

FCC MAIL SECTION

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

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FCC 92M-1073
30406

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, Noncom-)	
mmercial, Educational FM Station)	

MEMORANDUM OPINION AND ORDER

Issued: December 3, 1992

Released: December 7, 1992

1. On September 22, 1992, Southwest Allen County Schools (Southwest) and Faith Christian Academy (Faith) filed a Joint Motion for Approval of Agreement which was supplemented on November 5, 1992. Petitions for Leave to Amend were filed by Southwest and Faith on November 4 and 5, 1992. The Mass Media Bureau filed consolidated comments on November 17, 1992 in support of the joint motion and petitions.

2. The settlement agreement contemplates the amendment of both applications to remove the mutual exclusivity and to allow both applications to be granted. In addition, Southwest will pay Faith's legitimate and prudent expenses in an amount not to exceed \$8,500.

3. Review of the settlement agreement and attachments, as supplemented, reveals that the applicants have filed the documentation required by Section 73.3525 of the Commission's Rules, which implements Section 311(c) of the Communications Act of 1934, as amended. Specifically, in addition to the agreement, they have filed appropriate declarations from a principal of each party to the agreement which state that the respective applications were not filed for an improper purpose. They also state that grant of the joint motion would be in the public interest because it would expedite the provision of two new noncommercial FM services in Lafayette Township and Berne, Indiana. In addition, Faith has set forth an itemization demonstrating that its legitimate and prudent expenses incurred in this proceeding are in excess of \$8,500.

4. In its amendment, Southwest proposes to reduce power from 0.4 kilowatts to 0.2 kilowatts and to modify its directional antenna. Faith also proposes to amend its application by changing operation from Channel 216B1 to Channel 217, by reducing power, and by using a directional antenna.

5. The proffered amendments have been reviewed by the Bureau and have found to be in compliance with the Commission's technical standards.

Specifically, Faith has now satisfactorily addressed the issue of how it proposes to avoid RF exposure to workers on its tower. Accordingly, the contingent environmental issue specified against Faith may be deleted. Moreover, the two amendments will eliminate the mutual exclusivity between the applications of Southwest and Faith.

6. Good cause has been shown for acceptance of Faith's amendment and the amendment will be accepted. Acceptance of the amendment will permit two non-profit institutions to provide different programming formats and will conserve the Commission's resources as well as those of the parties. In addition, while Section 73.37(a)(1) of the Commission's rules specifies that a change in frequency is a major amendment requiring the assignment of a new file number, that rule has been interpreted to apply to pre-designation and not post-designation amendments, such as the instant amendment. California Broadcasting Corporation, 90 FCC 2d 800, 808 (1982).

Accordingly, IT IS ORDERED, That the contingent environmental issue specified against Faith Christian Academy IS DELETED.

IT IS FURTHER ORDERED, That the "Petition For Leave To Amend And Amendment" filed November 5, 1992 by Faith Christian Academy IS GRANTED and the amendment IS ACCEPTED.

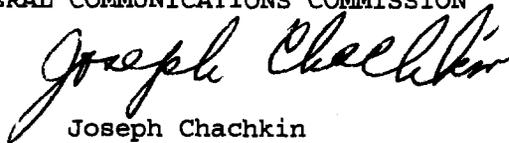
IT IS FURTHER ORDERED, That the "Petition For Leave To Amend" filed November 4, 1992 by Southwest Allen County Schools IS GRANTED and the amendment IS ACCEPTED.

IT IS FURTHER ORDERED, That the "Joint Motion For Approval Of Agreement" filed September 22, 1992 by Southwest Allen County Schools and Faith Christian Academy IS GRANTED and the settlement agreement IS APPROVED.

IT IS FURTHER ORDERED, That the applications of Southwest Allen County Schools and Faith Christian Academy ARE GRANTED.

IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Chachkin
Administrative Law Judge