

ORIGINAL

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

ORIGINAL
FILE

In re Applications of)
WIND 'N SEA FM LIMITED PARTNERSHIP)
J.H. COMMUNICATIONS)
For Construction Permit for a)
New FM Station on Channel 295A)
(106.9 MHz) in Ocean City, MD)
To: The Honorable Edward Luton)
Administrative Law Judge)

MM Docket No. 92-64
File No. BPH-901224ME
File No. BPH-901226MB

RECEIVED

AUG 19 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

SUPPLEMENT TO JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

WIND 'N SEA FM LIMITED PARTNERSHIP ("Wind") hereby supplements the "Joint Request for Approval of Settlement Agreement", filed August 14, 1992 by Wind and J.H. Communications ("J.H."). In support whereof, the following is respectfully set forth.

1. Attachment A hereto is a "Declaration of Margaret Isley", Wind's sole General Partner, in which she articulates the expenses incurred in connection with the prosecution of Wind's FM application. These expenses included in excess of \$27,000 in legal fees and more than \$11,000 in other expenses directly related to the prosecution of Wind's application, including the following:

Wind 'n Sea FM L.P. Expense Record

<u>Check #</u>	<u>Amount</u>	<u>To Whom and for What Purpose</u>
101	108.00	J. Jeffrey Craven (reimbursement); Maryland Certification of Partnership
102	2,030.00	FCC; Filing Fee
103	750.00	Stan Karas; Business Plan

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

0+6

104	00.00	VOID
105	1,999.92	Can-Am Consultants; Engineering Svcs.
106	60.00	MD Coast Dispatch; Legal Notice
107	6,760.00	FCC; Hearing Fee
108	<u>250.00</u>	Kenny Tyler; Tax Preparation
TOTAL: \$11,957.92		

2. Attachment B hereto is the "Certificate of Counsel", by Thomas L. Siebert, communications legal counsel to the Wind Applicant. Therein, Mr. Siebert certifies that legal services exceed \$27,000 and sets forth a list of services which are illustrative, though not exhaustive, of those performed.

3. In addition, Wind supplements the Joint Request by submitting original signatures to (a) The Joint Request itself, and (b) two Declarations submitted by Wind's General Partner, Margaret Isley.

WHEREFORE, in light of the Joint Request and the instant Supplement which demonstrates that Wind's request for reimbursement does not exceed its legitimate and prudent expenses, Wind respectfully requests that the Presiding Officer approve the Settlement Agreement between Wind and J.H.

Respectfully submitted,

**WIND 'N SEA FM
LIMITED PARTNERSHIP**

By: Thomas L. Siebert
Thomas L. Siebert
BESOZZI & GAVIN
1901 L Street, NW
Suite 200
Washington, D.C. 20036
(202) 293-7405

Its Counsel

Dated: August 19, 1992
/0653/SuppJtRq.pld

ATTACHMENT A

DECLARATION

Margaret Isley, under penalty of perjury, states as follows:

1. I am the sole General Partner of Wind 'n Sea FM Limited Partnership ("Wind'), an applicant for authority to construct a new FM radio station in Ocean City, Maryland, FCC File No. BPH-901224ME.

2. Wind has entered into an agreement with J.H. Communications ("J.H."), an applicant for the same facilities, to settle the Ocean City proceeding (the "Settlement Agreement"). The Settlement Agreement contemplates dismissal of the Wind application in consideration of the reimbursement of expenses up to \$37,500.00.

3. Wind has incurred expenses in connection with the prosecution of its application in excess of \$37,000.00. Such expenses include: bills from counsel to Wind for legal fees in excess of \$27,000.00 (as set forth in greater detail in the accompanying Certificate of Counsel). In addition, Wind has incurred direct expenses aggregating \$11,957.92 in prosecuting its application as follows: (Copies of checks are attached)

Wind 'n Sea FM L.P. Expense Record

<u>Check #</u>	<u>Amount</u>	<u>To Whom and for What Purpose</u>
101	108.00	J. Jeffrey Craven (reimbursement); Maryland Certification of Partnership
102	2,030.00	FCC; Filing Fee
103	750.00	Stan Karas; Business Plan
104	00.00	VOID
105	1,999.92	Can-Am Consultants; Engineering Svcs.
106	60.00	MD Coast Dispatch; Legal Notice

107	6,760.00	FCC; Hearing Fee
108	<u>250.00</u>	Kenny Tyler; Tax Preparation
TOTAL: \$11,957.92		

4. The application of Wind was not filed for the purpose of reaching or carrying out a settlement.

Dated: August 18, 1992


Margaret Isley, General Partner
Wind 'n Sea FM Limited Partnership

/0653/ecedec1.dec

TELLER
255

DEC 21 1990

101

ML
December 21 1990

7-16
520

PAY TO THE
ORDER OF

J. Jeffrey Cress

\$ 108.00

one hundred eight dollars and no/100
108.00 DOLLARS



MARYLAND FEDERAL BANK
BALTIMORE, MARYLAND

WELCOME

FOR Use N-500 Fm L.P. Certification Copy

Worship

Wiley

⑈000010⑈⑈1052000168⑈⑈⑈0535239719⑈⑈0000010800⑈

0820
00168

0520-0027-8
0820-0027-8

501580678 1122-50

11223357

082598006-7

J. Jeffrey Cress

Wind-'n-Sea-FM-Limited Partnership

6556 Ocean Pines

Berlin, Maryland 21811

102

December 21 19 90

7-16
520

PAY TO THE ORDER OF Federal Communications Commission

\$ 2030.00

Two thousand thirty dollars and 00/100

DOLLARS



MELLON AND NATIONAL BANK

BALTIMORE, MARYLAND

WELCOME

Ocean-City, MD-FM-App.
FOR FCC-Filing-Fee Code MTR

Margaret Steyer

⑆0000102⑆ ⑆052000168⑆ 0535239719⑆ ⑆0000203000⑆

60612-24-90 6379195 8195426 882 18

05300267 12

CREDIT TO ACCOUNT OR
WITHIN NAMED PAYEE
WITHOUT PREJUDICE; ABSENCE
OF ENDORSEMENT GUARANTEED
MELLON BANK-SMBC-PGL, PA.

1830 DE '90 231
8168 042000261

752081888

77834809

WIND. N° 5874 - FM L.P.

103

January 4 19 91 7-16-520

PAY TO THE ORDER OF

How Keros

\$ 750.00

seven hundred fifty dollars ~~no 611391 04 0052~~ DOLLARS



WINDYLAND INTERNATIONAL BANK

WELCOME

FOR *Proforma BUSINESS PLAN*
OCEAN CITY FM LICENSE APPLICATION

Raymond Wiley

⑈0000103⑈ ⑆052000168⑆ 0535239719⑈ ⑆0000075000⑆

Ch. Pearson

104

January 4 19 91

7-16
520

PAY TO THE
ORDER OF

~~Don Williamson P.E.~~

~~0~~
\$

DOLLARS



WELLS FARGO NATIONAL BANK
BALTIMORE, MARYLAND

WELCOME

VOID

FOR

⑈0000104⑈ ⑈052000168⑈ ⑈0535239719⑈



WINS N. SON - FM L.P.
6556 Ocean Pines
Berlin, MA 21811

105

January 4 19 91 7-16
520

PAY TO THE
ORDER OF

Cam-Am Consultants Ltd 1999.92

nineteen hundred ninety nine dollars and 92/100 DOLLARS



FARMERS AND MERCHANTS BANK
BALTIMORE, MARYLAND

WELCOME

FOR ENGINEERING SERVICES Re: Ocean
City Fm Application

Margaret Isley

⑈0000105⑈⑈052000168⑈⑈0535239719⑈⑈0000199992⑈

0535239719

0520-0027-B
0520-0027-B
305733336 01-06-91
JA '91 08
0830
00100

for deposit
CAM Am

011001931

Account # 4W030

Wind N' Sea FM Limited Partnership
6556 Ocean Pines
Berlin, MD 21822

106

March 6, 19 91 7-16
520

PAY TO THE ORDER OF The Maryland Coast Dispatch \$ 60.00

sixty-dollars and no/100 DOLLARS



MARYLAND NATIONAL BANK
BALTIMORE, MARYLAND

WELCOME

Raymond Volley

FOR Legal Notice (-2/1, -2/8/91)

⑈0000106⑈ ⑆052000168⑆ ⑆0535239719⑆ ⑆000000000000⑆

FOR DEPOSIT ONLY

FOR DEPOSIT ONLY
MARYLAND COAST DISPATCH

001183852732**031005290108MARS1

MR '91 11

00100
0290

⑈0535239719⑆

WIND-n SEA-FM, L.P.
6556 Ocean Pines
Berlin, MD 21811

107

July 11, 19 91 7-16
520

PAY TO THE ORDER OF Federal Communications Commission \$ 6,760

six thousand seven hundred sixty dollars and no/100 DOLLARS



MELLON NATIONAL BANK
BALTIMORE, MARYLAND

WELCOME

Margaret Volby

FOR COMPARATIVE HEARING FEE

⑆0000107⑆ ⑆052000168⑆ ⑆0535239719⑆ ⑆0000675000⑆

06807-16-91 0358178 0170288 019 18

PAID TO ACCOUNT OF
MELLON BANK
WITHOUT THE SIGNATURE
OR ENDORSEMENT GUARANTEED
MELLON BANK-CMDC-PGH., PA.

0430001201 16

371691
41030523

1116 96 220

ATTACHMENT B

CERTIFICATE OF COUNSEL

I, Thomas L. Siebert, do hereby certify that the following is true and correct:

1. I serve in an "Of Counsel" capacity in the Law Firm of Besozzi & Gavin, 1901 L Street, N.W., Suite 200, Washington, D.C. 20036 (the "Law Firm").

2. The Law Firm is counsel of record to Wind 'n Sea FM Limited Partnership ("Wind"), an applicant for a new FM station at Ocean City, MD, FCC File No. BPH-901224ME.

3. The Law Firm has represented Wind at all times since December 1990 in connection with the filing of the Ocean City application.

4. The Law Firm has issued bills to Wind totalling in excess of \$27,000.00 for legal fees incurred and cash disbursements made by the Law Firm since January 1991 solely in connection with the Ocean City FM application and the prosecution of said application.

5. In addition, Wind has paid the application and hearing designation fees charged by the Commission, as well as associated direct expenses related to prosecution of its application.

6. The Settlement Agreement between Wind and J.H. Communications provides for a reimbursement of expenses up to \$37,500.00. As set forth in the "Declaration of Margaret Isley," such a payment will reimburse Wind for an amount less than the legitimate and prudent expenditures incurred by Wind in preparing, filing and prosecuting its application for the Ocean City FM facility.

7. I hereby certify that out of the \$37,500.00 in expenses,

Wind has incurred legal fees in excess of \$27,000.00 since the preparation of the filing of its application. On behalf of Wind's Ocean City Application, I, myself, or other lawyers in this Law Firm have performed the following services beginning in December 1990:

a. Reviewed the Ocean City allocation with Wind's General Partner, Margaret Isley.

b. Assisted in the drafting of portions of the FCC Form 301 Application, including the Exhibits to the Form 301, as well as the supporting financial documentation for the application's financial certification.

c. Reviewed the applications of five competing applicants, as well as consultations with Winds's consulting engineer regarding a petition filed against Wind on engineering grounds.

d. Prepared Limited Partnership Agreement for use by Wind's two partners.

e. Several meetings to attempt to negotiate July 1991 settlement among parties which proved unsuccessful.

f. Review of May 1991 Hearing Designation Order, and subsequent case preparation, including deposition of principals.

g. Negotiation of Settlement Agreement in August 1992, as well as preparation/revision of necessary papers to implement settlement.

8. I certify that the fees for these matters alone exceeded \$27,000.00.

Dated: August 18, 1992

Thomas L. Siebert
Thomas L. Siebert

ORIGINAL SIGNATURES

approval of the Settlement Agreement, dismissal of Wind's application with prejudice, and grant of J.H.'s application is requested.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: Stephen T. Yelverton
Stephen T. Yelverton
Attorneys for J.H. Communications
1130 Connecticut Avenue, N.W.
Suite 750
Washington, D.C. 20036-3904
Telephone: (202) 429-8910

BESOZZI & GAVIN

BY: Thomas L. Siebert
Thomas L. Siebert

BY: Jeffrey Craven
Jeffrey Craven
Attorneys for Wind N'Sea FM
Limited Partnership
1901 L Street, N.W., Suite 200
Washington, D.C. 20036
Telephone: (202) 293-7405

August 14, 1992

ayw/sty/1450810a

DECLARATION

I, MARGARET ISLEY, under penalty of perjury, hereby declare as follows:

1. Wind N' Sea FM Partnership is an applicant for a Construction Permit for the new FM station on Channel 295A in Ocean City, Maryland. I am the General Partner of Wind.

2. The Wind application was filed on December 24, 1990. It was filed in good faith and for the purpose of obtaining an authorization to construct the requested facilities. It was not filed with the purpose of entering into or carrying out a settlement agreement.

3. Wind has entered into an agreement with JH Communications pursuant to which Wind will dismiss its applications with prejudice. Neither Wind, nor its principals have paid or received any consideration for the dismissal of the Wind application other than as set forth in the Settlement Agreement being tendered herewith. Approval of the settlement would be in the public interest inasmuch as it would permit the prompt institution of service to the public and would conserve the Commission's resources by obviating the need for a lengthy comparative hearing.

WIND N' SEA LIMITED PARTNERSHIP

Date:

August 13, 1992

By:

Margaret Isley
Margaret Isley, General Partner

dml/sty2/1450807C

certified mail, postage prepaid, with return receipt requested to the following or their respective designees:

To J.H. Communications

Stephen T. Yelverton, Esq.
Maupin Taylor Ellis & Adams, P.C.
1130 Connecticut Avenue, N.W., Suite 750
Washington, D.C. 20036
Telephone: (202) 429-8910

To Wind N' Sea EM Limited Partnership

Thomas L. Siebert, Esq.
Besozzi & Gavin
1901 L. Street, N.W., Suite 200
Washington, D.C. 20036
(202) 293-7405

11. The parties agree that this Agreement can be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

12. J.H. and Wind each acknowledge that they have made no representations or warranties except as specifically set forth herein.

13. This Agreement shall be construed under and governed by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

J.H. COMMUNICATIONS

BY: _____
Title: _____

WIND N' SEA EM LIMITED PARTNERSHIP

BY: *Raymond Sley*, General Partner
Title: _____

bbp/sty2/1450807A

Certificate of Service

I, Carla L. Duryea, a secretary in the law firm of Besozzi & Gavin, do hereby certify that copies of the forgoing **"SUPPLEMENT TO JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT"** were, on this 19th day of August, 1992, sent by first-class U.S. mail, postage prepaid, to the following individuals (except as otherwise noted):

The Honorable Edward Luton *
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Washington, D.C. 20554

Robert Zauner, Esquire *
Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554

Alan Campbell, Esquire
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037
Counsel for Family Stations, Inc.



Carla L. Duryea

* Delivered by hand
/u/0653/cert.doc