

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION RECEIVED

WASHINGTON, D.C.

091 20 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of
UHURU COMMUNICATIONS, INC.
For Renewal of License
of Station WUCI-FM
Binghamton, New York
and
WSKG PUBLIC
TELECOMMUNICATIONS COUNCIL
For a Construction Permit
for a New FM Station
Binghamton, New York
ARROWHEAD CHRISTIAN
CENTER
For a Construction Permit
for a New FM Station
Binghamton, New York

) MM Docket No. 92-116
) File No. BRED-910230WF
)
)
)
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) File No. BPED-910501MB
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)
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) File No. BPED-910501MC
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TO: Administrative Law Judge
Arthur I. Steinberg

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Pursuant to Section 73.3525 of the Commission's Rules, WSKG Public Telecommunications Council ("WSKG") and Arrowhead Christian Center, Inc. ("Arrowhead") (collectively the "Parties"), applicants in the above-captioned proceeding, respectfully request that the Presiding Judge approve the attached Settlement Agreement. The Agreement effectively

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resolves the mutual exclusivity of the WSKG and Arrowhead applications in this proceeding.

1. The Parties are mutually exclusive applicants for construction permits for a new noncommercial educational FM radio station on Channel 218 at Binghamton, New York. The application of Uhuru Communications, Inc. was dismissed by Memorandum Opinion and Order, FCC 92M-919, released August 27, 1992. The WSKG and Arrowhead applications remain designated for a comparative hearing (MM Docket No. 92-116).

2. The Parties agree that the hearing proceedings are likely to be protracted, expensive and a burden upon the Commission's resources. Further, in order to facilitate the early implementation of service to the public, the Parties have entered into an agreement to resolve the mutual exclusivity between their applications.

3. The Parties have executed a Settlement Agreement, a copy of which is attached as Attachment A. The Agreement provides for Arrowhead's amendment of its application to specify new technical facilities, including a new frequency and a new transmitter site. Arrowhead's amendment will propose facilities that are not mutually exclusive with the facilities proposed in the unamended WSKG application. Work on the Arrowhead amendment is in progress at this time. The Parties expect that the amendment and Arrowhead's request for

acceptance of the amendment will be tendered as a supplement to this Joint Motion within a short time.

4. The Agreement further provides for WSKG's reimbursement of the sum of Eighteen Thousand Dollars (\$18,000) (or such lesser amount as shall be approved by the FCC) for Arrowhead's legal and prudent expenses in this proceeding.

5. In three comparable noncommercial educational hearing proceedings, the respective presiding judges have approved engineering amendments (including channel changes) to applications as part of joint settlements between applicants.^{1/} In Cabrini College, FCC 89M-2039, released August 8, 1989, the presiding judge granted channel change amendments for three competing applications, even though prohibited contour overlap would occur between the applicants. In Yolo County Public Radio, FCC 90M-477, released March 9, 1990, the presiding judge granted Family Stations, Inc. leave to amend its Ione application by specifying operation on a different channel, even though the amendment would create "donut interference." In Lakeshore Communications, Inc., FCC 91M-1428, released April 24, 1991, the judge granted an engineering amendment with a channel change as a condition precedent to a joint

^{1/} In another recent noncommercial educational comparative hearing, Faith Bible College, FCC 92M-872, released August 13, 1992, the presiding judge granted an applicant leave to amend its application to change its proposed technical facilities, including transmitter site, antenna height and effective radiated power, where the amendment resolved mutual exclusivity among the applicants.

settlement. Copies of the orders in these cases are appended to this pleading as Attachment B.

6. The Parties request that their respective applications be held in deferred status pending the submission, review and acceptance of the Arrowhead amendment to be tendered. In addition, the Parties request that, upon acceptance of the amendment by Arrowhead that will eliminate the mutual exclusivity of the current applications, both applications be granted.

7. Attachments C and D contain the necessary declarations from each party pursuant to Section 73.3525 of the Commission's Rules stating (1) that the Settlement Agreement is in the public interest and reciting that each did not file its Application for the purpose of reaching or carrying out a settlement agreement, (2) that neither the applicants nor any principals of the applicants will receive or has received any money or other consideration in excess of the legitimate and prudent expenses of the applicants, and (3) that the Settlement Agreement reflects the only consideration exchanged and to be exchanged by the Parties. The Settlement Agreement and these declarations comply in all respects with the Report and Order, Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits, 6 F.C.C. Rcd. 85 (1990), clarified and modified, Memorandum Opinion and Order, 6 F.C.C. Rcd. 2901 (1991).

For the foregoing reasons, we respectfully request approval of the attached Settlement Agreement.

Respectfully submitted,

**WSKG PUBLIC TELECOMMUNICATIONS
COUNCIL**

By: *Richard D. Marks*

Richard D. Marks
Todd D. Gray
Margaret L. Miller

DOW, LOHNES & ALBERTSON
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037

Its Attorneys

ARROWHEAD CHRISTIAN CENTER

By: *Michael E. Beller/RDM*

William A. Crispin, Esquire
Michael E. Beller, Esquire

**VERNER, LIIPFERT, BERNHARD,
McPHERSON & HAND**
901 Fifteenth Street, N.W.
Suite 700
Washington, D.C. 20005

Its Attorneys

Dated: October 20, 1992

Attachment A
(Settlement Agreement)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 16th day of October 1992, between WSKG Public Telecommunications Council, a New York nonprofit corporation ("WSKG"), and Arrowhead Christian Center, a New York nonprofit corporation ("Arrowhead") (each a "Party" and, collectively, the "Parties").

PREAMBLE

WSKG has filed an application (FCC File No. BPED-910501MB) with the Federal Communications Commission (the "FCC") seeking authorization for a construction permit for a new noncommercial educational FM radio station on Channel 218A at Binghamton, New York ("the Binghamton I Channel").

Arrowhead has also filed an application with the FCC seeking authorization for a construction permit for the Binghamton I Channel (File No. BPED-910501MC).

There was previously pending before the FCC the license renewal application of Uhuru Communications, Inc. ("Uhuru") for the Binghamton I Channel. That application was dismissed by Memorandum Opinion and Order, FCC 92M-919, released August 27, 1992.

The WSKG and Arrowhead applications remain mutually exclusive and remain designated for a comparative hearing (MM Docket No. 92-116) in this proceeding.

WSKG and Arrowhead have agreed to resolve the mutual exclusivity between their applications for the Binghamton I Channel by a plan that would allow for the uncontested grant of WSKG's application and Arrowhead's application, as amended, pursuant to Section 1 herein, provided that the conditions set forth below are satisfied.

The resolution of the mutual exclusivity between WSKG and Arrowhead pursuant to this Settlement Agreement would conserve the resources of the FCC and the applicants, and would expedite the grant of both the WSKG application and the amended Arrowhead application, and the institution of additional local noncommercial educational broadcast radio services in Binghamton, New York, all of which will serve the public interest.

THEREFORE, in consideration of these mutual obligations and subject to the requirements of Section 73.3525 of the FCC's Rules, the Parties agree as follows:

TERMS AND CONDITIONS

1. Amendment. Arrowhead will request acceptance and grant of an amendment to its pending application to specify new technical facilities, including a new frequency and a new transmitter site. Grant of the amendment to Arrowhead's pending application will resolve the mutual exclusivity with WSKG's application for the Binghamton I Channel. Arrowhead will be responsible for and bear all costs associated with the preparation and filing of its amendment.

2. Reimbursement. As full consideration for such amendment resolving the mutual exclusivity with WSKG's application, WSKG shall pay Arrowhead the sum of Eighteen Thousand Dollars (\$18,000) (or such lesser amount shall be approved by the FCC) in reimbursement of Arrowhead's legitimate and prudent expenses in this proceeding and upon the occurrence of the following events: (i) Upon the grant of WSKG's application for the Binghamton I Channel, and such grant of the WSKG application having become final, i.e., granted by an order duly promulgated by the FCC or an FCC Administrative Law Judge which is not reversed, stayed, set aside, enjoined or suspended and with respect to which no requests for administrative or judicial review or stay are pending, and as to which the time for filing such a petition or appeal, or for the FCC to set aside its consent on its own motion, has expired; (ii) upon the Presiding Judge's approval of Arrowhead's legitimate and prudent expenses in this proceeding; and (iii) upon the Presiding Judge's approval of this Agreement.

3. FCC Approval. This Settlement Agreement is expressly conditioned upon and subject to the prior consent and approval of the FCC and upon grant of both the WSKG application and the Arrowhead application, as amended. This Settlement Agreement is also contingent upon retention by both applicants of their current file numbers and cut-off status upon and after acceptance of any amendments. The Parties agree that they will provide all information reasonably necessary in order to obtain

approval of this Settlement Agreement and grant of the joint request for approval thereof.

4. Joint Request. Within five (5) days after execution of this Settlement Agreement, the Parties shall, at their own respective expense, prepare, execute, and file with the FCC all declarations and/or other supporting documentation required by Section 73.3525 of the FCC's Rules, which are necessary to secure approval of this Settlement Agreement. WSKG shall prepare the joint request for approval of this Settlement Agreement. The joint request will request that the applications of both parties be held in deferred status pending the submission, review and acceptance of Arrowhead's amendment tendered pursuant to Section 1 of this Agreement. The joint request shall be reviewed and signed by counsel for both Parties upon approval by them. Should any declarations or other supporting documentation not be ready for filing at such time, the declarations and/or other supporting documentation shall be filed directly by the Party involved as a supplement to the joint request.

5. Closing. The Closing of this transaction ("Closing") shall take place in Washington, D.C. or such other place as mutually may be agreed upon by the Parties, within five (5) days after the date the order (or, in the case of more than one order, the last of the orders) described in Section 2 becomes final, as defined in Section 2. At the Closing, the payment of the sum of Eighteen Thousand Dollars (\$18,000) (or such lesser

amount as shall have been approved by the FCC) shall be delivered by certified check, made payable to "Arrowhead Christian Center," to counsel for Arrowhead.

6. Integration. This Settlement Agreement contains the entire understanding of the Parties with respect to this subject matter and supersedes all prior understandings, agreements, negotiations, discussions and representations, written or oral, and may not be changed, amended, extended, terminated, waived or discharged except by an instrument in writing signed by the Parties.

7. Scope and Binding Effect. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties, their heirs, successors and assigns. Each individual signing this Settlement Agreement warrants and represents that he has the authority to bind to this Settlement Agreement the Party for whom he is signing. Each of the Parties represents that this Settlement Agreement is a legal, valid and binding obligation of the Party, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, or by court-applied equitable remedies. The Parties agree that this Settlement Agreement shall be construed under the laws of the State of New York without reference to New York's choice of law provisions. In any litigation arising out of this Settlement Agreement, the prevailing party shall have the

right to recover from the other party its reasonable costs and expenses, including attorneys' fees.

8. Termination. Should the FCC or the Presiding Officer for any reason fail or refuse to grant WSKG's application for Binghamton I or Arrowhead's application, as amended, by an order or orders which shall have become final as defined in Section 2 within six (6) months after the submission of the joint request, then this Agreement shall become null and void, and WSKG and Arrowhead shall be entitled to resume prosecution of their applications before the FCC, unless the parties agree in writing to continue the Agreement. Such agreement shall not be unreasonably withheld, if failure to obtain FAA approval of Arrowhead's antenna is the cause of the delay.

9. Notices. All communications between the Parties to this Settlement Agreement shall be in writing and shall be deemed to have been duly given for all purposes if delivered personally by the Party to the Party to whom such notice is directed or, if mailed, sent by certified mail, postage prepaid, to the following addresses:

WSKG: WSKG Public Telecommunications Council
 P.O. Box 3000
 Binghamton, NY 13902
 Attn: Michael J. Ziegler

Copy to: Richard D. Marks, Esq.
 Dow, Lohnes & Albertson
 1255 Twenty-third Street, N.W.
 Washington, D.C. 20037

Arrowhead: Arrowhead Christian Center
c/o Arrowhead Ministries, Inc.
308 Harry L. Drive
Johnson City, NY 13790
Attn: David A. Martin

Copy to: Michael E. Beller, Esq.
Verner, Liipfert, Bernhard, McPherson &
Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

10. Partial Invalidity. In the event of the invalidity of any part or provision of this Settlement Agreement, such invalidity shall not affect the enforceability of any other part or provision of this Settlement Agreement, unless the invalidity would cause a material change in the rights or obligations of either Party, in which case the Party or Parties affected may seek to amend the Settlement Agreement or may withdraw from the Settlement Agreement.

11. Waivers. No waivers by either Party of any default by the other Party in the strict and literal performance of or compliance with any condition, provision or requirement of this Settlement Agreement shall be a waiver of strict and literal performance thereof in the future or of compliance with any other condition, provision or requirement thereof, nor shall any delay or omission of any Party to exercise any right accruing to it thereafter constitute a waiver of compliance with any other condition, provision or requirement thereof.

12. Specific Performance. In the event of a breach of this Settlement Agreement by either party, then the non-breaching Party shall be entitled to secure specific performance of the

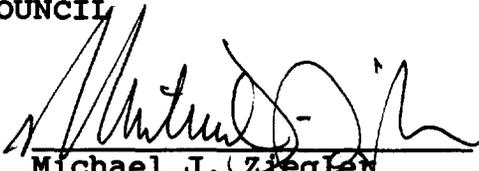
Settlement Agreement, it being recognized by the Parties that any legal remedy or remedies that otherwise might be available would not be adequate to cure or compensate for such breach of this Settlement Agreement.

13. Counterparts. This Settlement Agreement may be signed in counterparts, both of which together shall constitute the original.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

WSKG PUBLIC TELECOMMUNICATIONS
COUNCIL

By:



Michael J. Ziegler
General/Manager

ARROWHEAD CHRISTIAN CENTER

By:

David A. Martin
Assistant Secretary and
Executive Director

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

WSKG PUBLIC TELECOMMUNICATIONS
COUNCIL

ARROWHEAD CHRISTIAN CENTER

By: _____
Michael J. Ziegler
President

By: David A. Martin
David A. Martin
Assistant Secretary and
Executive Director

Attachment B
(Courtesy Copies of Cases)

FCC MAIL ROOM
DOCKET FILE COPY ORIGINAL

AUG 7 1989

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Signed By
Mailed By

FCC 89M-2039

In re Applications of	)	MM Docket No. 89-309	011236
)		
CABRINI COLLEGE	)	File No. BPED-860725MH	
Radnor Township, Pennsylvania)		
)		
VILLANOVA UNIVERSITY IN THE)		
STATE OF PENNSYLVANIA	)	File No. BPED-870402KA	
Villanova, Pennsylvania)		
)		
BUX-MONT EDUCATIONAL RADIO ASSOCIATION	)	File No. BPED-870514MN	
Sellersville, Pennsylvania)		
)		
TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA	)	File No. BPED-870515OE	
Philadelphia, Pennsylvania)		
)		
For a Construction Permit for a)		
Non-Commercial Educational FM station)		

MEMORANDUM OPINION AND ORDER

Issued: August 3, 1989; Released: August 7, 1989

1. Under consideration are the following: Petition for Leave to Amend, filed July 10, 1989, by Cabrini College ("Cabrini"); Petition for Leave to Amend, filed July 10, 1989, by Villanova University in the State of Pennsylvania ("Villanova"); Petition for Leave to Amend, filed July 10, 1989, by Bux-Mont Educational Radio Association ("Bux-Mont"); Joint Motion for Approval of Agreement, filed July 10, 1989, by Cabrini, Villanova, Bux-Mont and the Trustees of the University of Pennsylvania ("Penn"); Petition for Leave to Amend, filed July 24, 1989, by Villanova; Petition for Leave to Amend, filed July 25, 1989, by Bux-Mont; Petition for Leave to Amend and Amendment to Application, filed July 25, 1989, by Penn; and Comments on Joint Motion for Approval of Agreement, filed July 28, 1989, by Mass Media Bureau.

2. The joint agreement proposes that the applications of Cabrini, Villanova and Bux-Mont each be granted, subject to the acceptance of an amendment to each applicant's engineering proposal. An engineering amendment to each of these applications was filed simultaneously with the filing of the joint agreement. In addition, the joint agreement contemplates a grant of Penn's pending application with the result that the coverage area of Penn's existing station, WXPB, will expand.

3. The engineering amendments of Cabrini, Villanova and Bux-Mont propose a change in frequency. Cabrini and Villanova propose identical technical facilities. Cabrini and Villanova, which propose a shared-time operation, seek to amend their applications to propose operation on Channel 206A,

rather than Channel 203A. Bux-Mont seeks to amend its application to propose operation on Channel 205A, rather than Channel 204A. The applicants contend that a grant of these amendments will provide an aggregate of 2,259,284 people residing in an area of 5,188 square kilometers with the opportunity to receive new non-commercial FM service.

4. The engineering amendments will result in some contour overlap among the applicants. The applicants, therefore, request a waiver of Section 73.509 of the Commission's Rules which prohibits such overlap. The applicants note that the interference will not result in the loss of any present service to any listener. The applicants also note that the Penn proposal involves a relocation of WXPB's transmitter and a sharing with Station WPVI(TV), Philadelphia, of a diplexed antenna. This co-location and diplexing, they contend, will eliminate the interference between WXPB and WPVI(TV), thereby providing additional service to the public.

5. The Mass Media Bureau supports acceptance of the applicants' amendments and approval of the joint agreement and has offered the following comments. Here, the benefit of authorizing new and improved service outweighs the limited interference which will result. Significantly, none of the proposals will result in interference to a non-party to this proceeding, and each of the parties to this proceeding has agreed to accept interference as a condition of receiving a grant. Moreover, as noted by the applicants, no one currently receiving service will lose service as a result of acceptance of the applicants' amendments.

6. Additionally, it is noted that the parties have complied with Section 73.3525 of the Commission's Rules. The documents submitted include declarations from each of the parties asserting that their respective applications were not filed for the purpose of reaching or carrying out the joint settlement agreement. Approval of the agreement is in the public interest because it will eliminate the need for a hearing thereby conserving the resources of the non-commercial applicants and the Commission and further will expedite additional service to the public in the Philadelphia area.

7. In light of the foregoing, the engineering amendments will be accepted and a waiver of Section 73.509 will be granted. The joint agreement will be approved.

8. On July 24, 1989 and July 25, 1989, Villanova, Bux-Mont and Penn filed petitions for leave to amend their applications to provide information called for by the Hearing Designation Order ("HDO"). The Mass Media Bureau has reviewed these amendments and agrees with the applicants that they have met the HDO's requirements.

Accordingly, IT IS ORDERED that the Petitions for Leave to Amend, filed July 10, 1989, by Cabrini, Villanova and Bux-Mont ARE GRANTED, and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that a waiver of Section 73.509 of the Commissions Rules IS GRANTED.

IT IS FURTHER ORDERED that the Petition for Leave to Amend, filed July 24, 1989, by Villanova, the Petition for Leave to Amend, filed July 25, 1989, by Bux-Mont and the Petition for Leave to Amend and Amendment to Application, filed July 25, 1989, by Penn ARE GRANTED, and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the Joint Motion for Approval of Agreement, filed July 10, 1989, by Cabrini, Villanova, Bux-Mont and Penn IS GRANTED and the joint agreement IS APPROVED, the application of the Trustees of the University of Pennsylvania IS GRANTED, the applications of Cabrini College, Villanova University in the State of Pennsylvania and Bux-Mont Educational Radio Association, as amended, ARE GRANTED and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 90M-477

In re Applications of	)	MM Docket No. 89-111	1900
)		
YOLO COUNTY PUBLIC RADIO	)	File No. BPED-851217MG	
West Sacramento, California)		
)		
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT	)	File No. BPED-860226MC	
Sacramento, California)		
)		
CALIFORNIA STATE UNIVERSITY, SACRAMENTO	)	File No. BPED-860613MA	
Sacramento, California)		
)		
FAMILY STATIONS, INC.	)	File No. BPED-861023MB	
Ione, California)		
)		
FAMILY STATIONS, INC.	)	File No. BPED-861023MF	
North Highlands, California)		
)		
For Construction Permit for a New)		
Non-Commercial Education FM Station)		

MEMORANDUM OPINION AND ORDER

Issued: March 7, 1990; Released: March 9, 1990

1. Under consideration are the following:

Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed December 22, 1989, by Family Stations, Inc. ("Family") and California State University, Sacramento ("University");

Petition for Leave to Amend, filed December 22, 1989 on behalf of Family Stations, Inc.;

Amendment by Family Stations, Inc. to Application BPED-861023MB, Ione, California, filed December 22, 1989;

Amendment by Family Stations, Inc. to Application BPED-861023MF, North Highlands, California, filed December 22, 1989;

Joint Request for Approval of Settlement Agreement, filed December 22, 1989, by the University, Sacramento City Unified School District ("School District"), Family, and Yolo County Public Radio ("Yolo");

Mass Media Bureau's ("Bureau") Opposition to Petition for Leave to Amend and Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed January 26, 1990;

Mass Media Bureau's Comments on Joint Request for Approval of Settlement Agreement, filed January 3, 1990; and

Joint Reply to Opposition of Mass Media Bureau, filed February 14, 1990, by California State University, Sacramento ("University") and Family Stations, Inc. ("Family").

2. The settlement agreement provides for the dismissal with prejudice of Yolo's application for a stated monetary consideration to be paid by the University and Family. Family has concurrently filed a petition for leave to amend both its North Highlands application (to eliminate the mutual exclusivity between that application and the School District) and its Ione application (to eliminate the mutual exclusivity between that application and the University). Family and the University have concurrently petitioned for a waiver of the adjacent channel signal strength overlap requirements of Section 73.509 of the Commission's rules. It is alleged that a grant of the waiver would resolve the mutual exclusivity between Family's amended North Highlands application and the University, thereby permitting a grant of both applications. Approval of the settlement agreement and grant of the filed Joint Petition for Waiver and Petition for Leave to Amend, will obviate the need for a protracted administrative proceeding and will result in the expeditious implementation of local non-commercial radio service to the residents of Sacramento, North Highlands and Ione, California. Service to North Highlands and Ione, California would be the first local FM radio service to each area.

3. The settlement agreement comports with the requirements of Section 73.3525 of the Commission's Rules. Specifically, the parties have all completed the declarations required by Section 73.3525 of the Commission's Rules. The settlement and declarations enumerate the public interest reasons for settlement and establish that Yolo, the sole dismissing applicant, did not file its application for the purpose of reaching or carrying out a settlement agreement.

4. Family proposes to amend its Ione application by specifying operation on Channel 201A in lieu of Channel 202A. Family also proposes to amend its North Highlands application by specifying a new transmitter site, reducing effective radiated power, and utilizing a directional antenna. The amendment to Family's North Highland's application will create a situation involving so-called "donut interference," in which the transmitter site for the undesired station is encompassed within the 60 dBu contour of the desired station. Specifically, the 80 dBu contour of Family's amended proposal for

Channel 207 at North Highlands will lie almost entirely within the 60 dBU contour of University's proposal on Channel 205B at Sacramento. According to Family and the University, the overlap area would encompass 96 square kilometers or approximately 2.4 percent of the total area within the University's 60 dBU contour. The population within the overlap area would be approximately 8,791 persons or 1.0 percent of the total population within the University's 60 dBU contour. There will be no overlap of the University's 80 dBU contour by Family's North Highlands amended 60 dBU contour. Existing FM stations will receive no interference. Family and the University further maintain that approval of the settlement agreement would allow the inauguration of four new non-commercial FM services in the Sacramento area serving in the aggregate more than 1.3 million persons. Additionally, these service gains will be effected, according to Family, without any loss of existing service.

5. The Bureau opposes the joint waiver request on the grounds that the movants present no extraordinary reasons to justify a waiver of the Commission policy of avoiding the creation of "donut interference." The Bureau distinguishes the authority cited by the movants, Applications of Cabrini College, MM Docket 89-309, (ALJ, August 7, 1989), stating that the Cabrini case involved the provision of new services to more than 2.2 million persons in the highly congested northeast corridor (about twice the amount herein). Further, the Bureau states that there has been no demonstration that the parties are so deadlocked in their proposals that a resolution consistent with the Commission's rules and policies cannot be worked out. It is for these reasons the Bureau believes that the settlement agreement is inconsistent with the public interest.

6. As noted in the joint petition, in Cabrini, the Bureau supported a waiver of Section 73.509 of the Rules because the resulting "donut" interference would not cause loss of any present service and would enhance TV Channel 6 protection through co-location of the antennas of WXPN(FM) and WPVI(TV). Similarly, in the instant case, there would also be no loss of any present service (only new service is involved) and co-location of the antennas of the University and KVIE-TV will enhance TV Channel 6 protection for the public. Moreover, as is set forth in the supporting Engineering Statement (Attachment C) of John Kean, the non-commercial FM frequency spectrum in the Sacramento area will be fully saturated with the grant of the applications of the University, Family and Sacramento City Unified School District; because of TV Channel 6 protection requirements (Section 73.525) and the prohibited overlap requirements of Section 73.509 of the Rules, future new service is unlikely in the event a waiver of Section 73.509 is denied.

7. The joint petitioners point out that the dissimilarities between Cabrini and the instant situation also support a waiver of Section 73.509 of the Commission's Rules. In Cabrini, Station WXPN proposed an upgrade of facilities, i.e., change in frequency from Channel 205A to Channel 203B and a modification in facilities from 1.90 kW effective radiated power (ERP) at 85 meters height above average terrain (HAAT) to 3.1 kW at 332 meters HAAT. Also, the transmitter site of both a proposed Sellersville, Pennsylvania station (Channel 205A) and a proposed Radnor Township/Villanova, Pennsylvania station (206A) were wholly encompassed by the 60 dBU contour of WXPN's proposed facilities. Joint petitioners then maintain that there were two instances of "donut" interference

to WXPB whereas in the instant case there is only one instance of "donut" interference to the University. Moreover, it is claimed that WXPB proposed an upgrade in facilities and could have avoided "donut" interference by using a directional antenna or a reduction in power, options which are not really available to the University.

8. Joint petitioners also state that Cabrini also required an additional waiver of Section 73.509 of the Rules to permit co-channel interference between Station WWFM (Channel 206A), Trenton, New Jersey and the proposed operation of the Radnor Township/Villanova station on Channel 206A. The instant case does not appear to involve any adjacent or co-channel interference which, can result in an interference area where service is lost to both stations rather than merely to one station as is the case here.

9. The joint petitioners also argue that in order to avoid "donut" interference, there are arguably two possible options, First, the University could reduce its 60 dBu contour through use of a directional antenna or a reduction in effective radiated power so that Family's North Highlands transmitter would be located beyond the University's 60 dBu contour. Secondly, Family could locate its proposed North Highlands transmitter so that it is outside of the University's protected 60 dBu contour. The Engineering Statement notes that either option would result in an overall reduction in service to the public vis a vis granting a waiver of the "donut" interference policy. As a hypothetical, if the University were to avoid "donut" interference by contracting its service area to conform with the contour overlap requirements of Section 73.509 of the Rules, this would result in a reduction of the currently proposed interference free contours of the University from 3,823 square kilometers and 841,198 people to 2,280 square kilometers and 546,624 people -- a difference of 1,543 square kilometers and 294,574 people or a 42 percent reduction in area and a 35 percent reduction in people. This contrasts unfavorably with the currently proposed "donut" interference area of the University, comprising only 96 square kilometers and 8,791 people or 2.4 percent of its proposed service area and 1.0 percent of the proposed population, which would not receive new service due to interference received from Family's proposed North Highlands station.

10. On the other hand, the hypothetical relocation of Family's North Highlands transmitter site beyond the University's 60 dBu contour and in conformance with the contour overlap requirements of Section 73.509 of the Rules would result in a reduction in population served from the current 325,377 persons to 103,958 persons -- a reduction of 221,419 persons or 25 times the number of people within the current overlap area for which a waiver is requested.

11. Lastly, the joint petitioners note that the applicants in this proceeding have been attempting to resolve this mutually exclusive situation since April 14, 1988 when they were directed by the FM Branch to explore options which would avoid a comparative proceeding. For the better part of two years, the applicants have acted diligently and in good faith to resolve application conflicts, avoid a protracted and expensive comparative proceeding and initiate new service to the public. It is maintained that the proposed settlement,

related amendments and waiver request represent the best efforts of the applicants and comport with the public interest and are deserving of the Bureau's support.

12. In light of the foregoing, it is concluded that good cause exists for and that public interest would best be served by the grant of the submitted petitions.

Accordingly, IT IS ORDERED that the Joint Petition for Waiver of Section 73.509 of the Commission's Rules, filed December 22, 1989, by Family Stations, Inc. and California State University, Sacramento; IS GRANTED, the Petition for Leave to Amend, filed December 22, 1989 on behalf of Family Stations, Inc.; the Amendment by Family Stations, Inc., Ione, California, filed December 22, 1989; and the Amendment by Family Stations, Inc., North Highlands, California, filed December 22, 1989 ARE GRANTED and the amendments ARE ACCEPTED.

IT IS FURTHER ORDERED that the application of Yolo County Public Radio (File No. BPED-851217MG) IS DISMISSED with prejudice; the Joint Request for Approval of Settlement Agreement, filed December 22, 1989 IS GRANTED; the Agreement IS APPROVED; the applications of Sacramento City Unified School District (File No. BPED-860226MC), California State University, Sacramento (File No. BPED-860613MA), Family Stations, Inc., Ione, California, (File No. BPED-861023MB), as amended, Family Stations, Inc., North Highlands, California (BPED-861023MF) as amended, ARE GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge