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OCT 13 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 13, 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 92-64
Channel 295A
Ocean City, Maryland

Dear Mr. Caton:

Enclosed for filing is an original and fourteen (14) copies of a "Petition for Approval of Settlement Agreement" in regard to the above-referenced proceeding.

The settlement envisions the dismissal of the application and appeal of Bruce David Blanchard, Limited Partnership, and final grant of the application of JH Communications. Expense documentation will be submitted as soon as possible by the dismissing applicant.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: 
Stephen T. Yelverton
Attorneys for JH Communications

b:caton.112

No. of Copies rec'd 2414
List ABCDE

OCT 13 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20445

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|---|---|----------------------------|
| In Re Applications of |) | MM Docket No. <u>92-64</u> |
| |) | |
| BRUCE DAVID BLANCHARD, LIMITED PARTNERSHIP |) | File No. BPH-901226MA |
| |) | |
| JH COMMUNICATIONS |) | File No. BPH-901226MB |
| |) | |
| For Construction Permit for a new FM station on Channel 295A, Ocean City, Maryland |) | |

TO: The Commission

PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

Bruce David Blanchard, Limited Partnership ("Blanchard") and JH Communications ("JH") (collectively "the parties"), pursuant to Section 311(c) of the Communications Act of 1934, as amended, 47 U.S. Section 311(c), and Section 73.3525 of the Commission's Rules, respectfully request approval of the Settlement Agreement attached hereto as Appendix A. In support of this request, the parties submit as follows:

This proceeding involves the above-captioned applications for construction permit for a FM radio broadcast station on Channel 295A at Ocean City, Maryland. The application of Blanchard was dismissed on August 29, 1991, for failure to timely pay a hearing fee. An application for review of that dismissal was filed by Blanchard with the Commission on April 13, 1992, and is still pending. The application of JH was granted on September 29, 1992.

The attached Settlement Agreement, which is subject to prior Commission approval, envisions the final grant of JH's application and the dismissal with prejudice of Blanchard's application and appeal in return for monetary consideration as noted in the Settlement Agreement.

Approval of the Settlement Agreement will serve the public interest by obviating the need for further costly and time-consuming appeals and by facilitating the early inauguration of a new local FM broadcast service to Ocean City, Maryland.

Declarations of the principals of each of the parties, attesting that no consideration has been paid or promised in exchange for the Settlement Agreement, apart from that which appears in the attached agreements, and that the respective applications were not filed for purposes of reaching or carrying out the Settlement Agreement, are attached as Appendix B.

WHEREFORE, in view of the foregoing, the attached Settlement Agreement is consistent with Section 73.3525 of the Rules and Section 311 of the Communications Act of 1934, as amended. Accordingly, approval of the Settlement Agreement,

dismissal of Blanchard's application and appeal with prejudice, and final grant of JH's application is requested.

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: 

Stephen P. Yelverton
Attorneys for JH Communications
1155 15th Street, N.W., Suite 400
Washington, D.C. 20005
Telephone: (202) 659-3900

October 13, 1993

b:caton.112

SETTLEMENT AGREEMENT

AGREEMENT, made and entered into this 27th day of September, 1993, by and between JH COMMUNICATIONS (hereinafter referred to as "JH"), and ^{David Bruce} ~~DAVID BRUCE~~ BLANCHARD LIMITED PARTNERSHIP (hereinafter referred to as "Blanchard").

WHEREAS, JH was granted on September 29, 1992, a construction permit by the Federal Communications Commission ("Commission) to construct and operate a radio broadcast station on FM Channel 295A in Ocean City, Maryland (the "facility"); and

WHEREAS, the mutually exclusive application (BPH-901226MA) of Blanchard was dismissed by the Commission on August 29, 1991, prior to designation to hearing. An application for review of that dismissal was filed by Blanchard on April 13, 1992, and is still pending before the Federal Communications Commission.

WHEREAS, JH and Blanchard wish to avoid further costly proceedings and the time and financial burden that such an appeal places upon them and the Commission; and

WHEREAS, Blanchard is willing, subject to fulfillment of the terms of this Agreement, to dismiss with prejudice its application, application for review, and any appeal thereto, so as to facilitate the final grant of the construction permit for FM Channel 295A to JH, and JH has agreed to compensate Blanchard its reasonable and prudent application expenses for such dismissal; and

WHEREAS, settlement of Blanchard's appeal of his dismissal will obviate the expense, delay, and commitment of Commission resources, and those of JH and Blanchard, otherwise

necessary to resolve Blanchard's appeal, and will expedite bringing an additional local FM radio broadcast service to the residents of Ocean City, Maryland; and

WHEREAS, the obligations of the parties hereunder are subject to the conditions set forth herein, and to the prior approval of the Commission.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties agree as follows:

1. Blanchard agrees to petition the Commission for dismissal of its application, application for review, and any appeals thereto with prejudice, conditioned upon Commission approval of the terms and conditions contained in this Agreement.

2. JH agrees to pay to Blanchard the sum of Nine Thousand Dollars (\$9,000.000) (the "Settlement Amount") or such lesser amount approved by the Commission which represents Blanchard's reasonable and prudent application expenses, as documented pursuant to Commission policy. This amount shall be paid five (5) business days after the date upon which the Commission's Order approving the Settlement Agreement, dismissing with prejudice Blanchard's application, application for review, and any appeals thereto, and grant of JH's construction permit for FM Channel 295A, Ocean City, Maryland, becoming final as defined in Paragraph 3 hereof.

3. JH shall pay to Blanchard, within five (5) business days after the date upon which the Commission order granting the

Joint Request and grant of JH's construction permit becomes final, the Nine Thousand Dollars (\$9,000.00) Settlement Amount, or such lesser amount as approved by the Commission, by registered mail delivery to Blanchard of a certified check payable to Blanchard. An order will be deemed final when (1) the order contains no terms, restrictions, or qualifications which materially limit or conflict with any of the rights of the parties set forth or contemplated herein or in this Agreement or which would prevent JH from operating the facility in substantially the manner as is contemplated in its Application, as now amended, and (2) under the express provisions of the Communications Act of 1934, as amended, and the applicable Rules of the Commission and the Courts, the time for filing a request for administrative or judicial review of the action, or for the Commission to review such action on its own motion, shall have expired without such filing having been made or Commission action having been taken or, in the event of such filing or action, shall have been disposed of favorably, to JH, and the time for seeking further review of the action shall have expired without any request for such further review having been filed. It is agreed that a Commission order becomes final on the 42nd day after release of the text of the order, if no timely petition for reconsideration or judicial appeal is filed and the Commission has not reviewed the order on its own motion by that date pursuant to Section 1.117 of the Rules.

4. Within five (5) business days after the execution of this Agreement, JH and Blanchard shall file it with the Commission together with a "Joint Request for Approval of Settlement Agreement" ("Joint Request"). The "Joint Request" shall be filed pursuant to, and shall comply with Section 73.3525 of the Commission's Rules, and shall have attached thereto properly executed declarations.

5. Recognizing that this Agreement is expressly subject to the prior consent of the Commission and the need for Commission approval prior to closing, JH and Blanchard shall cooperate and use their respective best efforts in the preparation and filing of all Commission pleadings and related documents as shall be necessary or appropriate to consummate the transactions contemplated by this Agreement. The parties hereto shall cause all such filings, including application expense documentation, to be made as soon as reasonably practicable following the execution of this Agreement and each of them shall prosecute such filings with all reasonable diligence and otherwise cooperate with each other and use their best efforts to obtain the requisite Commission consent and approval promptly so that a Final Order may be obtained at the earliest possible date. It is understood and agreed that JH will bear the primary responsibility for coordinating, researching, preparing, and filing any materials submitted pursuant to this Agreement. In the event of a disagreement between JH and Blanchard as to strategy, the views of JH shall prevail.

6. This Agreement is the only agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. All other Agreements, written or oral, between the parties are incorporated herein. This Agreement shall be binding upon the parties hereto, their heirs, legatees, successors, assigns and executors.

7. Each signatory to this Agreement warrants and represents that he has full legal authority to enter into, execute and carry out this Agreement.

8. Any notice required hereunder shall be in writing and shall be deemed given when delivered personally, or filed by certified mail, postage prepaid, with return receipt requested to the following or their respective designees:

To JH Communications:

Stephen T. Yelverton, Esquire
McNair & Sanford, P.A.
1155 15th Street, N.W., Suite 400
Washington, D.C. 20005
Telephone (202) 659-3900

To ^{Bruce David} ~~David Bruce~~ Blanchard Limited Partnership:

^{Bruce David}
David Bruce Blanchard Limited Partnership
13001 Wight Street
Unit 501
Ocean City, Maryland 21842

9. The parties agree that this Agreement can be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

10. JH and Blanchard each acknowledge that they have made no representations or warranties except as specifically set forth herein.

11. This Agreement shall be construed under and governed by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

JH COMMUNICATIONS

By: _____

Title: _____

DAVID BRUCE
~~DAVID BRUCE~~ BLANCHARD LIMITED PARTNERSHIP

By: 

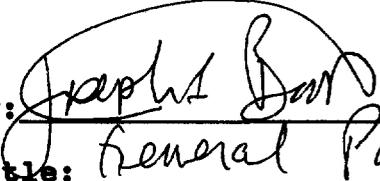
Title: General Partner

10. JH and Blanchard each acknowledge that they have made no representations or warranties except as specifically set forth herein.

11. This Agreement shall be construed under and governed by the laws of the District of Columbia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

JH COMMUNICATIONS

By: 

Title: General Partner

DAVID BRUCE BLANCHARD LIMITED PARTNERSHIP

By: _____

Title: _____

DECLARATION

I, ^{BRUCE DAVID} ~~DAVID BRUCE~~ BLANCHARD, under penalty of perjury, hereby declare as follows:

1. ^{BRUCE DAVID} ~~DAVID BRUCE~~ Blanchard Limited Partnership filed an application for a Construction Permit for a new FM station on Channel 295A in Ocean City, Maryland. I am the General Partner.

2. This application was filed on December 26, 1990, and was dismissed by the Federal Communications Commission on August 29, 1991. An appeal by the applicant of the dismissal is still pending before the Federal Communications Commission. The application was filed in good faith and for the purpose of obtaining an authorization to construct the requested facilities. It was not filed with the purpose of entering into or carrying out a settlement agreement.

3. An agreement has been entered into with JH Communications pursuant to which ^{BRUCE DAVID} ~~DAVID BRUCE~~ Blanchard Limited Partnership will dismiss its application and appeal with prejudice. Neither the applicant, nor its principals, have paid or received any consideration for the dismissal of the ^{BRUCE DAVID} ~~DAVID BRUCE~~ Blanchard Limited Partnership application other than as set forth in the Settlement Agreement being tendered herewith. Approval of the settlement would be in the public interest inasmuch as it would permit the prompt institution of service to the public and would

conserve the Commission's resources by obviating the need for further consideration of the appeal.

Since David

~~DAVID BRUCE~~ BLANCHARD LIMITED PARTNERSHIP

Date: 9/27/93

By: 

~~David Bruce~~ Blanchard

Since David

STATE OF MARYLAND

COUNTY OF WORCHESTER

I, the undersigned, a Notary Public in and for the said State and County, do hereby certify that Bruce David Blanchard personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 27th day of September, 1993.

Shirley M. Sexton
Notary Public

My Commission Expires:

9-1-94



(NOTARIAL SEAL OR STAMP)

DECLARATION

I, JOSEPH A. BOOTH, under penalty of perjury, hereby declare as follows:

1. JH Communications filed an application for a Construction Permit for a new FM station on Channel 295A in Ocean City, Maryland. I am a General Partner.

2. This application was filed on December 26, 1990, and was granted by the Federal Communications Commission on September 14, 1992. The application of JH was filed in good faith and for the purpose of obtaining an authorization to construct the requested facilities. It was not filed with the purpose of entering into or carrying out a settlement agreement.

3. A mutually exclusive application was filed by David Bruce Blanchard Limited Partnership on December 26, 1990, and was dismissed by the Federal Communications Commission on August 26, 1991. An appeal by Blanchard of the dismissal is still pending before the Commission.

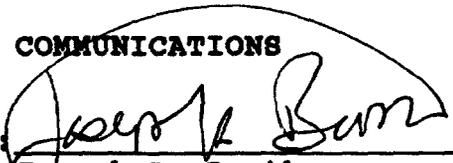
4. An agreement has been entered into with David Bruce Blanchard Limited Partnership whereby it will dismiss its application and appeal with prejudice. Neither JH, nor its principals, have paid or received any consideration for the dismissal of the David Bruce Blanchard Limited Partnership application other than as set forth in the Settlement Agreement being tendered herewith. Approval of the settlement would be in the public interest inasmuch as it would permit the prompt institution of service to the public and would conserve the

Commission's resources by obviating the need for further consideration of the Blanchard appeal.

Date: 27 Sep 93

JH COMMUNICATIONS

By:



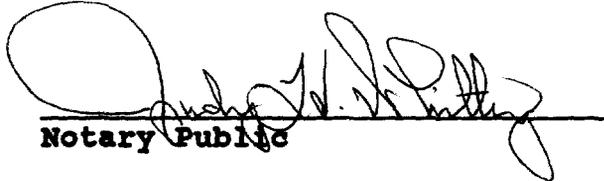
Joseph A. Booth
General Partner

COMMONWEALTH OF VIRGINIA

CITY OF VIRGINIA BEACH

I, the undersigned, a Notary Public in the Commonwealth of Virginia, do hereby certify that Joseph A Booth personally appeared before me this day and acknowledged that due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 27th day of September, 1993.


Notary Public

My Commission Expires:

1-30-95

(NOTARIAL SEAL OR STAMP)

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 13th day of October, 1993, I have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Petition for Approval of Settlement Agreement" to the following:

Andrew S. Fishel*
Managing Director
Federal Communications Commission
Room 852
Washington, D.C. 20554

James B. Mullins, Esquire*
Office of General Counsel
Federal Communications Commission
Room 616
1919 M Street, N.W.
Washington, D.C. 20554

Robert Zauner, Esquire*
Hearing Branch
Mass Media Bureau
Room 7212
Federal Communications Commission
Washington, D.C. 20554

Bruce David Blanchard
13001 Wight Street, Unit 501
Ocean City, Maryland 21842

Thomas L. Siebert, Esquire
Besozzi & Gavin, P.C.
1901 L Street, N.W., Suite 200
Washington, D.C. 20554


Stephen T. Yelverton

*Hand Delivery