

ORIGINAL
FILE

LAW OFFICES
HALEY, BADER & POTTS

SUITE 600

2000 M STREET, N.W.

WASHINGTON, D.C. 20036-3374

(202) 331-0806

TELECOPIER (202) 296-8679

MICHAEL H. BADER
WILLIAM J. BYRNES
JOHN CRIGLER
JAMES E. DUNSTAN
JOHN WELLS KING
THEODORE D. KRAMER
BENJAMIN J. LAMBIOTTE
MARY A. MCREYNOLDS
DAVID G. O'NEIL
JOHN M. PELKEY

KENNETH A. COX
MARY PRICE TAYLOR
COUNSEL

WILLIAM J. POTTS, JR.
RICHARD M. RIEHL
SUSAN H. ROSENAU
DAWN M. SCIARRINO (NY)
LEE W. SHUBERT
HENRY A. SOLOMON
RICHARD H. STRODEL
JAMES M. TOWARNICKY
KATHLEEN VICTORY
MELODIE A. VIRTUE

LARRY D. SUMMERVILLE
BROADCAST ANALYST

ANDREW G. HALEY
(1904-1986)

September 4, 1992

Mr. Gary Kalagian, Chief
Data Management Staff
Audio Services Division
Mass Media Bureau, Room 350
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RECEIVED

SEP - 4 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

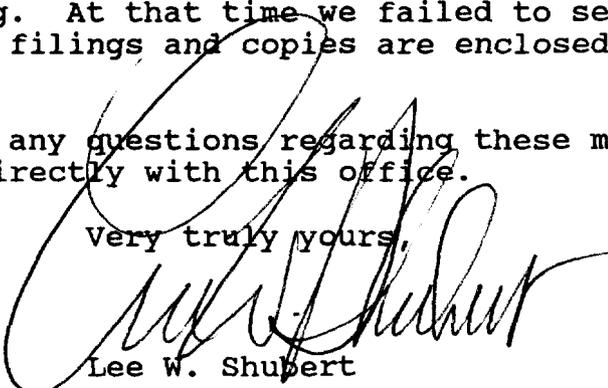
RE: MM Docket 92-98
BPED-910412MC
Reading, OH

Dear Mr. Kalagian:

On August 24, 1992, we filed a JOINT PETITION FOR APPROVAL OF SETTLEMENT AND DISMISSAL OF APPLICATION and a PETITION FOR LEAVE TO AMEND AND AN AMENDMENT and on August 28, 1992, filed an ERRATA TO AMENDMENT, in the above-referenced proceeding. At that time we failed to serve you with a copy of these filings and copies are enclosed herewith.

Should you have any questions regarding these matters, please communicate directly with this office.

Very truly yours,


Lee W. Shubert

Enclosures (3)

LWS/blr

CERTIFICATE OF SERVICE

I, Barbara L. Rascon, a secretary in the law offices of Haley, Bader & Potts, hereby certify that I have on this 4th day of September 1992, sent copies of the foregoing "JOINT PETITION FOR APPROVAL OF SETTLEMENT AND DISMISSAL OF APPLICATION", "PETITION FOR LEAVE TO AMEND AND AN AMENDMENT", and an "ERRATA TO AMENDMENT" by first-class, United States mail, postage prepaid, to the following:

Mr. Gary Kalagian, Chief*
Data Management Staff
Mass Media Bureau
Federal Communications Commission
1919 M Street, NW, Room 350
Washington, DC 20554

with copy of transmittal letter only to:

Honorable John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW, Room 223
Washington, DC 20554

Robert A. Zauner, Esq.
Hearing Division, Mass Media Bureau
Federal Communications Commission
2025 M Street, NW, Room 7212
Washington, DC 20554

Stanley S. Neustadt, Esq.
Cohn & Marks
1333 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036-1573
(Counsel to Miami University)


Barbara L. Rascon

*Hand Delivery

LAW OFFICES

HALEY, BADER & POTTS

SUITE 800

2000 M STREET, N.W.

WASHINGTON, D.C. 20036-3374

(202) 331-0806

TELECOPIER (202) 296-8679

August 24, 1992

MICHAEL H. BADER
WILLIAM J. BYRNES
JOHN CRIGLER
JAMES E. DUNSTAN
JOHN WELLS KING
THEODORE D. KRAMER
BENJAMIN J. LANBIOTTE
MARY A. McREYNOLDS
DAVID G. O'NEIL
JOHN M. PELLEY

KENNETH A. COX
MARY PRICE TAYLOR
COUNSEL

WILLIAM J. POTTS, JR.
RICHARD M. RIEHL
SUSAN H. ROSENBAU
DAWN M. SCIARRINO (NY)
LEE W. SHUBERT
HENRY A. SOLOMON
RICHARD H. STRODEL
JAMES M. TOWARNICKY
KATHLEEN VICTORY
MELODIE A. VIRTUE

LARRY D. SUMMERVILLE
BROADCAST ANALYST

ANDREW G. HALCY
(1904-1966)

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

SEP - 4 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

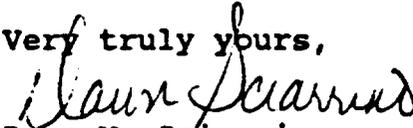
Re: MM Docket 92-98
File No. BPED-910412MC
Reading, Ohio

Dear Ms. Searcy:

Transmitted herewith, on behalf of Southwestern Ohio Seniors' Services, Inc. and The President and Trustees of The Miami University, are the original and six copies of their Joint Petition for Approval of Settlement and Dismissal of Application in the above-referenced proceeding.

Also transmitter herewith, on behalf of Southwestern Ohio Seniors' Services Inc., are the original and six copies of a Petition for Leave to Amend and an Amendment to its above-reference application.

If there are any questions concerning this matter, kindly communicate directly with this office.

Very truly yours,

Dawn M. Sciarrino

DMS:dms

Enclosures (14)

cc (by hand w/ enclosures):
The Honorable John M. Frysiak
Robert A. Zauner

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

SEP - 4 1992

In re Applications of)	MM Docket No. 92-98	FEDERAL COMMUNICATIONS COMMISSION
)		OFFICE OF THE SECRETARY
THE PRESIDENT AND BOARD)	File No. BPED-890530MA	
OF TRUSTEES OF)		
THE MIAMI UNIVERSITY)		
)		
SOUTHWESTERN OHIO SENIORS')	File No. BPED-910412MC	
SERVICES, INC.)		
)		
For Construction Permit for a New)		
Non-Commercial FM Station on)		
Channel 207A at Reading, Ohio)		

To: The Honorable John M. Frysiak
Administrative Law Judge

**JOINT PETITION
FOR APPROVAL OF SETTLEMENT AGREEMENT AND DISMISSAL OF APPLICATION**

Southwestern Ohio Seniors' Services, Inc. ("SOSSI") and The President and Trustees of the Miami University ("University"), applicants for a new non-commercial FM Station on Channel 207A at Reading, Ohio (MM Docket 92-98; File Nos. BPED-910412MC and BPED-890530MA, respectively), by their respective attorneys and pursuant to Section 311(c) of the Communications Act, as amended, Section 73.3525 of the Commission's Rules, and the Commission's Report and Order and Memorandum Opinion and Order in MM Docket No. 90-263,^{1/} hereby respectfully request the Commission to:

- (1) approve the Settlement Agreement, appended hereto as Attachment 1;
- (2) dismiss University's application with prejudice;
- (3) grant SOSSI's amendment to modify its engineering proposal to specify that previously proposed by University; and

^{1/} In the Matter of Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits, 6 FCC Rcd. 85 (1990) and 6 FCC Rcd. 2901 (1991).

- (4) grant SOSSI's application, as amended, for a new non-commercial FM station on Channel 207A at Reading, Ohio.

In support thereof the following is respectfully shown:

1. SOSSI and University both filed applications with the Federal Communications Commission ("FCC") for authority to construct a new non-commercial FM station on Channel 207A at Reading, Ohio.

2. The above-referenced SOSSI and University applications are mutually-exclusive in that only one of the two applications can be granted.

3. The Chief of the FCC's Audio Services Division designated the SOSSI and University applications for a comparative hearing by *Hearing Designation Order*, DA 92-517, released May 5, 1992.

4. SOSSI and University have reached an agreement to resolve their mutual exclusivity and terminate the pending proceeding. By the terms of the Settlement Agreement and in consideration of the promises contained therein, SOSSI shall seek leave to amend its application to specify the engineering previously proposed by University, and SOSSI shall grant University an option or right of first refusal for a period of 17 years. Subject to the Commission's approval, University has agreed to dismiss its application and SOSSI in return agrees to pay University a sum not in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in reimbursement of its legitimate and prudent expenses incurred in preparing, filing, prosecuting its application.

5. In amending Section 73.3525 regarding settlement agreements, the Commission limited the amount an applicant could receive in return for dismissing an application to the applicant's legitimate and prudent expenses which is defined as the

expenses incurred by the applicant in preparing, filing, prosecuting, and settling its application. *Report and Order*, at 87; *Memorandum Opinion and Order*, at 2901. Applicants are foreclosed from making a profit on the settlement of the application. *Id.* The contemplated settlement payment is not in excess of University's legitimate and prudent expenses and, therefore, University will not profit from this settlement payment.

6. In accordance with Section 73.3525(a) of the Commission's Rules, 47 CFR 73.3525(a), SOSSI and University have submitted affidavits setting forth the requirements of Section 73.3525(a)(1)-(6), Attachments 2 and 3, hereto, respectively.

7. The approval of this Settlement Agreement will serve the public interest by eliminating the state of mutual exclusivity between the parties and thereby eliminating the need for a comparative hearing, conserving the resources of the Commission and parties and expediting the provision of a new non-commercial FM radio service on Channel 207A to Reading, Ohio and the surrounding area.

WHEREFORE, the premises considered, SOSSI and University respectfully request the Commission to take the following actions:

- (1) approve the Settlement Agreement, appended hereto as Attachment 1;
- (2) dismiss University's application with prejudice;
- (3) grant SOSSI's amendment to modify its engineering proposal to specify that previously proposed by University; and

(4) grant SOSSI's application for a new non-commercial FM station on Channel 207A at Reading, Ohio.

Respectfully submitted,

**THE PRESIDENT AND TRUSTEES OF THE
MIAMI UNIVERSITY**

COHN & MARKS
Suite 600
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036
202/452-4814

By: Stanley S. Neustadt
Stanley S. Neustadt
Wayne Coy, Jr.

Its Attorneys

HALEY, BADER & POTTS
Suite 600
2000 M Street, N.W.
Washington, D.C. 20036
202/331-0606

**SOUTHWESTERN OHIO SENIORS'
SERVICES, INC.**
By: Lee W. Shubert
Lee W. Shubert
Dawn M. Sciarrino

Its Attorneys

August 24, 1992

SETTLEMENT AGREEMENT

by and between

THE PRESIDENT AND BOARD OF TRUSTEES OF THE MIAMI UNIVERSITY

and

SOUTHWESTERN OHIO SENIORS' SERVICES, INC.

Effective as of August 24, 1992

Prepared by

Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, DC 20036
Telephone: 202/452-4814

and

Haley, Bader & Potts
2000 M Street, N.W.
Suite 600
Washington, DC 20036-3374
Telephone: 202/331-0606

Table of Contents

<u>Section</u>	<u>Page</u>
1. Definitions	1
1.1. Business Day	1
1.2. Commission	1
1.3. Consideration	1
1.4. FCC	1
1.5. Final Order	1
1.6. Joint Petition	2
1.7. Licenses	2
1.8. Miami's Application	2
1.9. Option Term	2
1.10. Option Triggers	2
1.11. Principal	2
1.12. Radio Station	2
1.13. Refusal Term	2
1.14. SOSSI's Application	2
2. Commission Consent	3
3. Joint Request for Approval of Agreement	3
3.1. Actions Promoting Approval of Agreement	3
3.2. Dismissal of Miami's Application	3
4. Consideration	3
5. Amendment of SOSSI's Application	3
6. Miami's Option	4
6.1. Reimbursement to SOSSI for Acquisition Expenses	4
6.2. Reimbursement to SOSSI for Construction Expenses	4
7. Miami's Right of First Refusal	5
7.1. Existence of Bona Fide Offer	5
7.2. Miami's Election	5
8. No Future Litigation by SOSSI	5
9. No Future Litigation by Miami	5
10. Notice	5
10.1. Alternate Addressees	6
10.2. Date of Notice, Action	6
11. Waiver	6
12. Valid Organization and Warranty	6
13. Benefit; Assignment	7
14. Governing Law; Venue	7
15. Entire Agreement	7
16. Expenses	7
17. Counterparts and Effective Date	7
18. Severability	7
19. Headings	7
20. Republication	7
21. Further Assurances	7

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and effective as of the last date indicated below at the signatures of the parties, by and between The President and Board of Trustees of the Miami University, an Ohio institution of higher learning (hereinafter "Miami"), and Southwestern Ohio Seniors' Services, Inc. ("SOSSI"), an Ohio corporation.

WHEREAS, SOSSI and Miami are mutually exclusive applicants before the Federal Communications Commission ("Commission") for a permit to construct a new FM station on Channel 207A at Reading, Ohio; and

WHEREAS, the implementation of this Agreement would eliminate the need for further comparative hearing, conserve the resources of the Commission and of the parties, and expedite the provision of a new FM service to Reading, Ohio;

WHEREAS, the parties believe that the public interest would be served by the inauguration of the new service to Reading, Ohio, by simplification of the pending proceedings before the Commission and further, by conserving the finite resources of the parties to this proceeding and of the Commission;

WHEREAS, the implementation of this Agreement is subject to prior Commission approval;

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, and subject to the requirements of Section 73.3525 of the Commission's Rules, it is agreed as follows:

§1. *Definitions.* The terms described in this section shall, for the purposes of this Agreement, have the following meanings:

§1.1. *Business Day.* The term "Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks in Cincinnati, Ohio, are required to close.

§1.2. *Commission.* The term "Commission" shall mean the Federal Communications Commission, Washington, D.C.

§1.3. *Consideration.* The term "Consideration" shall mean the money to be paid by SOSSI to reimburse Miami in return for the dismissal of Miami's Application, as provided by Section 4, hereof.

§1.4. *FCC.* The term "FCC" shall mean the Federal Communications Commission, Washington, D.C.

§1.5. *Final Order.* For the purposes of this Agreement, "Final Order" or "Final Orders" shall mean actions taken by the Commission, or its delegatee, for which no judicial or administrative reconsideration or appeal is pending and for which the time for filing such judicial or administrative reconsideration or appeal has expired.

§1.6. *Joint Petition.* The term "Joint Petition" shall mean a Joint Request for Approval of this Agreement to be filed with the Commission by the parties hereto.

§1.7. *Licenses.* "Licenses" mean the permits and licenses issued by the Commission for the Radio Station and all associated auxiliary broadcast stations, if any.

§1.8. *Miami's Application.* The term "Miami's Application" shall mean that application (FCC Form 340), as amended, bearing the File Number BPED-890530MA, by which Miami has sought Commission authority to construct and operate the Radio Station.

§1.9. *Option Term.* The nomenclature "Option Term" shall mean that period of time beginning on the first day after the grant of SOSSI's Application becomes a Final Order, and continuing for a period of eighty-four (84) months thereafter, or such short term as may occur as provided in Section 7 and its subparts.

§1.10. *Option Triggers.* The term "Option Triggers" shall mean one or more events or incidents occurring during the Option Term and caused, intentionally or unintentionally, by SOSSI whereby SOSSI (a) fails to construct the Radio Station during the time, or any extensions thereof, authorized by the Commission for the construction of the Radio Station; or (b) permanently discontinues regular operation of the Radio Station without assigning or transferring it; or (c) does not broadcast the minimum hours to avoid a potential filing for a share time request -- presently agreed to be at least 12 hours per day, 365 days a year, or as otherwise specified by the Commission; or (d) enters into an agreement with a person, entity or organization that is not an employee of SOSSI or a party to this agreement for the brokerage of all or substantially all of the time on the Radio Station; or (e) seeks to assign all or substantially all of the assets and Licenses for the Radio Station to a person, entity or organization that is not a party to this Agreement; or (f) seeks to transfer control of the licensee for the Radio Station to a person, entity or organization that is not a party to this Agreement, or SOSSI's immediate assign hereunder.

§1.11. *Principal.* The term "Principal" shall mean any officer of the parties to this Agreement.

§1.12. *Radio Station.* The term "Radio Station" shall mean that FM broadcast station that is authorized by the Commission to operate on FM Channel 207 at Reading, Ohio.

§1.13. *Refusal Term.* The nomenclature "Refusal Term" shall mean that period of time beginning on the first day after the end of the Option Term and continuing for a period of one hundred twenty (120) months thereafter.

§1.14. *SOSSI's Application.* The term "SOSSI's Application" shall mean that application (FCC Form 340), as amended, bearing the File Number BPED-910412MC, by which SOSSI has sought and continues to seek the Commission's authority to construct and operate the Radio Station.

§2. Commission Consent. This Agreement is entered into subject to approval by the Commission, and shall be void unless the Commission shall approve it. Should the Commission refuse to approve this Agreement, then the parties hereby agree that they will immediately make good faith efforts to resolve each Commission objection in order to obtain Commission approval. In the event that the Commission has not approved this Agreement within nine (9) months from the date hereof, then either party hereto, upon written notice to the other, may terminate this Agreement.

§3. Joint Request for Approval of Agreement. Within five (5) days of the effective date of this Agreement, the parties hereto agree to file with the Commission a Joint Petition which shall be accompanied by a copy of the executed Agreement as well as other supporting documentation as required by Section 73.3525 of the Commission's Rules. The Joint Petition shall seek (a) approval of this Agreement; (b) dismissal with prejudice of Miami's Application; and (c) grant of the SOSSI Application.

§3.1. Actions Promoting Approval of Agreement. Together with the Joint Petition, the parties shall file declarations of Principals complying with the provisions of Section 73.3525 of the Commission's Rules. The parties agree to provide the Commission with any additional information necessary to obtain approval of this Agreement within ten (10) Business Days of any request for such information. The parties further agree to take no action that is in any way adverse to this Agreement, the Joint Petition, the dismissal of Miami's Application or the grant of SOSSI's Application for the Radio Station. No party hereto is obligated to file or join in the prosecution of any request for reconsideration, review or appeal, or to actively oppose reconsideration, review or appeal, or actively participate in any such proceeding. Each party, however, so long as this Agreement is not terminated, will cooperate in such action by another party (or parties) directed toward approval of this Agreement and the actions contemplated herein.

§3.2. Dismissal of Miami's Application. Concurrently with the filing of the Joint Petition, Miami agrees to request dismissal, with prejudice, of Miami's Application, contingent upon approval of this Agreement.

§4. Consideration. It is agreed that SOSSI shall reimburse Miami for such documented reasonable and prudent expenses as are allowed by the Commission and that are attributable to Miami's efforts to prepare, file and prosecute Miami's Application, including expenses incurred to achieve the settlement between Miami and SOSSI, provided that such reimbursement shall not, in any event exceed TWENTY FIVE THOUSAND and NO/100 DOLLARS (\$25,000.00), or such lesser amount as may ultimately be approved by the Commission. The Consideration, as approved by the Commission, shall be paid in cash, United States currency, or certified or cashier's check payable to Miami's attorneys, Cohn & Marks, at the address specified in Section 10, hereof. Miami expressly authorizes its attorneys to acknowledge and receive such payment. The payment shall be made on the tenth (10th) Business Day from the date that the Commission's order granting SOSSI's Application becomes a Final Order. The obligation of SOSSI to pay Miami any sum shall arise only if SOSSI's Application is granted. SOSSI is not obligated to pay the Settlement Amount or any portion thereof to Miami except as specifically provided above. The payment by SOSSI to Miami is a material term of this Agreement.

§5. Amendment of SOSSI's Application. As part of the Joint Petition, but in no event later than thirty (30) days of the date of this Agreement, SOSSI shall file with the Commission, and the support of Miami, an amendment to SOSSI's Application that reflects

that SOSSI, upon approval of this Agreement and dismissal of Miami's Application, will change the engineering portion of SOSSI's Application to incorporate, use, and rely upon the engineering set forth in Miami's Application. Miami hereby specifically authorizes SOSSI to use and incorporate in SOSSI's Application the engineering portion of Miami's Application without further consideration of any kind whatsoever to be promised or paid by SOSSI. Miami will join with SOSSI in seeking from the Presiding Administrative Law Judge such additional time as may be required to act on the Joint Petition and for the Mass Media Bureau to review the amendment to SOSSI's Application and to advise the Presiding Administrative Law Judge concerning the amendment. In the event, for any reason, that the amendment to SOSSI's Application is not accepted and granted, the remainder of this Agreement will continue as provided in Section 18, hereof.

§6. *Miami's Option.* During the Option Term, should an Option Trigger occur, then Miami shall have the absolute option to acquire the Radio Station, subject to the prior approval of the Commission, in return for Miami's obligatory reimbursement to SOSSI of SOSSI's reasonable and prudent expenses incurred in obtaining and constructing the Radio Station. Should an Option Trigger occur, then SOSSI shall be obligated to notify Miami in writing and within twenty (20) Business Days of the occurrence, that an Option Trigger has occurred. Miami may then exercise the option by providing SOSSI, within twenty (20) Business Days of Miami's receipt of SOSSI's notice, with an acknowledgement of Miami's receipt of SOSSI's notice and of Miami's intention to exercise the option. Miami shall then have twenty (20) Business Days to prepare and file with the Commission, a requisite application for the assignment of the Licenses for the Radio Station from SOSSI to Miami. Should Miami fail to (a) respond or (b) seek, in writing, from SOSSI an extension of the time for a response, within the twenty (20) Business Day period, as herein provided, then Miami's option right and the Option Term shall expire and no longer be valid. For the purposes of this Agreement the reimbursement to be paid to SOSSI by Miami for option to acquire the Radio Station shall be limited, as follows:

§6.1. *Reimbursement to SOSSI for Acquisition Expenses.* Miami shall reimburse SOSSI for its reasonable and prudent, documented, expenses incurred by SOSSI in connection with the preparation, filing and prosecution of SOSSI's Application, not to exceed THIRTY SEVEN THOUSAND TWO HUNDRED FIFTY and NO/100 DOLLARS (\$37,250.00) plus any sums paid by SOSSI to Miami as reimbursement under this Agreement. During the first sixty (60) months of the Option Term, Miami's reimbursement shall include the expenditures by SOSSI to reimburse Miami in return for the dismissal of Miami's Application; during the balance of the Option Term, Miami's reimbursement to SOSSI, pursuant to this Section, shall exclude the expenditures by SOSSI to reimburse Miami in return for the dismissal of Miami's Application.

§6.2. *Reimbursement to SOSSI for Construction Expenses.* Miami shall reimburse SOSSI for its reasonable and prudent, documented, expenses incurred by SOSSI in connection with the acquisition, delivery and installation of all Radio Station equipment and facilities, but limited to studio, production and transmission system equipment. Further, Miami shall reimburse SOSSI for all necessary improvement expenses incurred or made and documented by SOSSI with regard to the Radio Station transmitter site, so long as the transmitter site is that specified in Miami's Application, or a subsequently authorized transmitter site; provided, however, that said subsequently authorized transmitter site must provide comparable or greater coverage over the Cincinnati metropolitan area than does the transmitter site specified in Miami's Application. To be considered valid expenses hereunder,

SOSI's expenses shall have been incurred prior to the date SOSI notifies Miami of the occurrence of any Option Triggers

§7. Miami's Right of First Refusal. During the Refusal Term the following rights of first refusal shall apply:

§7.1. Existence of Bona Fide Offer. SOSI shall grant to Miami the right of first refusal to be exercised by Miami following its receipt of a written notification from SOSI of the terms of a *bona fide* offer from a third party to purchase all of the assets and Licenses of the Radio Station. During the Refusal Term, should SOSI receive from a third party an offer to sell the Radio Station or solicit from a third party a bid to sell the Radio Station, and should a *bona fide* offer be made, then SOSI shall be obligated to notify Miami in writing of all the materials terms of said offer.

§7.2. Miami's Election. Miami shall have a period of twenty (20) Business Days from its receipt of SOSI's written notice, as provided in Section 8.1, in which to elect to purchase the Radio Station upon the same terms and conditions as contained in the offer made by the third party to SOSI. Should Miami elect to purchase the Radio Station, it shall notify SOSI in writing that it will meet the material terms of the *bona fide* offer. To be valid, Miami's written notice to SOSI shall be postmarked no later than twenty (20) Business Days following Miami's receipt of SOSI's notice, and shall otherwise be made in conformance with the notice provisions of this Agreement. Should Miami fail to respond within the twenty (20) Business Day period, as herein provided, its right of first refusal shall expire. Should Miami timely exercise its right to purchase the Radio Station, then SOSI shall be obligated to sell the Radio Station to Miami, rather than to the third party *bona fide* offeror, upon the same terms and conditions set forth in SOSI's notice to Miami. Moreover, should Miami timely exercise its right to purchase the Radio Station, then Miami shall be obligated to buy the Radio Station from SOSI.

§8. No Future Litigation by SOSI. As consideration, in part, for Miami's agreement hereunder to dismiss Miami's Application, SOSI hereby covenants, promises, warrants and agrees that should the Commission, or its delegatee, dismiss Miami's Application and should that action become a Final Order, SOSI (as an entity or through any officer, director, or agent), for the duration in the aggregate of the Option Term and the Release Term, will not file, or cause, or instigate or encourage any individual, group, entity, organization or enterprise to file an application with the Commission that is mutually exclusive, or in any way conflicts with any application that is filed by Miami.

§9. No Future Litigation by Miami. As consideration, in part, for SOSI's grant of the option and right of first refusal hereunder, Miami hereby covenants, promises, warrants and agrees that should the Commission, or its delegatee, grant SOSI's Application and should that action become a Final Order, Miami (as an entity or through any officer, director, or agent), for the duration in the aggregate of the Option Term and the Release Term, will not file, or cause, or instigate or encourage any individual, group, entity, organization or enterprise to file an application with the Commission that is mutually exclusive, or in any way conflicts with any application that is filed by SOSI.

§10. Notice. Any notice required hereunder shall be in writing and any payment, notice or other communications shall be deemed given when delivered personally, or mailed by

certified mail or Federal Express Service, postage prepaid, with return receipt requested, to the following address:

To SOSSI:

Jerry D. Smart with copy to
Southwestern Ohio Seniors'
Services, Inc.
11100 Springfield Pike
Springdale, OH 45246
Tel: 513/782-2427
Fax: 513/782-1056

Lee W. Shubert, Esq.
Haley, Bader & Potts
2000 M Street, N.W., #600
Washington, DC 20036-3374
Tel: 202/331-0606
Fax: 202/296-8679

To Miami:

John D. Bortel with copy to
Director of Broadcasting
& General Manager, WMUB
Department of Communications
Williams Hall
Spring at Oak Streets
Oxford, OH 45046
Tel: 513/529-5885
Fax: 513/____ - _____

Stanley S. Neustadt, Esq.
Cohn & Marks
1333 New Hampshire Ave., N.W., #600
Washington, DC 20036
Tel: 202/452-4814
Fax: 202/293-4827

§10.1. *Alternate Addressees.* Notice, as provided by this section, may be given to any other person or party, as any party hereto may in the future designate in writing, upon due notice to the other party(ies).

§10.2. *Date of Notice, Action.* The postal receipt for deposit with the U.S. Mail or courier service specified herein shall establish the date of such notification or communication. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holding by law in Cincinnati, Ohio, the last day for such notification, communication or action shall be extended to the first date thereafter which is not a Saturday, Sunday or such legal holiday.

§11. *Waiver.* Failure of any party to complain of any act or omission on the part of any other party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

§12. *Valid Organization and Warranty.* Each party hereto respectively represents that (a) it is duly organized, validly existing and in good standing under the laws of the State of Ohio, (b) the execution, delivery and performance of this Agreement, without limitation, has been duly and effectively authorized by its board of directors, governing board, or general partners, and (c) it has full legal authority to enter into and perform its obligations under this Agreement.

§13. *Benefit; Assignment.* This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors and assigns. This Agreement may be assigned by SOSSI to a corporation in which SOSSI shall have an equity interest of at least fifty percent (50%) and legal control, and which shall succeed to the obligations and undertakings of SOSSI hereunder. Should SOSSI assign its rights and obligations under this Agreement, then such an assignment shall in no way relieve SOSSI of the specific obligations undertaken by SOSSI pursuant to Sections 3 and 4, and their subparts, of this Agreement.

§14. *Governing Law; Venue.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio, and by the applicable rules and regulations of the Commission. Venue for any such action may be either in Butler or Hamilton Counties, Ohio, or Washington, District of Columbia.

§15. *Entire Agreement.* This Agreement, with Attachments, constitute the only agreements between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof, and may not be amended or modified except by an instrument in writing signed by all the parties hereto.

§16. *Expenses.* Each party shall bear its own expenses relating to (a) this Agreement and all supporting documents; (b) the filings and transactions contemplated hereby to obtain approval of this Agreement; (c) acceptance of the amendment to SOSSI's Application, as provided by this Agreement; and (d) the option and right of first refusal accorded to Miami pursuant to the terms hereof.

§17. *Counterparts and Effective Date.* This Agreement may be signed in one or more counterparts by a Principal, each of which shall be deemed a duplicate original, binding on the parties hereto; notwithstanding that the parties are not signatory to the original or the same counterpart. This Agreement shall be effective as of the date on which the executed counterparts are exchanged by the parties.

§18. *Severability.* In the event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

§19. *Headings.* The headings of the sections of this Agreement are for the convenience of reference only, and do not form a part hereof, and in no way define, limit, describe, modify, interpret or construe the meanings of the parties, the scope of this Agreement or the intent of any section hereof.

§20. *Republication.* It is expressly understood and agreed that it is a condition of this Agreement that no republication be required pursuant to Section 73.3525 of the Commission's Rules. In the event the Commission rules, for whatever reason, that republication would be required, and such ruling becomes a Final Order, this Agreement shall be null and void.

§21. *Further Assurances.* The parties hereto agree to execute and deliver any additional or supplemental document as may be necessary or required to effectuate the purposes of this Agreement.

WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last below written.

MIAMI UNIVERSITY

Date: _____.

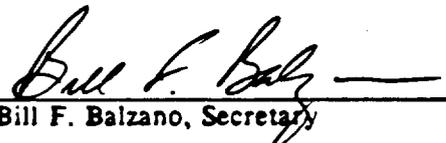
By _____

SOUTHWESTERN OHIO SENIORS' SERVICES, INC.

Date: 8/12/92.

By 
Jerry D. Smart, President

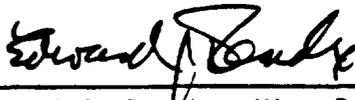
Date: 8/18/92.

By 
Bill F. Balzano, Secretary

WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last below written.

MIAMI UNIVERSITY

Date: August 5, 1992

By 
Edward J. Demske, Vice President
Finance & Business Affairs

**SOUTHWESTERN OHIO SENIORS'
SERVICES, INC.**

Date: _____,

By _____
Jerry D. Smart, President

Date: _____,

By _____
Bill F. Balzano, Secretary

ATTACHMENT NO. 2

DECLARATION

I, Jerry D. Smart, hereby declare under penalty of perjury as follows:

1. I am the President of Southwestern Ohio Seniors' Services, Inc. ("SOSSI"), an applicant for a new non-commercial FM broadcast station on Channel 207A at Reading, Ohio.

2. SOSSI has entered into a Settlement Agreement dated August _____, 1992, with The President and Board of Trustees of the Miami University ("University") pursuant to which University has agreed to dismiss its application for a new non-commercial FM station at Reading, Ohio.

3. In exchange for University dismissing its application, SOSSI will pay University an amount not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) to offset the reasonable and prudent out-of-pocket expenses that University incurred in the preparation, filing and prosecution of its application.

4. Approval of the Settlement Agreement would serve the public interest by eliminating the need for a comparative hearing, conserving the resources of the Commission and parties and expediting the provision of a new non-commercial FM radio service on Channel 207A to Reading, Ohio and the surrounding area.

5. SOSSI's application was not filed for the purpose of reaching or carrying out this or any other Settlement Agreement.

6. SOSSI has not entered into any ancillary agreement connection with the dismissal of its application nor has it received or been promised or paid or promised to pay any consideration other than as disclosed in the Settlement Agreement.

I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief and is submitted in good faith.

Executed under penalty of perjury this 20th day of August 1992.



Jerry D. Smart, President
Southwestern Ohio Seniors'
Services, Inc.

County of Butler)
)
State of Ohio) ss.

AFFIDAVIT OF EDWARD J. DEMSKE

Edward J. Demske, being duly sworn, deposes and states:

1. I am Vice President, Finance and Business Affairs of The Miami University.

2. I submit this affidavit in accordance with Section 73.3525 of the Rules of the Federal Communications Commission, in support of the petition for approval of the settlement agreement between Miami University and Southwestern Ohio Seniors' Services, Inc., which provides, among other things, that The Miami University application will be dismissed and that it will be reimbursed for its documented reasonable and prudent expenses in an amount not to exceed \$25,000.

3. I hereby state that The Miami University application which is to be dismissed was not filed for the purpose of reaching or carrying out any settlement agreement.

4. I hereby certify that neither Miami University nor any of its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of Miami University, except for the consideration which is expressly set forth in the settlement agreement.

5. The public interest will be served by approval of the settlement agreement because it will result in public broadcast

service to Reading, Ohio and its environs much more expeditiously than if a comparative hearing between the applicants were held, and this will result without the expenditure of the significant amount of public and private funds required for the prosecution of a comparative hearing to its ultimate conclusion.

6. There is attached hereto an itemized list of the expenses incurred by Miami University in the preparation, filing and prosecution of its application, and, in addition, a statement of counsel for Miami University which sets forth the amount of legal fees and disbursements incurred by Miami University in connection with the application.

7. There is no oral agreement relating to the dismissal of the application of Miami University; the complete agreement between the two applicants is set forth in the written Settlement Agreement.



Edward J. Denske
Vice President,
Finance and Business Affairs

Subscribed and Sworn to Before Me This 31st Day of August 1992



Notary Public



EARL D. FOLKER
NOTARY PUBLIC STATE OF OHIO
MY COMMISSION EXPIRES FEB. 22, 1997