

FCC MAIL SECTION

DOCKET FILE COPY
DUPLICATE

FCC 91M-1428
4041

APR 25 10 02 AM '91

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

In re Applications of)	MM DOCKET NO. 90-606 ✓
LAKESHORE COMMUNICATIONS, INC.)	File No. BPED-880406MK
Channel 203)	
Green Bay, Wisconsin)	
CATHOLIC DIOCESE OF GREEN BAY)	File No. BPED-880303MB
WISCONSIN)	
Channel 201C)	
Green Bay, Wisconsin)	
For Construction Permit for a)	
Non-Commercial Educational)	
FM Station)	
EVANGEL MINISTRIES, INC.)	File No. BPED-890224MA
Milladore, Wisconsin)	
For Modification of Facilities of)	
Station WGNV(FM))	
Channel 203C1)	
Milladore, Wisconsin)	

MEMORANDUM OPINION AND ORDER

Issued: April 22, 1991

Released: April 24, 1991

1. Evangel Ministries, Inc. (Evangel), Lakeshore Communications, Inc. (Lakeshore), and Catholic Diocese of Green Bay (Catholic) have submitted a settlement package for ruling. It consists of (1) a Joint Request for Approval of Settlement Agreement filed April 3, 1991; (2) a Supplement to that Request filed by Catholic on April 16, 1991; (3) a Petition for Leave to Amend that Lakeshore filed on April 4, 1991; and (4) a Supplement to Petition For Leave to Amend that Lakeshore filed on April 16, 1991.

2. The Mass Media Bureau filed " ... Consolidated Comments on Joint Request for Approval of Settlement Agreement and Petition For Leave to Amend" on April 17, 1991.

Lakeshore's Petition For Leave to Amend

3. The Trial Judge must rule on Lakeshore's April 4, 1991 amendment request first. That request is a condition precedent to considering the April

3, 1991 joint request since the Lakeshore application submitted under the Settlement Agreement is the Lakeshore application as amended.

4. Lakeshore proffers an engineering amendment that will remove the mutual exclusivity among the three applications, and permit all three to be granted.

5. Lakeshore proposes to:

- (a) Change frequency from Channel 203 (88.5 MHz) to Channel 211 (90.1 MHz);
- (b) Increase the station's effective radiated power from 3 Kw to 6 Kw;
- (c) Relocate the transmitting antenna;
- (d) Decrease the height of the Antenna Radiation Center above average terrain (HAAT) and mean sea level (MSL);
- (e) Increase the height of the Antenna Radiation Center above ground level (AGL); and
- (f) Decrease the elevation on the top of the antenna supporting structure (including antenna, all other appurtenance and lighting) above ground level (AGL) and mean sea level (MSL).

6. The Mass Media Bureau says Lakeshore's engineering proffer complies with the Commission's technical rules; that good cause has been demonstrated for amending; and " ... that the Presiding Judge has jurisdiction to grant Lakeshore's request to amend from Channel 203 to 211" and the grant the amended application.¹

¹ Thus the Bureau takes the position that 47 CFR 73.3522(c) doesn't apply to this postdesignation amendment. That subsection provides:

"Notwithstanding the provisions of paragraph (b) of this section, and subject to compliance with the provisions of §73.3525, a petition for leave to amend may be granted, provided it is requested that the application as amended may be removed from the hearing docket and returned to the processing line. See §73.3571."

Ruling on The Amendment

7. Lakeshore's petition for Leave to amend will be granted and the engineering amendment will be accepted. Accepting the amendment will permit a universal settlement of this proceeding. So good cause is shown.

8. The only real question is whether after permitting Lakeshore to change frequencies from Channel 203 to Channel 211 the Trial Judge has jurisdiction over a "Channel 211 application."²

9. The Mass Media Bureau says the Trial Judge does have jurisdiction over Lakeshore's application as amended since the Commission's rule do not prohibit him from exercising such jurisdiction and " ... in two comparable hearing proceedings, the respective presiding judges have approved channel changes ..."

10. The Bureau's position will be credited. So Lakeshore's Petition For Leave to Amend will not only be granted, the Trial Judge will assume jurisdiction over the Lakeshore application as amended; i.e., the application for Channel 211 (90.1 MHz).

The Joint Request For Approval of Settlement Agreement

11. Evangel, Lakeshore and Catholic have settled their differences. Evangel's and Catholic's applications are not mutually exclusive. Lakeshore's application (prior to amendment) for Channel 201C in Green Bay, Wisconsin was mutually exclusive with both Evangel's and Catholic's applications. But by amending to Channel 211 (90.1 MHz), Lakeshore has removed that mutual exclusivity and all three applications can be granted.

Ruling

12. The Joint Request will be granted, and the accompanying Settlement Agreement will be approved. The parties have submitted the appropriate documents. See Oak television of Everett, Inc. 53 RR 2d 995 (1983). None of the three applicants filed their applications for an improper purpose.

13. Approval of the agreement will close out the case; speed up the start up of the two new noncommercial educational FM service that Station WGNV provides Milladore, Wisconsin. The public interest is thus furthered.

² The Hearing Designation Order (56 F.R. 4291 published February 24, 1991) only gave the Trial Judge jurisdiction over Channels 203, and 201C.

SO, the Petition For Leave to Amend that Lakeshore Communications, Inc. filed on April 4, 1991 IS GRANTED and the accompanying amendment to BPED-880406MK IS ACCEPTED;

The Joint Request For Approval Of Settlement that Evangel Ministries, Inc., Lakeshore Communications, Inc., and Catholic Diocese of Green Bay filed on April 3, 1991, IS GRANTED; and the accompanying Settlement Agreement IS APPROVED;

Lakeshore Communications, Inc.'s application (BPED-880406MK) as amended IS GRANTED;

Catholic Diocese of Green Bay, Wisconsin's application (BPED-890303MB) IS GRANTED;

Evangel Ministries, Inc.'s application (BPED 890224MA) IS GRANTED; and

This proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Walter C. Miller

Walter C. Miller
Administrative Law Judge

W

FCC MAIL SECTION

AUG 13 3 44 PM '92

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

FCC 92M-872
03847

In re Applications of)	MM DOCKET NO. 91-354
FAITH BIBLE COLLEGE)	File No. BPED-910402MC
for Construction Permit for a New, Noncommercial, Educational FM Station on Channel 213A in Milton, Florida)	
and)	
OKALOOSA PUBLIC RADIO, INC.)	File No. BPED-901016MK
For Modification of Facilities for Station WTJT-FM, Baker, Florida)	

MEMORANDUM OPINION AND ORDER

Issued: August 11, 1992 ; Released: August 13, 1992

1. Under consideration are: (a) a Petition for Leave to Amend, filed on March 13, 1992, by Faith Bible College ("Faith"); (b) a Joint Motion for Approval of Settlement Agreement, filed on March 13, 1992, by Faith and Okaloosa Public Radio, Inc. ("Okaloosa"); (c) consolidated comments in support of (a) and (b), filed on March 24, 1992, by the Mass Media Bureau ("Bureau"); and (d) a Petition for Leave to Amend, filed on August 10, 1992, by Faith.

Petitions for Leave to Amend

2. In its March 13 petition, Faith seeks leave to amend to change its proposed technical facilities, including transmitter site, antenna height, and effective radiated power. Faith contends that the amendment would eliminate the mutual exclusivity with Okaloosa's proposed facilities, and would allow a grant of both the Faith and Okaloosa applications. The Bureau's engineering staff has reviewed Faith's amendment and has determined that it is in compliance with the Commission's technical rules. Moreover, the Bureau's review corroborates Faith's assertion that acceptance of the amendment will eliminate the mutual exclusivity that exists between the applicants.

3. In its August 10 petition, Faith seeks leave to amend its application to provide a Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration on June 22, 1992, and to report that Faith has been advised that the Determination became final on August 1, 1992. The Determination was issued for the facilities proposed by Faith in its March 13 amendment.

4. Faith's petitions will be granted and its amendments accepted. Suffice it to say, Faith has shown good cause for the relief requested.

Joint Motion for Approval of Settlement Agreement

5. Faith and Okaloosa have entered into a Settlement Agreement which has been submitted for approval. Pursuant to the agreement Faith has amended its application to eliminate the existing mutual exclusivity. The Bureau supports approval of the agreement and the grant of both applications.

6. The joint motion will be granted and the Settlement Agreement approved. Faith and Okaloosa have demonstrated compliance with Section 73.3525(a) of the Commission's Rules. Specifically, Faith and Okaloosa have declared under penalty of perjury that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, and have demonstrated that approval of the agreement will serve the public interest. Moreover, pursuant to the manner in which the agreement was implemented, no monetary consideration has been exchanged between the applicants. In addition, given the acceptance of Faith's amendments eliminating the mutual exclusivity and the approval of the Settlement Agreement, no impediment exists to the grant of both applications, and they will be granted.

Accordingly, IT IS ORDERED that the Petition for Leave to Amend filed by Faith on March 13, 1992, IS GRANTED and the accompanying amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition for Leave to Amend filed by Faith on August 10, 1992, IS GRANTED and the accompanying amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Joint Motion for Approval of Settlement Agreement filed by Faith and Okaloosa on March 13, 1992, IS GRANTED and the Settlement Agreement IS APPROVED.

IT IS FURTHER ORDERED that the above captioned application of Faith Bible College for a construction permit for a new noncommercial educational FM station in Milton, Florida, IS GRANTED.

IT IS FURTHER ORDERED that the above captioned application of Okaloosa Public Radio, Inc., for modification of facilities for station WTJT-FM, Baker, Florida, IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

Attachment C
(WSKG Declaration)

DECLARATION OF MICHAEL J. ZIEGLER

I, Michael J. Ziegler, declare as follows:

I am the President of WSKG Public Telecommunications Council ("WSKG"). WSKG authorized me to negotiate and execute the Settlement Agreement with Arrowhead Christian Center that resolves the conflict between the two applications for new noncommercial educational FM radio stations on Channel 218A in Binghamton, New York and alleviates the need for a comparative hearing.

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, would expedite the grant of both the WSKG application and the amended Arrowhead application, and would speed the institution of additional local noncommercial educational broadcast radio services in Binghamton, New York, all of which will serve the public interest.

The Settlement Agreement reflects the only consideration exchanged and to be exchanged by the parties.

WSKG did not file its application for the purpose of reaching or carrying out a settlement agreement.

Except as recited in the Settlement Agreement, no money or other consideration has, directly or indirectly, been paid or promised to WSKG or its principals in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 1992.

**WSKG PUBLIC TELECOMMUNICATIONS
COUNCIL**

By: 
Michael J. Ziegler
President

Attachment D
(Arrowhead Declaration)

DECLARATION OF DAVID A. MARTIN

I, David A. Martin, hereby declare, under penalty of perjury that the following is true and correct:

1. I am the Executive Director and Assistant Secretary of Arrowhead Christian Center (Arrowhead), an applicant before the Federal Communications Commission ("FCC") for a new noncommercial FM broadcast station on Channel 218A in Binghamton, New York (File No. BPED-910501MC). Arrowhead authorized me to enter into the foregoing Settlement Agreement with WSKG Public Telecommunications Council ("WSKG") to remove the mutual exclusivity between Arrowhead's and WSKG's applications.

2. Except as disclosed in the Settlement Agreement, Arrowhead will not receive, directly or indirectly, any other consideration.

3. Arrowhead did not file its application for the purpose of reaching or carrying out a Settlement Agreement.

4. The Settlement Agreement between Arrowhead and WSKG is in the public interest because it will (1) conserve the resources of the Commission and the applicants, (2) expedite the grant of both the WSKG application and Arrowhead's application, as amended and (3) expedite the institution of additional noncommercial educational FM radio service to the Binghamton community.

5. Arrowhead will be reimbursed up to \$18,000, which is not in excess of its legitimate and prudent expenses, as itemized below, incurred in the preparation, prosecution, and amendment of its application:

(a)	Legal Services (<u>See</u> attached Declaration of Michael E. Beller, Esquire)	\$ <u>15,000</u>
(b)	Engineering Services (Invoice attached)	\$ <u>5445.56</u>
Total Expenditures		\$ <u>20,445.56</u>

Executed on October 15, 1992.

David A. Martin
David A. Martin

LEGAL SERVICES

DECLARATION OF MICHAEL E. BELLER, ESQUIRE

I, MICHAEL E. BELLER, hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney licensed to practice law in the District of Columbia in the firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, with offices at 901 Fifteenth Street, N.W., Suite 700, Washington, D.C. 20005.

2. The firm has represented Arrowhead Christian Center ("Arrowhead") in the preparation and prosecution of its application to the Federal Communications Commission ("FCC") for a new noncommercial educational FM radio station on Channel 218, Binghamton, New York (File No. BPED-91051MC).

3. Arrowhead has agreed to dismiss its application in return for the payment by WSKG Public Telecommunications Counsel "WSKG", of the reasonable and prudent expenses Arrowhead has incurred in the preparation and prosecution of its application. This declaration has been prepared to document the charges for legal services that Arrowhead has incurred.

4. The total charges for legitimate and prudent legal services and related expenses incurred by Arrowhead solely in connection with the preparation and prosecution of its application are in excess of \$15,000. The legal fees and related expenses charged to Arrowhead are similar to those this firm regularly charges other clients for similar services.

5. Arrowhead also incurred total charges of \$5,445.56 for engineering services in connection with its application.

6. Therefore, Arrowhead incurred legitimate and prudent expenses in excess of \$18,000. The amount to be reimbursed by WSKG in connection with the preparation and prosecution of Arrowhead's application, is \$18,000 and, therefore, is in accordance with Section 73.3525 of the Commission's Rules.


Michael E. Beller

Signed and dated this 15th day of October, 1992.

ENGINEERING SERVICES

STATEMENT AS OF FEBRUARY 19, 1990

TO:

Mr. David Martin
Arrowhead Christian Center
308 Harry L Drive
Johnson City, NY 13790

SERVICES OF:

STERLING COMMUNICATIONS, INC.
Post Office Box 80484
Chattanooga, TN 37411-7484
TELEPHONE (615) 899-9393

CONSULTANTS SPECIALIZING IN RADIO-FREQUENCY SYSTEMS

IN CONNECTION WITH: 1813 Johnson City, NY

ACCOUNT #198

REF#	DATE	DESCRIPTION	AMOUNT
57	900207	PREP & FILE NCE-FM CP APP	\$ 3950.00
58	900207	Ck# 0574	\$ -3950.00
		ACCOUNT BALANCE	\$ 0.00

PLEASE CONTACT US AT ONCE WITH ANY QUESTIONS,
OR IF ANY ITEM IS IN ERROR.

THANK YOU FOR THE OPPORTUNITY OF WORKING WITH YOU.
IF WE CAN BE OF ANY OTHER SERVICE, PLEASE LET US KNOW.

TO:

Mr. David Martin
Arrowhead Christian Center
308 Harry L Drive
Johnson City, NY 13790

SERVICES OF:

STERLING COMMUNICATIONS, INC.
Post Office Box 80484
Chattanooga, TN 37411-7484
TELEPHONE (615) 899-9393

CONSULTANTS SPECIALIZING IN RADIO-FREQUENCY SYSTEMS

IN CONNECTION WITH: 1813 BINGHAMTON, NY

ACCOUNT #198

REF#	DATE	DESCRIPTION	AMOUNT
26	910430	PREP SEC V-B ENGINEERING	\$ 1400.00
27	910430	EXP REINBURSE DELTA DASH TO BILL CRISPIN	\$ 95.56
ACCOUNT BALANCE			\$ 1495.56

PLEASE CONTACT US AT ONCE WITH ANY QUESTIONS,
OR IF ANY ITEM IS IN ERROR.

PAYABLE UPON COMPLETION OF PROJECT REPORT
UNLESS OTHER PRIOR ARRANGEMENTS.

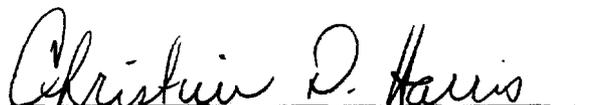
PAST DUE BALANCES SUBJECT TO LATE CHARGES
OF 1.5% PER MONTH (18% APR).
PLEASE RETURN COPY OF THIS STATEMENT
OR SHOW ABOVE ACCOUNT NUMBER ON CHECK.

CERTIFICATE OF SERVICE

I, Christine D. Harris, a secretary in the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 20th day of October, 1992, I caused a copy of the foregoing "JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT" to be served, by first class U.S. Mail, postage prepaid, upon the following persons:

The Honorable Arthur I. Steinberg*
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 228
Washington, D.C. 20554

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


Christine D. Harris

* By hand delivery.