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SEP 22 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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LEE J. PELTZMAN  
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September 22, 1992

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

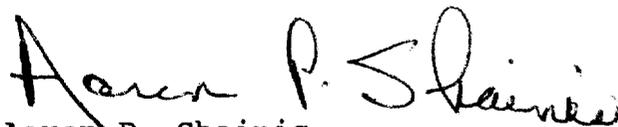
RE: MM Docket No. 92-27

Dear Ms. Searcy:

On behalf of Southwest Allen County Schools and Faith Christian Academy, parties in the above-referenced hearing, there is transmitted herewith an original and six copies of a Joint Motion for Approval of Agreement and related documents.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Sincerely yours,



Aaron P. Shainis  
Counsel for  
Southwest Allen County Schools

APS/mcl  
Enclosure  
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BEFORE THE

**Federal Communications Commission** SEP 22 1992

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re Applications of	)	MM Docket No. 92-27
	)	
SOUTHWEST ALLEN COUNTY SCHOOLS	)	File No. BPED-900215MC
Channel 216A	)	
Lafayette Township, Indiana	)	
	)	
FAITH CHRISTIAN ACADEMY	)	File No. BPED-901203MN
Channel 216B1	)	
Berne, Indiana	)	
	)	
For Construction Permit for a	)	
New, Noncommercial, Educational	)	
FM Station	)	

TO: Administrative Law Judge Joseph Chachkin

JOINT MOTION FOR APPROVAL OF AGREEMENT

Aaron P. Shainis  
Lee J. Peltzman  
Counsel for  
Southwest Allen County Schools

William H. Crispin  
Counsel for  
Faith Christian Academy

September 22, 1992

## SUMMARY

The Commission has recently designated for hearing two mutually-exclusive competing applications for the institution of new, noncommercial educational FM service to be provided to the greater Ft. Wayne, Indiana metropolitan area as filed by Southwest Allen County Schools ("Southwest") and Faith Christian Academy ("Faith"). The conflicts among these proposals would require lengthy and expensive hearings to determine which of these proposals should be granted. No matter what the outcome of these proceedings, only one of the applications can be approved in their present form.

The applicants have worked together in an effort to develop a compromise proposal which will permit the institution of new noncommercial service by each of them, and they have entered into the Joint Agreement being filed hereby in order to obtain a grant of each application. The Joint Agreement proposes an amendment to the Faith application which will enable each of these applications to be granted.<sup>1</sup> Grant of the Joint agreement and of the applications in manner described therein will avoid the need for comparative hearings, will conserve the resources of the noncommercial applicants and the Commission, and will eliminate substantial delays in the provision of new noncommercial FM service to the greater Ft. Wayne area. No other outcome in this proceeding will result in as much new or improved noncommercial service

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<sup>1</sup> In order to accommodate the settlement, Southwest must amend its application. Therefore, concurrent with the filing of Faith's amendment, Southwest will also amend its application.

to as many people in as large an area as that proposed in the Joint Agreement.

The applicants submit that approval of the Joint Agreement and the grant of the amendments to be filed by each will serve and advance the public interest and the applicants urge that the Presiding Judge act promptly to grant the pending applications accordingly.

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

In Re Applications of	)	MM Docket No. 92-27
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Channel 216A	)	
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	)	
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Channel 216B1	)	
Berne, Indiana	)	
	)	
For Construction Permit for a	)	
New, Noncommercial, Educational	)	
FM Station	)	

TO: Administrative Law Judge Joseph Chachkin

JOINT MOTION FOR APPROVAL OF AGREEMENT

Southwest Allen County School ("Southwest") and Faith Christian Academy ("Faith") (hereinafter sometimes referred to collectively as the "Applicants") have filed with the Commission the above-captioned applications for new broadcasting facilities, which applicants are mutually-exclusive and have been designated for a comparative hearing.

1. In February 1990, Southwest filed an application with the Commission for authority to construct and operate a new educational FM facility to operate in Channel 216A at Lafayette Township, Indiana.
2. On December 3, 1990, Faith filed an application with the Commission for authority to construct and operate a new noncommercial, educational FM station on Channel 216B1 to serve Berne, Indiana.

3. The Applicants desire to obtain approval of authority for each to broadcast and to avoid the cost, delay and uncertainty inherent in any comparative proceeding. Accordingly, they have entered into the joint agreement submitted herewith which provides for the filing of an amendment to the Faith application to make it compatible with the Southwest application.<sup>1</sup> A copy of the Agreement (the "Joint Agreement") executed by the parties is attached. Faith agrees to amend its proposal to specify operation on Channel 217. This amendment will permit the grant of Southwest's application as originally filed. In addition, Southwest has agreed to reimburse Faith up to \$8,500 of the legitimate and prudent expenses Faith has incurred in the filings and prosecution of its application or whatever lesser sum is approved by the Commission.<sup>2</sup>

As a result of this amendment, the grant of each of the applications in this comparative proceeding will provide the

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<sup>1</sup> The amendment to the Faith application is under preparation. The delay is occasioned by the prior commitment of Faith's consulting engineer. The amendment and a petition for leave to amend will be filed shortly. In addition, in order to accommodate the Settlement, Southwest will file an amendment to its application. The parties request that the presiding Judge hold in abeyance ruling on the settlement agreement until the amendments are filed.

<sup>2</sup> Documentation of Faith's expenses will be provided concurrent with the filing of Faith's Amendment.

listening audience of the great Ft. Wayne area the opportunity to receive new noncommercial FM service.

The parties to the Joint Agreement have devoted considerable resources to arrive at the plan embodied in their agreement. The plan endorsed by the applicants presents what they believe to be the most efficient proposal -- indeed, the only workable proposal -- for the mutual realization of new service by both Southwest and Faith. The Applicants and the Commission also realize substantial savings of time and expenditures through avoidance of complex hearing proceedings by approval of the Joint Agreement; such conservation of scarce resources of the Applicants, all of which are noncommercial entities, can permit them to rededicate expenses which would otherwise be devoted to litigation to the development of programming and to other matters in furtherance of their educational and informational objectives.

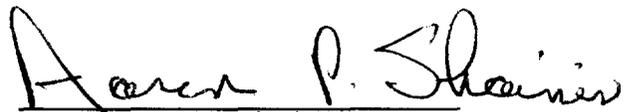
The parties to the Joint Agreement believe that no other solution exists which could better resolve the conflicts among the pending applications. Because the Joint Agreement is conditioned upon grant of the Faith amendment and the ultimate grant of both of the pending applications as modified, denial of the Faith amendment will necessitate protracted hearings among the competing noncommercial applicants at great cost in terms of time and resources for each of the Applicants and for the Commission, and would impose substantial delay in the

effectuation of any new and/or improved noncommercial radio service throughout the Ft. Wayne metropolitan area.

Most important, any resolution of the conflicting proposals as a consequence of such comparative proceedings other than that embodied in the Joint Agreement would not result in as much new noncommercial service as proposed in the Joint Agreement.

The compromise plan formulated by the Applicants promotes the most efficient use of the limited number of reserved band frequencies in the Ft. Wayne area and will enhance the overall educational FM allocation scheme in the region. The parties to the Joint Agreement therefore urge that the presiding Judge accept the respective amendments, approve the Joint Agreement, grant the applications and terminate this proceeding.

Respectfully submitted,



Aaron P. Shainis  
Lee J. Peltzman  
Counsel for  
Southwest Allen County Schools

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William H. Crispin  
Counsel for  
Faith Christian Academy

September 22, 1992

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effectuation of any new and/or improved noncommercial radio service throughout the Ft. Wayne metropolitan area.

Most important, any resolution of the conflicting proposals as a consequence of such comparative proceedings other than that embodied in the Joint Agreement would not result in as much new noncommercial service as proposed in the Joint Agreement.

The compromise plan formulated by the Applicants promotes the most efficient use of the limited number of reserved band frequencies in the Ft. Wayne area and will enhance the overall educational FM allocation scheme in the region. The parties to the Joint Agreement therefore urge that the presiding Judge accept the respective amendments, approve the Joint Agreement, grant the applications and terminate this proceeding.

Respectfully submitted,

---

Aaron P. Shainis  
Lee J. Peltzman  
Counsel for  
Southwest Allen County Schools

---

William H. Crispin  
Counsel for  
Faith Christian Academy

**ATTACHMENTS**

## AGREEMENT

This Agreement is entered into this 19<sup>th</sup> day of August, 1992, by and among, Southwest Allen County Schools ("Southwest") and Faith Christian Academy ("Faith"). Each of the foregoing has filed with the Federal Communications Commission (the "Commission") applications for new broadcasting facilities and are sometimes collectively referred to herein as the "Applicants."

### RECITALS

On February 15, 1990, Southwest filed an application with the Commission for authority to construct and operate a new educational FM facility to operate on channel 216A at Lafayette Township, Indiana.

On December 3, 1990, Faith filed an application with the Commission for authority to construct and operate a new non-commercial, educational FM station on channel 216B1 to serve Berne, Indiana.

Concurrent with the filing of the instant Agreement with the Federal Communications Commission, Faith shall file an amendment to its application to specify operation on Channel 217.

Therefore, in consideration of the mutual promises and undertakings set forth herein, and subject to the approval of each of the applications as amended in accordance herewith, the parties hereto agree as follows:

1. Amended Proposal. Faith agrees to undertake to amend its application to specify operation on Channel 217.

- a. Grant of the foregoing amendment will permit Southwest and Faith's applications to be granted as now proposed.
2. Payment to Faith. Southwest has agreed to reimburse Faith up to \$8,500.00 of the legitimate and prudent expenses Faith has incurred in the filing and prosecution of its application or whatever lesser sum is approved by the Commission. This money shall be paid to Faith when the Commission grant of the settlement has become final, (i.e. no longer subject to administrative or judicial review). Documentation as to Faith's expenses are attached to the Agreement (Appendix I).
3. Further Assurances. Each of the Applicants covenants to the other that it shall provide such further information as may be requested by the Commission with respect to its application, and that it shall take such further action as may be reasonably requested by the Applicants in fulfillment of the objectives of this Agreement. It is understood by each of the Applicants that the fulfillment of the objectives of this Agreement may only be achieved by the full cooperation of each in the manner described herein.
4. Miscellaneous. This Agreement shall be construed under the laws of the State of Indiana. This Agreement constitutes a valid and legally binding obligation of

each of the parties hereto and shall be binding upon the successors and assigns of each of them. In the event that the Commission shall fail to approve any of the applications of the Applicants as amended hereby, the party(ies) shall withdraw their amendments and restore their respective applications to their original proposals, in which event none of the Applicants shall have any further liability or obligation to any party hereunder. This Agreement may be executed in one or more counterparts and the Agreement shall be binding when it has been executed by all of the parties.

THEREFORE, in view of the foregoing, the undersigned parties have executed this Agreement as of the date first shown above.

SOUTHWEST ALLEN COUNTY SCHOOLS

BY: D. R. Johnson  
ITS: President

FAITH CHRISTIAN ACADEMY

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_



DECLARATION

It is hereby stated, under penalty of perjury, that the application of Southwest Allen County Schools (File No. BPED-900215MC) was not filed for the purposes of obtaining a settlement. Moreover, the full extent of the consideration that is being paid to Faith Christian Academy (File No. BPED-901203MN) is delineated in the "Agreement". No other consideration has been paid or promised to be paid to Faith Christian Academy to obtain the settlement.

SOUTHWEST ALLEN COUNTY SCHOOLS

D. R. Solz

Date: 8-18-92

DECLARATION

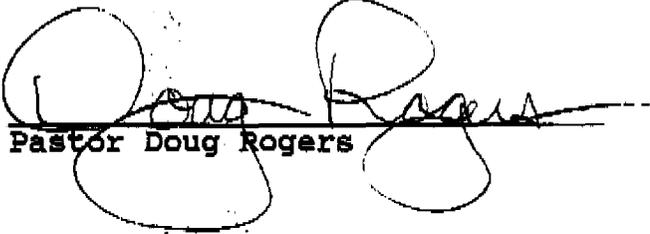
I, Pastor Doug Rogers, do hereby declare under penalty of perjury that the following is true and correct:

1. I am the Pastor of Faith Baptist Church and Faith Christian Academy ("Faith"), an applicant for a new noncommercial, educational FM station to serve Berne, Indiana.

2. No consideration has been or will be paid to Faith, either directly or indirectly, except as set forth in the foregoing written statement agreement.

3. Faith's application was not filed for the purpose of reaching or carrying out this or any other settlement agreement.

August 20, 1992

  
Pastor Doug Rogers

**CERTIFICATE OF SERVICE**

I, Marianne C. Lynch, certify that I have this 22nd day of September, 1992, sent by regular United States mail, postage prepaid, a copy of the foregoing "Joint Motion for Approval of Agreement" to:

Administrative Law Judge Joseph Chachkin \*  
Federal Communications Commission  
2000 L Street, NW, Room 226  
Washington, D.C. 20554

Larry Miller, Esq. \*  
Federal Communications  
Commission  
Mass Media Bureau  
Room 7212  
2025 M Street, NW  
Washington, D.C. 20554

William H. Crispin, Esq.  
Verner, Liipfert Bernhard  
McPherson & Hand, Chartered  
901 15th Street, NW, Ste. 700  
Washington, D.C. 20005  
Counsel for  
Faith Christian Academy

By:   
Marianne C. Lynch

---

\* Hand delivered

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