

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

AUG 23 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-53
)	
KR PARTNERS)	File No. BPH-911001MB
)	
KES COMMUNICATIONS, INC.)	File No. BPH-911003MH
)	
LORI LYNNE FORBES)	File No. BPH-911004MH
)	
For Construction Permit for a)	
New FM Station on Channel 256C)	
in Waimea, Hawaii)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

RECEIVED
AUG 23 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENTS**

KR PARTNERS ("KR"), KES COMMUNICATIONS, INC. ("KES"), and LORI LYNNE FORBES ("Forbes"), by their attorneys, and pursuant to Section 73.3525 of the Rules, hereby respectfully submit this Joint Request for Approval of Settlement Agreements, and request that the Settlement Agreements attached hereto, which accomplish a "global" settlement of this proceeding, be approved by the Presiding Judge, that the Merger Agreement between KR and KES be granted, that the amended Application of KR be granted, that the Application of KES be voluntarily dismissed pursuant to the KES-KR merger, and that the Application of Forbes be voluntarily dismissed for the consideration set forth in the Settlement Agreement between KES, KR and Forbes. In support whereof, the following is shown:

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Introduction

1. This proceeding was designated for Hearing by the Chief, Audio Services Division by *Hearing Designation Order* released March 16, 1993.¹ The Applications of KR, KES and Forbes are mutually exclusive with each other; only one application can be granted. In the absence of a settlement of a "global" or universal nature wherein KR and KES merge, and the Application of Forbes is voluntarily dismissed, a costly and time-consuming evidentiary hearing must be held before the Presiding Judge.

The Settlement Agreements

2. The parties, upon discussions between principals or their counsel, have concluded that the public interest would best be served by settling this case, and permitting one applicant, a proposed corporation consisting of certain KR and KES principals, to go forward. To that end, KR and KES have each executed a Merger Agreement with each other, whereby KR's Julie K. O'Connor and KES's Karen E. Slade each propose to become 50% equity owners in a newly formed Hawaiian corporation. Said corporation will be the new Waimea permittee. In addition, KR, KES and Forbes have each executed a Settlement Agreement whereby Forbes agrees to voluntarily dismiss her application for the monetary consideration set forth in the Settlement Agreement. Attached hereto as exhibits to this Joint Request are copies of the executed Merger

¹DA 93-239, hereafter "*HDO*."

Agreement between KR and KES (*Exhibit 1*), and the Settlement Agreement between KR, KES and Forbes (*Exhibit 2*).

Public Interest Showing

3. Grant of this Joint Request and Approval of the Merger and Settlement Agreements attached hereto would serve the public interest. The resources of both the parties and the Commission would be conserved, and the community of Waimea, Hawaii would receive additional aural broadcast service at an early date. The Presiding Judge, in his *Prehearing Conference* on 18 May 1993 encouraged the Applicants to seek settlement of this matter and to avoid litigation.

4. Also attached hereto as *Exhibit 3 (Exhibits 3A through 3C)* are the Declarations of principals of each of the three Applicants in this proceeding, stating why they believe their respective settlements are in the public interest, that they did not file their respective applications for the purpose of reaching or achieving a settlement, and that the settlement agreement is the only agreement between the parties, no other consideration having been paid or promised to be paid.

Dismissal of the Forbes Application

5. Pursuant to the terms of the Settlement Agreement between KR, KES and Forbes, Forbes hereby respectfully requests the dismissal of her Application, with prejudice, subject only to the condition that the Presiding Judge grant this Joint Request and approve the Merger and Settlement Agreements.

Qualifications of Prevailing Applicant

6. The Chief, Audio Services Division, did not specify any basic qualifications issues against KES. Although a financial qualifications issue was specified against KR, the proposed KR-KES merged entity has established financial qualifications. See, *Petition For Leave to Amend and Amendment, filed concomitantly herewith*. Accordingly, there is no impediment to the immediate grant of KR's Amended Application, and it is so-requested.

Conclusion

WHEREFORE, the above premises considered, the undersigned parties hereby respectfully request: (1) that this Joint Request for Approval of Settlement Agreement be GRANTED; (2) that the Merger Agreement between KR and KES be APPROVED; (3) that the Settlement Agreement between KES, KR and Forbes be APPROVED; (4) that KR's Amendment (to reflect the KR-KES merger into a new Hawaiian corporation) be APPROVED; (5) that the Application of Forbes be DISMISSED WITH PREJUDICE; and (6) that the Amended Application of KR for Construction Permit be GRANTED.

Respectfully submitted,

KR PARTNERS

By:


Mark Van Bergh, Esq.

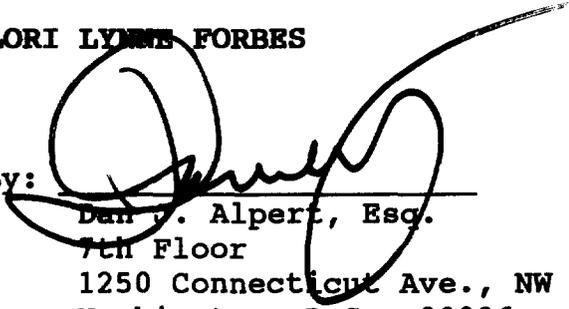
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August 23, 1993

EXHIBIT No. 1

(Merger Agreement Between KR and KES)

MERGER AGREEMENT

This Merger Agreement dated as of this 11th day of August, 1993 sets forth the terms and conditions upon which KES, COMMUNICATIONS INC. (hereinafter referred to as KES), a California corporation and KR PARTNERS, (hereinafter referred to as KR) a Hawaii partnership have agreed to a merger of their interests, that if approved by the Federal Communications Commission of Washington, D.C. ("the Commission") would effectuate a settlement agreement reached between these and other applicants for a construction permit to operate a commercial radio broadcast station in Waimea, Hawaii.

The parties hereto agree as follows:

1. A. A new corporation shall be formed in the State of Hawaii which corporation shall be the permittee of FM Channel 256-C in Waimea, Hawaii ("the Station"). That it is in the interest of each that said new corporation qualify under Subchapter S of the Internal Revenue Code, which provisions include a requirement that each of the shareholders must be an individual and no corporation may be a shareholder. KR and KES will promptly prepare, file and use their best efforts to prosecute a Joint Request for Approval of Agreements ("Joint Request"), including supporting documents, as required by Section 73.3525 of the FCC's Rules (47 C.F.R. Section 73.3525), which will request FCC approval of this Agreement and the settlement agreement between KR, KES and Forbes looking towards the dismissal of Forbes' Application. The parties shall concurrently request the suspension of all procedural dates pending FCC action on the Joint Request.
- B. Simultaneously with the filing of the Joint Request, KES will request the dismissal of its Application contingent upon approval of this Agreement and acceptance by the FCC or its delegate of the amendment to KR's Application, as provided in subparagraph (c) below, which approval (s) shall become Final, as that term is defined in Paragraph 2 of this Agreement.
- C. At the time the Joint Request is filed with the FCC, or as soon thereafter as is possible, KR shall file with the FCC an amendment to its Application (the "KR Amendment") substituting New Co for KR as the applicant, and upon approval of this Agreement and dismissal of the

KES and Forbes Applications, deleting Nelson Parker as principal and adding Slade as a principal of the applicant, such that O'Connor and Slade will each have fifty percent (50%) of the ownership and voting rights of New Co (the "Amended New Co Application"). The amendment

to KR's Application shall also contain such additional information as is required to make the Amended New Co Application legally and technically complete, acceptable, and grantable under applicable FCC Rules.

D. KR, KES, O'Connor, and Slade shall each use their best efforts to prepare and file the KR Amendment and to prosecute the Amended New Co Application. KR and KES shall immediately make good faith efforts to resolve any questions or objections relating to the Amended New Co Application or this Agreement in order to obtain prompt FCC approval of this Agreement, acceptance of the KR Amendment, and grant of the Amended New Co Application.

E. If the FCC or its delegate has not approved this Agreement, accepted the KR Amendment, and granted the Amended New Co Application within six (6) months from the effective date hereof, then either KR or KES, upon written notice to the other party, may terminate this Agreement, and the parties shall return to their status quo ante.

2. Conditions Precedent to Merger. The consummation of the merger contemplated by this Agreement is contingent upon the FCC or its delegate approving this Agreement, accepting the KR Amendment, granting the Amended New Co Application, approving the settlement agreement among KR, KES and Forbes, and dismissing Forbes' Application, and such Order(s) or action(s) having become Final. As used in this Agreement, an Order or action of the FCC or its delegate is Final when no judicial or administrative reconsideration, review, appeal or rehearing is pending, and the time for filing or seeking judicial or administrative reconsideration, review, appeal or rehearing has expired.

3. Conduct of Parties. The parties shall cooperate with the other in good faith and with the FCC or its delegate by expeditiously furnishing to each other and to the FCC or its delegate, as may be necessary, any additional information which reasonably may be required, and by performing all other acts reasonably necessary to effectuate and implement this Agreement.

4. Representations and Warranties.

- A. KR and O'Connor represent and warrant that i) they have full power and authority to consummate the transactions contemplated in this Agreement; ii) that they are not a party to, or bound by, any contract or instrument or subject to any restrictions which condition their ability to enter into this Agreement or perform their obligations hereunder; iii) there are no actions, suits or proceedings pending or, to their knowledge, threatened against or affecting them at law or in equity or in any proceeding before any governmental department, commission, board, bureau, agency, or other instrumentality which would be reasonably expected to raise a disqualifying issue before the FCC as to them, with the exception of any matters which may be or have been raised with respect to KR's Application; iv) the execution, delivery or performance of this Agreement will not conflict with or result in the breach of any term, condition or provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon their assets or pursuant to the terms of any trust agreement, indenture, mortgage, collateral assignment, deed of trust or other instrument to which either of them is a party or by which any of their property may be bound; and v) they will use their best efforts to assign the agreement to lease the antenna site specified in KR's Application to New Co on terms and conditions which are reasonably satisfactory to New Co and its principals.
- B. KES and Slade represent and warrant that i) they have full power and authority to consummate the transactions contemplated in this Agreement; ii) that they are not a party to, or bound by, any contract or instrument or subject to any restrictions which condition their ability to enter into this Agreement or perform their obligations hereunder; iii) there are no actions, suits or proceedings pending or, to their knowledge, threatened against or affecting them at law or in equity or in any proceeding before any governmental department, commission, board, bureau, agency, or other instrumentality which would be reasonably expected to raise a disqualifying issue before the FCC as to them, with the exception of any matters which may be or have been raised with respect to KES's Application; iv) the execution and delivery of this Agreement and performance hereunder will not violate any provision of the Articles

of Incorporation or By-Laws of KES and has been duly authorized by the directors and stockholders of KES; and v) the execution, delivery or performance of this Agreement will not conflict with or result in the breach of any term, condition or provision of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon their assets or pursuant to the terms of any trust agreement, indenture, mortgage, collateral assignment, deed of trust or other instrument to which either of them is a party or by which any of their property may be bound.

C. The representations and warranties made herein shall survive the approval of this Agreement by the FCC.

5. Remedies. If any party to this Agreement fails to abide by the provisions of this Agreement, then any party may institute and maintain a proceeding to compel specific performance of this Agreement by the one in default. The parties hereto acknowledge

A. Karen E. Slade and Julie O'Connor hereby agree that they shall be the initial sole shareholders of said corporation and do by their acts of executing this Agreement with its attachments, hereby assign to said new corporation to be formed any and all rights that they may have in their respective applications for construction permit now pending before the Federal Communications Commission for said channel.

B. The parties do hereby provide that this agreement shall act as a subscription agreement for shares of stock in said new corporation to be formed and do hereby agree that said corporation shall be operated pursuant to the terms of the shareholder agreement, a copy of which is attached hereto as Exhibit "A", fully executed by the parties. The form of By-Laws that the new corporation shall adopt in order to effectuate this Merger Agreement is attached hereto as Exhibit "B". Subject to commission approval, the parties hereto and each of their respective individual principals hereby agree to take all necessary steps to effectuate this Merger Agreement and the agreements identified herein and to consummate the merger in all respects thereof. None of the parties hereto nor any of their respective individual principals will hinder or delay the consummation of this Merger Agreement or any agreement identified herein by any action on their part or by any omission or failure to act on their part.

6. The parties agree that the new corporation to be formed shall have common voting stock and common non-voting stock as permitted under the Hawaii Business Corporation Laws. At the outset, only common voting stock shall be issued, in equal number of shares to Karen E. Slade and to Julie O'Connor. The remainder of the voting stock and the non-voting stock shall be held in reserve for future issuances should such be required. No further such stock issuance, whether voting or non-voting, shall be issued after the initial issuance unless authorized by seventy percent (70%) majority of the shares of all classes as that term is defined in the Articles of Incorporation. Each share of common stock in the initial issuance shall be issued for the same subscription price.
7. The Articles of Incorporation and By-Laws of the corporation shall provide for cumulative voting for the board of directors only.
8. The parties hereto have agreed to reimburse another applicant for this channel, namely Lori Lynne Forbes, in the total sum of \$32,500.00. Each of the individual principals herein agree that they shall be responsible for fifty percent (50%) of such total reimbursement under the following plan as approved by the Commission:
 - a) Initial payment total is \$17,500.00 payable by each of Karen E. Slade and Julie O'Connor in the amount of \$8,750.00 each;
 - b) Five (5) months after the date of FCC approval an additional \$5,000.00 shall be paid (\$2,500.00 each);
 - c) Ten (10) months after FCC approval an additional \$5,000.00 (\$2,500.00 each) shall be paid; and
 - d) Fifteen (15) months after FCC approval the final \$5,000.00 (\$2,500.00 each).

At the time of the final principal payment, the individual principals herein shall also pay to Lori Lynne Forbes the sum of six percent (6%) interest on the unpaid principal from and after the initial payment of \$17,500.00. Said funding shall be secured. The funding for the three subsequent payments shall be secured by O'Connor placing said funds into an escrow account and Karen E. Slade shall submit a letter of credit to guarantee the performance of her \$7,875.00 share.

9. The equity capital to be raised by means of the subscription agreement contained herein shall be set up as follows:

(1) Formation of the new corporation: \$2,500.00 each shall be paid into the corporation to open accounts and purchase stock. The balance of capital shall be determined by subsequent agreement of the parties.

These funds and contributions shall be made by the parties in anticipation of necessary expenses of construction and operation of the station.

10. Failure to meet a capital call when due will result in the forfeiture of the subscription rights to purchase the common stock attributable to the particular capital call by the breaching shareholder except such common stock which has been declared fully paid and non-assessable. Each shareholder shall have a period of ninety (90) days in which to meet a capital call from the date the shareholders determine to require additional capital contributions. If any shareholder has not, within said ninety (90) day period paid to the corporation the amount of the capital call in effect (a "Non-Paying Shareholder"), then any other shareholder may pay to the corporation the amount of the capital call not paid by the Non-Paying Shareholder. In the event that the corporation is to issue additional stock in the corporation in return for the capital contribution, then the Non-Paying Shareholder shall not be entitled to receive said stock, and any shareholder who pays the capital call not paid by the Non-Paying Shareholder shall receive said stock. In the event the corporation is not to issue additional stock in return for the capital call, then the amount of the capital call paid by any shareholder following a Non-Paying Shareholder's failure to pay the capital call shall be treated as a loan to the corporation, which shall accrue interest at the annual rate of 6% until repaid. If non-payment of a capital call occurs, and there is more than one other shareholder other than the Non-Paying Shareholder, then the rights of the other shareholders provided in this paragraph to pay the capital call not paid shall apply pro rata to the ownership interests of all other shareholders electing to pay the unpaid capital call.
11. It is anticipated that additional financing will be obtained from various financial institutions and individuals and equipment suppliers for expenses relating to construction and operation of the station. With respect to such financing, the parties hereto agree as follows:

- a. Personal Guarantees, Supply of Collateral & Cash. Each shareholder (i) agrees and agrees to guarantee personally such loans or lines of credit, but only in an amount equal to each shareholder's respective pro rata percentage ownership of the corporation, and only if such personal guarantee is required by a lender or equipment supplier, or (ii) in lieu of a personal guarantee, any shareholder agrees and agrees to provide additional capital in cash (which will be treated as a loan to the corporation on the same terms and conditions as the financing extended by the lender or equipment supplier) or a pledge of a certificate of deposit or provision of an irrevocable standby letter of credit in an amount equal to the pro rata portion of such financing for which the shareholder would be otherwise responsible under this provision.
- b. Other Requirements, etc. Subject to paragraph 11(a) above, each shareholder agrees and agrees to cooperate in procuring or providing funds necessary for the construction and operation of the station. This may include pledges of the shares of corporation stock held by such principals as security for such loans or equipment leases.
12. The Board of Directors of the corporation shall consist of at least three (3) persons and not more than seven (7) persons. The parties agree that there shall always be an uneven number of board members. The Board of Directors may appoint an executive committee of the board consisting of two or more members of the Board of Directors.
13. Duties and Functioning of the Board: Matters of significance in construction and operation of the station, including without limitations, matters concerning overall operations, financing and financial performance of the station shall be referred to the Board of Directors for final approval and decision. The parties agree that Karen E. Slade shall be Chairman of the Board and General Manager of the station operated by the corporation. The parties further agree that Julie O'Connor shall be the President of the corporation and shall carry the further title of Operations Director. One year from the date of the Shareholders' Agreement, and on each succeeding anniversary, the Board of Directors of the corporation may elect to change the office positions, job titles and duties of the shareholders as set forth in this paragraph and the Shareholders' Agreement.

14. Separate Interests: Subject to paragraph 15 of this Merger Agreement, the separate interests in the present competing applicants, KR PARTNERS and KES, INC. may be allocated among the respective individual owners and partners as they shall so determine, it being understood and agreed that unless and until action is taken to implement direct ownership of common stock in the new corporation to be formed, each of said prior entities shall hold equal interests in the applications until the FCC approval and formation of the new corporation.

15. The parties agree that they will cause KR PARTNERS and KES, INC. to cease to exist as separate owners of interests in the application effective upon FCC approval of this settlement for the station and that direct ownership of the common stock of the corporation to be formed shall be held by Karen E. Slade and Julie O'Connor. Such direct ownership shall continue the parties rights and obligations pursuant to this Merger Agreement.

16. The restriction against sale of stock in the new corporation to be formed is set forth in the Shareholder Agreement attached hereto as Exhibit "A" and fully executed by JULIE O'CONNOR and KAREN E. SLADE.

17. Articles and By-Laws: Provisions contained in the Certificate of Incorporation and By-Laws of the corporation to be formed shall be consistent with the provisions of this Merger Agreement. In the event of any discrepancy, the terms of this Merger Agreement shall control and the parties hereto agree that such articles and by-laws shall be amended by them forthwith to coincide with the terms contained herein. Amendment of the Certificate of Incorporation and the By-Laws shall require a seventy percent (70%) vote of each class of stock of voting shares, with respect to any provision relating to the issuance of common stock or any other security of the corporation to be formed, including the terms and conditions upon which such common stock or any other security is issued and the number of authorized and issued shares, classes of common stock or any other security of the corporation to be formed, the number in terms of directors, any organic change in the By-Laws and any provision that implements or relates to any provision of this Merger Agreement. The Certificate of Incorporation and By-Laws of the corporation shall in no event provide for staggered terms or other classifications of directors.

18. Management Plan: Prior to the commencement of the operation of the station by the corporation to be formed, the Board of Directors of the corporation may, if it so determines, develop a management plan which contains the goals and objectives of

the corporation, outlines the proposed organizational structure of the corporation, including executive and senior management personnel; provides, among other things, for ranges of salary and other forms of compensation and benefits for executives, senior management and other key personnel, outlines a financial plan for the corporation, to include, among other things, provision for financing of capital construction to and operation of the station, statements of dividend policy; and provides for periodic financial review of station operations. The development of such a management plan is not a condition precedent to any obligation of either party and will be solely at the option of the Board of Directors of the corporation, operating by majority vote.

19. Pledge to Third Parties: Should any of the common stock in the corporation be pledged pursuant to the terms of this Merger Agreement, then the common stock or other securities which are so pledged shall be held by a third party having no connection with either of the parties hereto (except as a lender), including but not limited to, a reputable financial or similar institution providing said services in the ordinary course of business. Any pledge agreement under which any common stock in the corporation is pledged, shall provide for a reasonable notice of default and a reasonable opportunity for either party hereto to cure said default before action to foreclose under said pledge agreement may be commenced.

20. Promotion of Sales & Profits: It is the intention of the parties hereto that during any period in which Julie O'Connor or Karen E. Slade, is a shareholder of the corporation, the corporation shall undertake to promote and enhance the station revenues and profits in a manner consistent with the goals and objectives of the station.

21. The parties have agreed to avoid an irrevocable deadlock on matters of fundamental significance to the corporation by the use of an uneven number of directors, notwithstanding that the Board of Directors shall at all times undertake all efforts necessary or appropriate to preserve the corporations assets and goodwill, including without limitation, construction of the station in a timely fashion, and operation of the station in accordance with the rules of the FCC and good business judgment.

22. Any shareholder may at any time offer to purchase all of the common stock held by any other shareholder. Any such offer must be in writing, must offer to purchase all of the other shareholder's or shareholder's common stock and must provide

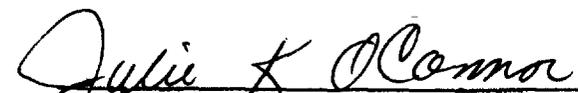
for payment of the offer price (if the offer is accepted) in cash as is set forth in the Shareholders Agreement attached hereto. Said payment shall be made and the time periods for payment shall arise from the date of final approval by the FCC of the transaction, if such approval is required, and if not required, then from the date of signature of the contract by the last party to sign.

23. Modifications in Writing: No amendment, modification or attempted waiver of the provisions herein shall be binding on either party unless set forth in writing and signed by the authorized representative of each party or the parties themselves.
24. 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 of any rights hereunder. No waiver by any party at any time, express or implied, or 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.
25. Severability. If any provision of this Agreement shall be held unenforceable by the FCC or any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
26. Notice: Whenever provision is made for notification herein, such notification shall be made in writing by registered mail at the addresses set forth in Exhibit "A".
27. This Agreement shall be construed and interpreted in accordance with the substantive and internal laws of the State of Hawaii and according to the laws of the State of Hawaii without regard to conflict of law rules.
28. The parties hereto and their respective individual principals agree to maintain the new corporation to be formed as duly qualified and existing under and in accordance with the internal laws of the State of Hawaii at all times. The provisions of this agreement and the Shareholders Agreement shall be binding upon any party or parties purchasing or otherwise acquiring common stock in the corporation.

29. **Separate Expenses:** Each of the parties hereto shall bear its separate costs and expenses of prosecuting its respective application until the effective date of the merger pursuant to this Merger Agreement. Subsequent to the effective date of the merger, the costs and expenses of the new corporation to be formed effectuating the merger and the costs and expenses of construction and operation of the station shall be borne by the parties to this Merger Agreement as set forth in this Agreement.
30. **Merger:** The parties agree to prepare and enter all other and further agreements and take all other steps reasonably necessary for the consummation of the merger contemplated by this Agreement, including without limitation, the Shareholders Agreement referred to herein. The parties agree to form the new corporation within 20 days following the date upon which this Merger Agreement is approved by the FCC.
31. This Merger Agreement may be executed in multiple counter parts.
32. Each of the parties hereto or their authorized representatives represent that it or its representative has the full merger power and authority required of it to execute this Merger Agreement.

KES, INC. by Karen E. Slade

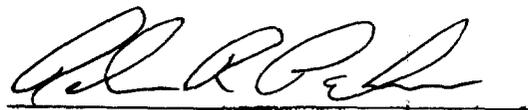
Karen E. Slade



KR PARTNERS, by Julie
O'Connor

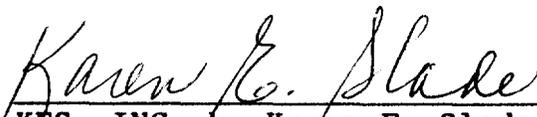


Julie O'Connor

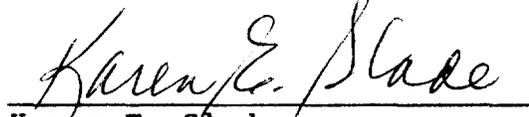


Nelson Parker

29. **Separate Expenses:** Each of the parties hereto shall bear its separate costs and expenses of prosecuting its respective application until the effective date of the merger pursuant to this Merger Agreement. Subsequent to the effective date of the merger, the costs and expenses of the new corporation to be formed effectuating the merger and the costs and expenses of construction and operation of the station shall be borne by the parties to this Merger Agreement as set forth in this Agreement.
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31. This Merger Agreement may be executed in multiple counter parts.
32. Each of the parties hereto or their authorized representatives represent that it or its representative has the full merger power and authority required of it to execute this Merger Agreement.



KES, INC. by Karen E. Slade



Karen E. Slade

KR PARTNERS, by Julie
O'Connor

Julie O'Connor

Nelson Parker

EXHIBIT "A"

SHAREHOLDERS' AGREEMENT**for****HAWAII BROADCASTING COMPANY, INC.**

(Name to be chosen)

THIS AGREEMENT is entered into this 11th day of August, 1993, by and among Julie K. O'Connor and Karen Slade (hereafter referred to as "Shareholder(s)"), who are all of the Shareholders of Hawaii Broadcasting Company, Inc., a Hawaiian corporation (hereinafter referred to as "Corporation").

RECITALS

The Shareholders believe that it is important to prepare this Agreement pursuant to the Hawaiian Business Corporations Act to evidence their desire to provide for their permanent employment and their agreement concerning the management and control of the affairs of the Corporation, including but not limited to management of its business, division of its profits, and distribution of its assets on liquidation.

IT IS THEREFORE AGREED:

I

BOARD OF DIRECTORS

- (A) Each Shareholder shall vote for directors of the Corporation. All regular meetings of directors and Shareholders are hereby waived. During the term of this Agreement, the directors shall be responsible to, where appropriate:

- (1) Determine in good faith the "current assets" of the Corporation relative to corporate distributions as required by the Hawaiian Business Corporations Act;
- (2) Cause an annual report to be sent to the Shareholders not later than one hundred twenty (120) days after the close of the fiscal year, unless such requirement has been expressly waived in the Bylaws of the Corporation; and
- (3) After filing the Corporation's original Articles of Incorporation and thereafter as required, file, on a form prescribed by the State of Hawaii, a statement designating an agent for service of process as required by Hawaii Law, and containing:
 - (a) The presently authorized number of the Corporation's directors;
 - (b) The names and complete business or residence addresses of the directors of the Corporation;
 - (c) The names and complete business or residence addresses of the Corporation's Chief Executive Officer, Secretary, and Chief Financial Officer;
 - (d) The street address of the Corporation's principal executive office.
 - (e) If the address of the Corporation's principal executive office is not in Hawaii, the street address of the Corporation's principal business office in Hawaii, if any; and
 - (f) A statement of the general type of business which constitutes the principal business activity of the Corporation.
- (4) Elect Directors, the number of which shall be uneven at all times with a minimum of three (3) and a maximum of seven (7). The parties must jointly elect the third, fifth, or seventh director as the case may be.

**PRESIDENT AS OPERATIONS MANAGER
CHAIRMAN AS GENERAL MANAGER**

- (B) Julie O'Connor shall be the President of the Company, who shall be the chief operations officer of the Corporation. Karen Slade shall be the Chairman of the Company, who shall be the general managing officer of the Corporation. The Chairman shall have control over and the management of the day-to-day operations of the business and affairs of the Corporation, except that the following actions shall require the written approval of the holders of not less than seventy percent (70%) of the outstanding shares of the Corporation entitled to vote:
- (1) Employment of officers as set forth in Section II of this Agreement;
 - (2) Execution of contracts which cannot be performed within one (1) year from the date of execution or involve extraordinary commitments on the part of the Corporation;
 - (3) Change of the general type of business activity of the Corporation;
 - (4) Entry into a partnership or similar business relationship;
 - (5) Indemnification pursuant to Hawaii Law which is hereby waived.

APPROVAL OF SHAREHOLDERS

- (C) Notwithstanding the provisions in Sections I(A) and I(B) of this Agreement, the written consent of seventy percent (70%) of the Shareholders shall be required to approve the following actions:
- (1) Mergers or consolidations involving the Corporation;
 - (2) Amendments or repeal of the Articles of Incorporation of the Corporation;
 - (3) Issuance of shares of any class or other rights relating to the issuance of shares of the Corporation;
 - (4) Transfer of all, or substantially all, the assets of the Corporation;
 - (5) Voluntary dissolution of the Corporation pursuant to Hawaii Law.

II

EMPLOYMENT OF SHAREHOLDERS

- (A) Subject to any employment agreements executed concurrently with this Agreement and to the provisions of Section III of this Agreement relating to termination of employment, the Shareholders shall be employed as officers of the Corporation, in the capacity specified below and at the indicated annual salary, for so long as they individually devote their full time and best efforts to the Corporation's business, do not engage in any competing business, and satisfactorily perform the duties set forth in this Agreement, their individual employment contracts, and the Articles of Incorporation and the Bylaws of the Corporation.

One (1) year from the date of this Shareholders' Agreement, and on succeeding anniversary, the Board of Directors of the corporation may elect to change the office positions, job titles and duties of the individual Shareholders as set forth in the Merger Agreement between the Shareholders and in Sections I and II of this Agreement.

<u>NAME</u>	<u>TITLE</u>	<u>ANNUAL SALARY</u>
Julie O'Connor	President	To be determined
Karen Slade	General Manager	To be determined

- (B) Each Shareholder shall repay the Corporation any amount of compensation which the Internal Revenue Service has determined to be nondeductible because excessive.
- (C) The title, duties, and the other terms of employment, including the annual salary, as set forth in this Agreement and the other above-mentioned documents, may be altered by the written unanimous consent of the Shareholders. The initial duties and responsibilities of Julie O'Connor and Karen Slade shall be as follows:
- (1) The responsibilities of the President and chief operations officer, Julie O'Connor, shall include, but not be limited to, the following:
 - (a) Develop Station sound through select programming efforts. Program musical format to meet target audience needs;
 - (b) Maintaining successful staff production schedules/performances and program logging;

- (c) Include assignment of production to air personalities, coordination with traffic and sales, consultation with the sales staff in commercial development, supervision, and promotions rotations;
- (d) Coordination of other programming projects as assigned;
- (e) Assume responsibilities in areas of: News, engineering, production, and public affairs personnel development, consistent monitoring of the Station for creative quality control, and conducting production critiques, programming meetings, and seminars;
- (f) Scheduling and timely execution of promotional and merchandising events;
- (g) Record and maintain complete file including cassette tape and written instructions on all Station promotion (includes "On-Air" contests and promotions);
- (h) Represent the Station in planning and development of promotions with clients and outside community organizations;
- (i) Research and present special promotional opportunities;
- (j) Maintain and be responsible for an updated FCC required public file;
- (k) Supervise and maintain the ascertainment file and insure the timeliness of the collection of the ascertainment documents;
- (l) Oversee the implementation and creation of "On-Air" and "Off-Air" promotions sales, programming, and public service);
- (m) "News sourcing" and maintaining the highest possible listening levels through the consistent, accurate, and legal gathering, writing, production, and relating of information of interest and importance to target audience;
- (n) The creative, accurate, and legal and efficient scheduling of all broadcast elements and generation and maintenance of resulting program logo;

- (2) The responsibilities of the Chairman and general managing officer, Karen Slade, shall include, but not be limited to, the following:
- (a) Maximize profit, audience, and market by positioning the Station correctly;
 - (b) Develop and supervise sufficient and effective business practices;
 - (c) Supervise ongoing conduct of business functions, including, but not limited to: Budget development, general accounting, financial records and reporting, credit, and collection;
 - (d) Monitor, evaluate, and interpret of financial reports/data and trends to incorporate into overall business plan;
 - (e) Insuring the fulfillment of FCC legal and ethical obligations;
 - (f) Development, supervision, and achievement of budget and revenue targets;
 - (g) Function as national and local sales manager for Station;
 - (h) Maintain primary responsibility for generation of revenue via retail, agency, and direct clientele;
 - (i) Coordination of national rep. sales activities, including making key advertising calls;
 - (j) Responsible for the successful growth and development of the Station and the individual members of the staff.
 - (k) Analysis of market conditions, budget planning, and revenue projection;
 - (l) Conduct weekly individual planning sessions with account executives to set target accounts and goal objectives;
 - (m) To strategize on problem accounts and establish rates;
 - (n) Ongoing evaluations of account executives' progress, from monitoring goal status, billing, competitive account activity, and collections efforts;