
in Rosamond, California)

MM Docket No. 92-121 ✓
File No. BPH-910225MG
File No. BPH-910225MH
File No. BPH-910225MI

To: Joseph P. Gonzalez
Administrative Law Judge

JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

1. Rosamond Radio, Inc. ("Rosamond") and Jamie Leigh Coberly ("Coberly"), applicants for a new FM station to operate on Channel 228A in Rosamond, California (File Nos. BPH-910225MG and BPH-910225MH, respectively), respectfully request, pursuant to Section 73.3525 of the Commission's Rules, that the Settlement Agreement ("Agreement") attached hereto as Exhibit 1 be approved and that, upon approval, Coberly's application be dismissed with

No. of Copies rec'd 046
List A B C D E

prejudice and Rosamond's application be granted as amended in accordance with the Agreement.

2. The Agreement provides for the dismissal of Coberly's application and the formation of a new corporation to construct and operate the station at Rosamond, California; the current Rosamond Shareholders would hold eighty percent (80%) of the equity of the new corporation and eighty-five percent (85%) of the voting rights with Coberly holding twenty percent (20%) of the equity and fifteen percent (15%) of the voting rights. The undertakings of Coberly to dismiss her application and the undertakings of Coberly and Rosamond to join together to construct and operate the new station are conditioned upon the Commission's action (1) approving the Agreement, (2) dismissing Coberly's application with prejudice and (3) dismissing the mutually-exclusive application of Diane K. Hitt with prejudice (File No. BPH-910225MI) becoming a "Final Action" as that term is defined in Paragraph 6 of the Settlement Agreement (Exhibit 1, hereto).

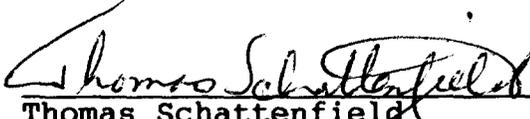
3. Attached as Exhibits 2 and 3 hereto are the Declarations of each of the applicants, Rosamond and Coberly, respectively, to the effect that they did not file their applications for the purpose of reaching or entering into a settlement agreement.

4. Grant of this Petition clearly would serve the public interest in that it would save substantial time and the resources

of the parties and the Commission and expedite the initiation of a new local FM service on Channel 228A in Rosamond, California.

WHEREFORE, for the reasons set forth hereinabove, the parties hereto respectfully submit that this Petition should be granted.

Respectfully submitted,



Thomas Schattenfield



Susan A. Marshall

Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6000

Counsel for Rosamond Radio, Inc.



Arthur Belendiuk, Esquire
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.
Washington, D.C. 20036
(202) 785-2800

Counsel for Jamie Leigh Coberly

Date: July 1, 1992

EXHIBIT 1

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between Rosamond Radio, Inc. ("Rosamond") and Jamie Leigh Coberly ("Coberly") to be effective as of the 30th day of June, 1992.

W I T N E S S E T H:

WHEREAS, Rosamond and Coberly each have pending before the Federal Communications Commission ("FCC") applications for a construction permit for a new FM radio broadcast station to operate on Channel 228A at Rosamond, California (the "Station"), (FCC File Nos. BPH-910225MG and BPH-910225MH, respectively), which applications are mutually exclusive with one another and with the application filed by Diane K. Hitt ("Hitt") (File No. BPH-910225MI);

WHEREAS, the aforementioned mutually exclusive applications have been designated for hearing in MM Docket No. 92-121; and

WHEREAS, Rosamond has entered into a Settlement Agreement with Hitt and the appropriate documents have been or will be filed with the FCC requesting approval thereof:

WHEREAS, the dismissal of Hitt's Application, the merger of the applications of Rosamond and Coberly and the pooling of the efforts of Rosamond and Coberly to construct and operate the new Station at Rosamond, California, would serve the public interest by expediting the proceeding in MM Docket No. 92-121, thereby conserving the resources of the parties and the FCC and hastening earlier institution of a new FM radio service at Rosamond, California;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

1. Capitalization of Applicant. Rosamond will amend its application to provide for a new corporate entity ("NEWCO") which will be capitalized with two classes of common stock, voting and nonvoting. P. Dale Ware, Patricia Ware and Salvador D. Martinez (who are currently shareholders in Rosamond and are hereinafter sometimes referred to as the "Rosamond Shareholders") shall own 80% of the stock of NEWCO, all in the form of voting shares, and Coberly shall own 20% of the stock, 15% in the form of voting shares and 5% in the form of nonvoting shares, all of which stock is to be issued in accordance with the provisions and the privileges and restrictions set forth in the Shareholders' Agreement (attached hereto as Appendix A), made by and among the Rosamond Shareholders and Coberly and dated June 30, 1992. At the time of the closing on the transactions underlying this Agreement, the parties shall own their stock free and clear of all liens, encumbrances and other charges.

2. Articles of Incorporation. NEWCO's Articles of Incorporation shall provide for shareholder preemptive rights.

3. Management and Operations.

The shareholders of NEWCO (the "NEWCO Shareholders") shall use their best efforts to implement this Agreement to cause the Station to be constructed and placed in operation as expeditiously as possible after the FCC grants the construction

permit application described in Section 6, below, and to supervise all aspects of the Station's operation. In furtherance of their obligations under this subsection, the Shareholders shall assume the following duties and responsibilities on behalf of NEWCO and the Station:

a. The NEWCO Shareholders shall take all steps necessary or appropriate to obtain any land use or building permit and/or zoning variances required in order to proceed with the construction and/or installation of the Station's transmission facilities and studios.

b. The NEWCO Shareholders shall arrange for the shipment and delivery of all of the equipment necessary and/or appropriate for the construction and operation of the Station.

c. The NEWCO Shareholders shall take all steps necessary to arrange for suitable studio space for the Station.

d. The NEWCO Shareholders shall use their best efforts to insure that the station is operated in a frugal and efficient manner, consistent with the objective of making it a viable commercial enterprise.

e. The NEWCO Shareholders shall retain on behalf of the Station the services of a professional communications engineer and of communications counsel and take such other measures as are reasonably necessary to insure that the construction and installation of the Station's technical facilities and the operation of the Station complies in all material respects with the terms of the Station's construction

permit and license and of the rules, regulations and policies of the FCC.

5. Representations and Warranties.

a. The Rosamond Shareholders represent and warrant to Coberly that:

i. They have full power to enter into and perform their obligations under this Agreement.

ii. They are not parties to, or subject to, any agreements, orders or decrees which will prevent or hinder their carrying out their obligations under this Agreement.

b. Coberly represents and warrants to Rosamond Shareholders that:

i. She has full power to enter into and perform her obligations under this Agreement.

ii. She is not a party to, or subject to, any agreement, order or decree which would prevent or hinder her carrying out her obligations under this Agreement.

6. FCC Application.

a. Within five (5) days after the date of this Agreement, the Rosamond Shareholders and Coberly shall join in the filing of a Joint Petition pursuant to Section 73.3525 of the FCC's Rules, together with such other documents as may be required by that Section, requesting that the FCC approve this Agreement, dismiss Coberly's application with prejudice and grant Rosamond's application as amended in accordance with Section 1 hereinabove. The parties shall cooperate fully with one another

and take whatever additional action which is necessary or appropriate to obtain FCC approval of and to effectuate this Agreement.

b. The obligations of the parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" within the meaning of Subsection 6c, below, approving this Agreement, dismissing with prejudice Coberly's application, dismissing with prejudice Hitt's application and granting Rosamond's application. In the event the FCC does not take such "Final Action" within eight (8) months of the date hereof, either the Rosamond Shareholders or Coberly may, at their option, cause this Agreement to be terminated by giving written notice to the other party provided that the party electing to terminate is not in material default in the performance of any of its obligations hereunder.

c. For the purposes of this Agreement, an action of the FCC shall be a "Final Action" when the time for filing any requests for administrative or judicial review of the action or for the FCC to reconsider such action on its own motion has lapsed without any such filing or motion having been filed or, in the event of such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.

7. Binding Effect.

This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs, successors, executors, personal and legal representatives and assigns.

8. Notices.

Unless otherwise provided in this Agreement, all notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and pending the designation of another address, addressed as follows:

If to Rosamond Radio, Inc.:

P. Dale Ware, Ph.D.
2818 Gus Court
Lancaster, CA 93536

With copy to:

Thomas Schattenfield, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

If to Jamie Leigh Coberly:

Ms. Jamie Leigh Coberly
146 Loma Vista Street #2
El Segundo, CA 90245

With copy to:

Arthur Belendiuk, Esquire
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036

9. Entire Agreement.

This Agreement constitutes the entire understanding of the parties and no other consideration, action or forbearance is contemplated or relied upon by them.

10. Counterparts.

This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by all of the parties.

11. Amendments.

This Agreement may not be altered or amended except in writing, signed by the party or parties against whom enforcement is sought.

12. Headings.

The headings of the paragraphs of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of the specific provisions hereof.

13. Choice of Laws.

This Agreement is to be construed according to the laws of the State of California applicable to transactions conducted entirely within that State, without regard to the conflict of law rules utilized in that jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement
as of the date first set forth above.

ROSAMOND RADIO, INC.

By: 
P. Dale Ware, Ph.D., President

JAMIE LEIGH COBERLY

APPENDIX A

SHAREHOLDERS' AGREEMENT

SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS' AGREEMENT, dated this 30th day of June, 1992, by and between NEWCO, a corporation to be formed under the laws of the State of California, hereinafter called the "Corporation", and P. DALE WARE, PATRICIA WARE, SALVADOR D. MARTINEZ and JAMIE LEIGH COBERLY, who are to be the shareholders of Corporation's capital stock.

W I T N E S S E T H:

WHEREAS, P. Dale Ware, Patricia Ware, and Salvador D. Martinez are shareholders in Rosamond Radio, Inc. (hereinafter sometimes referred to as the "Rosamond Radio Shareholders") which filed an application for a new FM station on Channel 228A in Rosamond, California (hereinafter the "Station");

WHEREAS, Jamie Leigh Coberly (hereinafter referred to as "Coberly") filed a mutually exclusive application for the same radio station authorization in Rosamond, California;

WHEREAS, pursuant to the terms of the Settlement Agreement dated June 30, 1992, Coberly and the Rosamond Radio Shareholders have agreed to merge their applications and form NEWCO;

WHEREAS, it is the intention of Coberly and the Rosamond Radio Shareholders to pool their efforts to construct and operate the Station;

WHEREAS, it is the intention of the shareholders that the stock remain closely held to protect their interest and to continue orderly management of the Corporation's business; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

SECTION 1. CORPORATE NAME. The Corporation's name shall be chosen by a majority vote of the shareholders, at the time of the Corporation's formation. Till such time, the corporate entity to be formed shall be called NEWCO.

SECTION 2. CORPORATE SHARES. The Corporation shall have two classes of shares, Class A common voting and Class B common non-voting. Each shareholder shall be the owner of shares in the following percentages of total equity.

CLASS A COMMON STOCK - VOTING

<u>SHAREHOLDER</u>	<u>PERCENTAGE OF EQUITY</u>	<u>PERCENTAGE OF VOTES</u>
P. Dale Ware, Ph.D.	24%	25.26%
Patricia G. Ware	24%	25.26%
Salvador Martinez	32%	33.68%
Jamie Leigh Coberly	15%	15.80%

CLASS B COMMON STOCK - NON-VOTING

<u>SHAREHOLDER</u>	<u>PERCENTAGE OF EQUITY</u>	<u>PERCENTAGE OF VOTES</u>
Jamie Leigh Coberly	5%	0%

SECTION 3. OFFICERS AND DIRECTORS. The By-laws of the Corporation shall provide for a Board of Directors consisting of four (4) persons. The initial members of the Board of Directors and officers of the Corporation shall be as follows:

P. Dale Ware	Director, President
Patricia Ware	Director, Secretary/Treasurer
Salvador Martinez	Director, Vice President
Jamie Leigh Coberly	Director

SECTION 4. RESTRICTION ON STOCK TRANSFER. No shareholder shall encumber or dispose of the shares of stock of the Corporation which he or she now owns or may hereafter acquire except, subject to approval by the Federal Communications Commission ("FCC"), and as provided for herein.

SECTION 5. ENCUMBRANCE, MORTGAGE OR PLEDGE OF SHARES. No shareholder or transferee of any shareholder may ever encumber, mortgage, pledge or subject any of the shares of stock covered by this Agreement unless such shares of stock are pledged by shareholder as collateral for such shareholder's individual guaranty of the Corporation's obligations.

SECTION 6. PUT OPTION.

No shareholder may sell his/her shares other than pursuant to the provisions of this section. Anytime twelve (12) months after the Station commences operations pursuant to program test authority any shareholder ("offering shareholder") may offer to sell his/her shares pro rata to the other shareholders. If the parties cannot agree on the purchase price, the offering shareholder, at his/her expense, may obtain an appraisal of the fair market value of the Station by a nationally recognized electronic media brokerage firm which specializes in the appraisal of radio stations and which has no financial or other relationship with any shareholder. Within thirty (30) days after the appraisal is completed, any other shareholder, at his/her own expense, may have a second appraisal performed by a media brokerage firm. If no second appraisal is obtained within such

thirty (30) day period, the first appraisal shall be binding on all parties. If a second appraisal is obtained and if the amount of the two appraisals are within ten (10%) percent of each other, the fair market value of the Corporation shall be determined by averaging the two appraisals and such average shall be binding on all parties. If the amount of the two appraisals are more than ten (10%) percent apart, the two appraisers shall select a third appraiser whose appraisal of the fair market value of the Corporation shall be binding on all parties. In order to determine the adjusted book value of the shares of the offering shareholder, the regularly employed auditor of the Corporation shall subtract from the appraised fair market value the liabilities of the Corporation (including all unpaid and accrued Federal, state, city and municipal taxes and other corporate encumbrances) as determined by generally accepted accounting principals. The remainder shall be divided by the number of shares of stock outstanding (including voting and non-voting shares) to determine the adjusted book value per share of stock. The adjusted book value per share shall be the same for voting and non-voting shares.

Within sixty (60) days following the receipt of the appraisal the offering shareholder shall have the right to elect to sell all of his/her shares to the Corporation or other shareholders (hereinafter referred to as "Stock Put"). The Corporation or the other shareholders, on a pro rata basis, may purchase the shares at the adjusted book value for a period of

sixty (60) days after written notice of the Stock Put is delivered. In the event that the Corporation or the other shareholders are unable or unwilling to purchase the shares that have been put, the Station will be placed on the open market for sale and shall be sold, within a reasonable period of time, to the highest bidder. The net proceeds of the sale will be divided by all the shareholders on a pro rata basis.

SECTION 7. ENDORSEMENT ON STOCK CERTIFICATES. The following endorsement shall be printed on each stock certificate subject to this Agreement (including Class "A" and Class "B"): "Any sale, assignment, transfer, pledge or other disposition of this certificate and all rights represented herein are restricted by, and subject to, a Shareholder's Agreement, a copy of which is on file with the Secretary of the Corporation".

SECTION 8. AFFIRMATIVE COVENANTS OF CORPORATION AND SHAREHOLDERS. The Shareholders and Corporation jointly and severally covenant and agree that they will;

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect NEWCO's existence as a corporation, and all material rights, licenses, permits and franchises and comply in every material respect with all laws and regulations applicable to NEWCO and all material agreements to which NEWCO is a party, including all agreements with its stockholders, preserve its material property used or useful in the conduct of NEWCO's business and keep the same in good repair, working order and condition (reasonable wear and

tear and damage by fire or other casualty excepted), and from time to time, make or cause to be made all needful and proper repairs, renewals, replacements, and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times;

(b) Keep all of its insurable properties now or hereafter owned adequately insured at all times against loss or damage by fire or other casualty to the extent customary with respect to like properties of companies conducting similar businesses;

(c) Pay and discharge or cause to be paid and discharged all taxes, assessments and government charges or levies imposed upon NEWCO or its income and profits or upon any of its property, real, personal or mixed, or upon any part thereof as well as all lawful claims for labor, materials and supplies or otherwise, which, if not paid might become a lien or charge upon such properties or any part thereof, in each case before the same shall become in default; provided that NEWCO shall not be required to pay and discharge or cause to be paid and discharged any such taxes, assessments, charge, levy or claims so long as the validity thereof shall be contested in good faith by appropriate proceedings and it shall have set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim, so contested; and provided further that, in any event, payment of any such tax, assessment, charge, levy or claim shall be made before any of its property shall be seized or sold in satisfaction thereof;

(d) Furnish to each shareholder the following documents:

1. Within thirty (30) days after the end of each month, a statement of income and expenses together with supporting schedules;
2. Within forty-five (45) days after the end of each quarter in each fiscal year, NEWCO shall supply each shareholder a copy of its balance sheet and statement of income, retained earnings and sources and use of funds, together with supporting schedules;
3. Within ninety (90) days after the end of each fiscal year, NEWCO shall supply each shareholder a copy of its balance sheet and statement of income, retained earnings, changes in financial position and sources and use of funds, together with supporting schedules, and together with a listing of trades payable and trades receivable showing the financial condition of NEWCO at the close of such fiscal year and the result of operations during such year;
4. Promptly upon there becoming available, and in any event within thirty (30) days following receipt thereof, all rating reports, if any, prepared by Arbitron Rating Company and other rating reports applicable to the operations of the Station;

(e) Permit shareholders to inspect, during normal business hours, the Station's premises and if different the corporate offices of NEWCO and its books and records and to make abstracts or reproductions thereof. A shareholder at his or her own

expense may have an audit conducted of the books and records of the Corporation;

(f) Maintain a standard system of accounting in accordance with generally accepted accounting principals consistently applied;

(g) Pay salaries which are within industry standards based on the location of the Station, its class of service, i.e., Class A FM, and the types of duties performed.

SECTION 9. ACTIONS REQUIRING UNANIMOUS VOTE OF SHAREHOLDERS. The Corporation or its Board of Directors, without approval of all the shareholders holding Class A common stock cannot take the following actions:

(a) Amend NEWCO's Articles of Incorporation or By-Laws;

(b) Issue new shares in NEWCO or make capital calls on its shareholders;

(c) Purchase any real estate or enter into any lease of real estate;

(d) Incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any indebtedness or liability, whether direct, indirect or contingent, except:

(1) Indebtedness for borrowed money or capital leases relating to the construction and operation of the Station in the aggregate principal amount of not more than THREE HUNDRED FIFTY THOUSAND (\$350,000.00) DOLLARS and bearing interest at a rate not to exceed four (4%) percent above the prevailing prime interest rate;

(2) Indebtedness with respect to the replacement of parts and equipment used or useful in the operation of the station in an aggregate principal amount not to exceed FIVE THOUSAND (\$5,000.00) DOLLARS;

(3) Indebtedness with respect to business obligations and other normal accruals in the ordinary course of business (not including trade-out obligations) not yet due and payable or not more than ninety (90) days in arrears measured from the date such payment is due, or with respect to which NEWCO is contesting in good faith the amount or validity thereof by appropriate proceedings, and then only to the extent it has set aside on its books adequate reserves therefore;

(4) All goods or services received in return for a promise to run a specified number of commercials over a period of time (commonly referred to in the industry as trade-outs) shall be the property of or used for the benefit of the Station;

(e) Create, incur, suffer or permit to exist any mortgage, pledge, lien, charge or other encumbrance of any nature whatsoever on any of NEWCO's assets or capital stock now or hereafter owned, issued or outstanding other than:

(1) Liens securing the payment of taxes, either not yet due or the validity of which is being contested in good faith by appropriate proceedings, and as to which it shall have set aside on its books adequate reserves;

(2) Deposits under workmen's compensation, unemployment insurance, and social security laws;

(3) Mortgage pledges, liens, charges or other encumbrances required to secure the funds covered by Section 9(d)(1) herein;

(f) Sell, lease, transfer or otherwise dispose of its properties, assets, rights, and licenses to any person, except in the ordinary course of business including the replacement of equipment with other equipment of at least equal utility and value;

(g) Turn over the day-to-day management of the Station, its assets, rights, licenses and franchises, to any person other than a shareholder of NEWCO;

(h) Enter into any arrangements, directly or indirectly, with any person whereby NEWCO shall sell or transfer any property, real, personal or mixed, used or useful in its business whether now owned or hereinafter acquired, and thereafter rent or lease such property;

(i) Purchase, invest in or otherwise acquire or hold securities (including without limitation capital stock or interest in general or limited partnerships, either as a general or limited partner or otherwise) and evidences of indebtedness of, or make loans or advances to, or enter into any arrangement for the purpose of providing funds or credit to, any other person or entity;

(j) Form any subsidiary; dissolve, liquidate, consolidate with or merge with or otherwise acquire any new radio station, any business unit or all or any substantial portion of the

assets, properties of, or ownership interests, of any corporation, partnership or other entity. The shareholders will not unreasonably withhold approval for the Corporation to enter into a local marketing agreement ("LMA") provided such agreement is commercially reasonable and beneficial to the Station;

(k) Engage, directly or indirectly, in any business other than that of operating the Station;

(l) Sell, assign, discount or dispose in any way of any accounts receivable, promissory notes or trade acceptances, except for collections in the ordinary course of business;

(m) Issue dividends to only one class of shares or dividends that favor one class of shares on a per share basis.

SECTION 10. SPECIFIC PERFORMANCE. The parties hereto recognize that the capital stock of the Corporation cannot be readily purchased or sold in the open market, and for that reason, among others, the parties will be irreparably damaged in the event that this Agreement is not specifically enforced. Should any dispute arise concerning the sale or disposition of capital stock, an injunction may be issued restraining any sale or disposition pending the determination of such controversy. In the event of any controversy concerning the purchase or sale of any such stock, the same shall be enforceable in a court of equity by a decree of specific performance. Such remedy shall, however, be cumulative and not conclusive, and shall be in addition to any other remedy which the parties may have. The parties hereto declare that it is impossible to measure in money