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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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HENRY A. SOLOMON
ADMITTED IN VA. AND D.C.

November 23, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

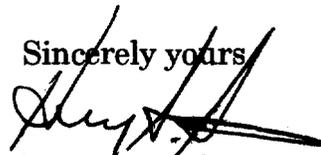
Reference: **MM Docket No. 93-51**
New Albany, IN

Dear Mr. Caton:

We submit an original and six copies of a **Joint Request for Approval of Agreement**.

If there are any questions in regard to this matter, kindly communicate directly with this office.

Sincerely yours



Henry A. Solomon
Liaison Counsel to
Applicants

HAS:dh
Enclosure

cc: All Counsel

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NOV 23 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The
Federal Communications Commission
Washington, D.C. 20554

In re Applications of) MM Docket No. 93-51
)
MARTHA J. HUBER, et al.,)
)
For Construction Permit for a)
New FM Station on Channel 234A)
in New Albany, Indiana)

TO: The Honorable Richard L. Sippel
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF AGREEMENTS

Martha J. Huber and Midamerica Electronics Service, Inc. ("Applicants"), Staton Communications, Inc. ("Staton"), Rita Reyna Brent ("Brent"), and New Albany Broadcasting Co., Inc. ("NBC"), by Liaison Counsel and pursuant to 47 C.F.R. § 73.3525, hereby respectfully request the Presiding Judge to (a) approve the **annexed** Settlement Agreements and Merger Settlement Agreement, all dated as of November 19, 1993; (b) grant the concurrently filed Motion for Leave to Amend and Amendment and Motion for Summary Decision; (c) dismiss the mutually exclusive applications of Staton, Martha J. Huber and Brent; (d) substitute NBC as the applicant in lieu of Midamerica Electronics, Inc.; and (e) grant NBC's application. In support hereof the following is shown:

1. **Background.** Applicants' applications and the applications of Brent and Staton for a new Class A FM station on Channel 234A at New Albany, Indiana, are mutually exclusive and are pending before the Commission, having been designated for a consolidated comparative hearing.

2. **Merger Settlement Agreement.** Applicants signed a Merger Settlement Agreement and have formed a new corporation (NBC) in which they have equal voting stock interests. Their Merger Settlement Agreement looks toward amendment of Midamerica's application¹ in order to substitute NBC as the successor applicant, dismissal of the Huber application, and an award of the Channel 234A, New Albany construction permit to NBC.²

3. **Reimbursement Settlement Agreements.** Applicants, Staton and Brent have signed separate Settlement Agreements. If Applicants' Merger Settlement Agreement is approved in all respects, and in consideration of Staton and Brent dismissing their applications with prejudice, Applicants shall reimburse Staton and Brent for reasonable and prudent expenses incurred by them in preparing, filing, and prosecuting their respective applications.³

4. **Declarations.** The **attached** declarations on behalf of each of the Applicants, Staton and Brent, affirm that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that

¹ In accordance with the Presiding Judge's *Order* (FCC 93M-541), released August 20, 1993, a request for leave to amend is being submitted concurrently herewith. The amendment includes a revised technical proposal which, *inter alia*, specifies a new antenna site.

² The Applicants have had financial issues designated against each of them. In order to achieve a universal settlement, and as a condition to effectuation of the Applicants' merger settlement and to their settlements with Staton and Brent, Midamerica Electronics, Inc., is submitting herewith for approval a request for summary decision demonstrating its financial qualifications. *Order, supra*.

³ The amount to be reimbursed shall be the amount approved by the FCC, not to exceed twenty-five thousand dollars in the case of Staton, and fifty-one thousand dollars in Brent's case. The **attached** declarations of Staton's principal and Staton's counsel, and the declarations of Brent and her counsel, verify that Staton incurred costs "in excess of the \$25,000.00 settlement payment." Brent incurred costs of fifty one thousand seven hundred seventy six dollars (\$51,776.00), also in excess of her settlement payment.

the agreements they are proffering for approvals are in the public interest. The Staton and Brent declarations also verify those parties' reasonable and prudent expenses. See § 73.3525(a)(1)(2).

5. **The Public Interest.** Applicants, Staton and Brent, further submit that approval of their universal settlement would serve the public interest: a potentially lengthy and complex trial would be avoided; a fully qualified applicant comprised of two locally-based stockholders would be awarded the construction permit; Staton would receive reimbursement of a majority of its legitimate and prudent application expenses up to \$25,000.00; and Brent would receive reimbursement of her expenses up to \$51,000.00. Most importantly, a new competitive FM service would become available in the New Albany area more expeditiously than would otherwise be the case were litigation to continue.

6. **Requested Actions.** In light of the foregoing, Applicants Staton and Brent, request that the reimbursement Settlement Agreements and Merger Settlement Agreement proffered herewith be accepted and approved, that the subject Joint Request for Approval of Agreement be granted, and that the Presiding Judge take the following implementing actions:

- a. Dismiss with prejudice the referenced application of Staton Communications, Inc., Martha J. Huber and Rita Reyna Brent;
- b. Grant Midamerica's Motion for Summary Decision; and
- c. Accept Midamerica Electronics Service, Inc.'s proffered Amendment, substitute NBC for Midamerica Electronics Service, Inc.;
- d. Grant NBC's application;
- e. Waive § 73.1620(g)(reporting requirement re comparative proposal(s), under the authority of subparagraph (g)(3); and

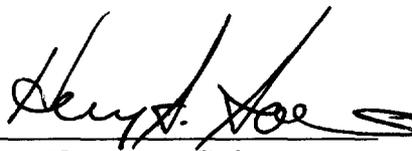
f. Take any other actions deemed necessary or appropriate to effectuate the parties' settlement.

WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that the subject Joint Request be Granted as provided herein.

Respectfully submitted,

**MARTHA J. HUBER,
MIDAMERICA ELECTRONICS, INC.
STATON COMMUNICATIONS, INC.
RITA REYNA BRENT, &
NEW ALBANY BROADCASTING
CO., INC.**

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

By 
Henry A. Solomon
Liaison Counsel

November 23, 1993

SETTLEMENT AGREEMENT

This Settlement Agreement, by and among **MARTHA J. HUBER** and **MIDAMERICA ELECTRONICS SERVICE, INC.** (together, the "Merging Parties") and **RITA REYNA BRENT** ("Brent") (collectively, "the Parties") is made and entered into as of the date last set forth below.

W I T N E S S E T H:

WHEREAS, the Parties and Staton Communications, Inc. ("Staton") have been prosecuting mutually exclusive applications before the Federal Communications Commission ("Commission" or "FCC") for a construction permit for a new FM station on Channel 234A, allocated to New Albany, Indiana ("the Station"); and

WHEREAS, the Parties believe that the public interest would be served by settling and terminating the conflict among them, to permit the prompt initiation of a new FM broadcast service at New Albany, Indiana; and

WHEREAS, subject to the prior approval of the Commission, the Merging Parties have agreed in a separate agreement to consolidate their interests by forming a corporation under the laws of the State of Indiana (the "Corporation"), and to amend one of the Merging Parties' applications to substitute the Corporation (known as New Albany Broadcasting Co., Inc., an Indiana corporation) as the applicant for the Station;

WHEREAS, under separate agreement and subject to prior approval of the Commission, the Merging Parties have entered into a settlement agreement with Staton in which Staton has agreed to dismiss its pending application for the Station in return for reimbursement of its expenses by the Merging Parties; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Commission;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

1. Joint Request. The Parties will file a Joint Request for Approval of Settlement Agreements ("Joint Request") with the FCC, pursuant to Section 73.3525 of the Commission's Rules, seeking the following actions by the Commission: (a) approval of this Settlement Agreement; (b) approval of a settlement agreement between the Merging Parties and Staton Communications, Inc. ("Staton"); (c) approval of the Merging Parties' settlement agreement; (d) dismissals of the applications of Brent, Huber, and Staton, with prejudice; (e) approval of an amendment to Midamerica's application to substitute the Corporation as the surviving applicant; and (f) grant of the Corporation's application with no condition materially adverse to the Corporation. The Parties understand that the foregoing actions are conditioned upon the Presiding Administrative Law Judge's prior determinations that both of the Merging Parties are qualified to be Commission licensees.

It shall be a condition precedent to this Settlement Agreement and to the filing of the Joint Request that the Merging Parties shall have executed a settlement agreement and that said settlement agreement shall contemplate the grant of the Corporation's application.

2. Dismissal: No Adverse Actions. Brent agrees to request dismissal, with prejudice, of her application as part of the Joint Request. The Parties agree to take no action adverse to this Settlement Agreement, the Joint Request, the petition for leave to amend Midamerica's application to substitute the Corporation as the sole surviving applicant for the Station, the grant of the amended application of the Corporation, or the dismissal of Huber's application as contemplated in the Merging Parties' settlement agreement.

3. Payment. The Merging Parties shall pay to Brent as consideration for the foregoing and for the performance of her obligations hereunder, the sum of **FIFTY-ONE THOUSAND DOLLARS** (\$51,000.00), or such lesser amount that the Commission may approve for the reimbursement of Brent's legitimate and prudent expenses incurred in the preparation, filing and prosecution of Brent's application (File No. BPH-911115MC) for the Station (the "Settlement Price"). Payment of the Settlement Price to Brent is expressly conditioned upon the dismissals with prejudice of Brent's, Huber's and Staton's applications, the grant of the remaining application as amended to substitute the Corporation, and those actions having become final (*i.e.*, granted by an Order or Orders of

the Presiding FCC Administrative Law Judge which is not reversed, stayed, set aside, modified, enjoined or suspended, and with respect to which no requests for administrative or judicial review or stay are pending, and as to which the filing of such a petition or appeal, or for the FCC to set aside its consent on its own motion has expired).

4. Closing. Payment of the Settlement Price to Brent (or her designee) shall be made within ten (10) business days after the Order (or the last of the Orders) referred to in Paragraph 3 above, has become final. The Merging Parties are not obligated to pay the Settlement Price or any portion thereof except as specifically provided in this Settlement Agreement.

5. Escrow. Not later than ten (10) days after the filing of the Joint Request described in Paragraph 1 above, the Merging Parties shall deposit the Settlement Price in an interest-bearing escrow account (the "Escrow Account"). The Escrow Account will be subject to the terms of an Escrow Agreement attached hereto and incorporated herein at this place.

6. Required Filings. This Settlement Agreement is entered into subject to approval by the Commission. The parties shall file with the Joint Request a copy of this Settlement Agreement, together with all supporting documentation required by Section 73.3525 of the FCC's Rules, including a showing by Brent that the Settlement Price does not exceed its legitimate and prudent out-of-pocket expenses incurred in the preparation, filing and prosecution of Brent's application.

7. Cooperation. The Parties shall cooperate with each other and with the Commission by expeditiously filing the Joint Request and by providing to one another or to the Commission, all additional information that may be reasonably required, and by expeditiously filing the additional documents that may be necessary or appropriate to comply with Section 73.3525 of the FCC's Rules, to effectuate the objectives of this Settlement Agreement, or to satisfy the conditions to settlement. The Parties agree to provide the Commission with such information requested by the Commission within seven (7) days after each such request.

8. **Termination.** This Settlement Agreement may be terminated at the option of any party upon the occurrence of any event necessitating further hearings before Administrative Law Judge Sippel prior to a grant of the Joint Request, or by Brent in the event the Merging Parties fail to establish the Escrow Account specified in Paragraph 5 above. Upon such termination the Parties may withdraw from the Joint Request and may continue to prosecute their respective applications.

9. **Scope and Binding Effect.** This Settlement Agreement supersedes any and all previous agreements and understandings among the Parties. It is the only Agreement between Brent and the Merging Parties, and contains all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by an instrument in writing signed by all Parties. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns, heirs or legal representatives. Staton understands and agrees that the Merging Parties may assign their rights and obligations hereunder to the Corporation.

10. **Expenses.** Except as otherwise provided herein, each party to this Settlement Agreement shall bear its own expenses in relation to this agreement, including preparation of this agreement, the filings and transactions contemplated thereby.

11. **Counterparts.** The Parties agree that this Settlement Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

12. **Governing Law.** This Settlement Agreement shall be construed under the laws of the State of Indiana, the Communications Act of 1934, as amended, and the rules and regulations of the Commission.

13. **Execution.** Each party hereto expressly warrants that it has the full power and authority to enter into this Settlement Agreement and to execute the same, and that there is no constraint upon such party's legal capacity and ability to perform its responsibilities hereunder.

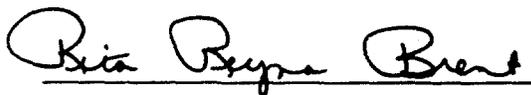
14. **Specific Performance.** In the event of a breach of this Settlement Agreement then the injured party or parties shall be entitled to secure specific performance of the Settlement Agreement, it being

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. If, on account of an alleged breach or default by any party of its obligations under this Settlement Agreement, any other party shall employ an attorney to enforce or defend any of its rights or remedies under this Settlement Agreement, the prevailing (or parties) shall be entitled to recover reasonable costs incurred in such connection, including but not limited to reasonable attorneys' fees.

15. Waiver. Failure of any party to complain of any act or omission on the part of any other party in breach of this Settlement Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party shall be deemed a waiver of any other provision of this Settlement Agreement or consent to any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Settlement Agreement on the dates set forth below, contemplating the effective date hereof to be the date last set forth below.

RITA REYNA BRENT



Signed and dated this 19th day of November, 1993

MARTHA J. HUBER

Signed and dated this ____ day of November, 1993

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. If, on account of an alleged breach or default by any party of its obligations under this Settlement Agreement, any other party shall employ an attorney to enforce or defend any of its rights or remedies under this Settlement Agreement, the prevailing (or parties) shall be entitled to recover reasonable costs incurred in such connection, including but not limited to reasonable attorneys' fees.

15. Waiver. Failure of any party to complain of any act or omission on the part of any other party in breach of this Settlement Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party shall be deemed a waiver of any other provision of this Settlement Agreement or consent to any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Settlement Agreement on the dates set forth below, contemplating the effective date hereof to be the date last set forth below.

RITA REYNA BRENT

Signed and dated this ____ day of November, 1993

MARTHA J. HUBER

Martha J. Huber

Signed and dated this 15 day of November, 1993

**MIDAMERICA ELECTRONICS SERVICE,
INC.**

By  _____
President

Signed and dated this 17 day of November , 1993

SETTLEMENT AGREEMENT

This Settlement Agreement, by and among **MARTHA J. HUBER** and **MIDAMERICA ELECTRONICS SERVICE, INC.** (together, the "Merging Parties") and **STATON COMMUNICATIONS, INC.** ("Staton") (collectively, "the Parties") is made and entered into as of the date last set forth below.

W I T N E S S E T H:

WHEREAS, the Parties and Rita Reyna Brent ("Brent") have been prosecuting mutually exclusive applications before the Federal Communications Commission ("Commission" or "FCC") for a construction permit for a new FM station on Channel 234A, allocated to New Albany, Indiana ("the Station"); and

WHEREAS, the Parties believe that the public interest would be served by settling and terminating the conflict among them, to permit the prompt initiation of a new FM broadcast service at New Albany, Indiana; and

WHEREAS, subject to the prior approval of the Commission, under separate agreement, the Merging Parties have agreed to consolidate their interests by forming a corporation under the laws of the State of Indiana (the "Corporation") and to amend one of the Merging Parties' applications to substitute the Corporation (known as New Albany Broadcasting Co., Inc., an Indiana Corporation) as the applicant for the Station;

WHEREAS, under separate agreement and subject to prior approval of the Commission, the Merging Parties have entered into a settlement agreement with Brent, in which Brent has agreed to dismiss her pending application for the Station in return for reimbursement of her expenses by the Merging Parties; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Commission;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties agree as follows:

1. Joint Request. The Parties will file a Joint Request for Approval of Settlement Agreements ("Joint Request") with the FCC, pursuant to Section 73.3525 of the Commission's Rules, seeking the following actions by the Commission: (a) approval of this Settlement Agreement; (b) approval of the Settlement Agreement between the Merging Parties and Brent and dismissal with prejudice of Brent's application; (c) approval of a settlement agreement to be executed by and among the Merging Parties; (d) dismissal of Staton's application with prejudice; (e) dismissal with prejudice of Huber's application and approval of an amendment to Midamerica's application to substitute the Corporation as the surviving applicant; and (f) grant of the Corporation's application with no condition materially adverse to the Corporation. The Parties understand that the foregoing actions are conditioned upon the Presiding Administrative Law Judge's prior determinations that each of the Merging Parties is qualified to be a Commission licensee.

It shall be a condition precedent to this Settlement Agreement and to the filing of the Joint Request that the Merging Parties shall have executed a settlement agreement and that said agreement shall contemplate the grant of the Corporation's application.

2. Dismissal: No Adverse Actions. Staton agrees to request dismissal, with prejudice, of its application as part of the Joint Request. The Parties agree to take no action adverse to this Settlement Agreement, the Joint Request, the petition for leave to amend Midamerica's application to substitute the Corporation as the sole surviving applicant for the Station, the grant of the amended application of the Corporation, or the dismissals of Huber's application as contemplated in the Merging Parties' proposed settlement agreement.

3. Payment. The Merging Parties shall pay to Staton, as consideration for the foregoing and for the performance of Staton's obligations hereunder, the sum of **TWENTY-FIVE THOUSAND DOLLARS** (\$25,000.00) or such lesser amount that the Commission may approve for the reimbursement of Staton's legitimate and prudent expenses incurred in the preparation, filing and prosecution of Staton's application (File No. BPH-911115MU) for the Station (the "Settlement Price"). Payment of the Settlement Price to Staton is expressly conditioned upon: the dismissal with prejudice of Staton's application; Brent's application and Huber's application; the grant of the Midamerica application as

amended to substitute the Corporation; and those actions having become final (i.e., granted by an Order or Orders of the Presiding FCC Administrative Law Judge which is not reversed, stayed, set aside, modified, enjoined or suspended, and with respect to which no requests for administrative or judicial review or stay are pending, and as to which the filing of such a petition or appeal, or for the FCC to set aside its consent on its own motion has expired).

4. Closing. Payment of the Settlement Price to Staton (or its designee) shall be made within ten (10) business days after the Order (or the last of the Orders) referred to in Paragraph 3 above, has become final. The Merging Parties are not obligated to pay the Settlement Price or any portion thereof except as specifically provided in this Settlement Agreement.

5. Escrow. Not later than ten (10) days after the filing of the Joint Request described in Paragraph 1 above, the Merging Parties shall deposit the Settlement Price in an interest-bearing escrow account (the "Escrow Account"). The Escrow Account will be subject to the terms of an Escrow Agreement attached hereto and incorporated herein at this place.

6. Required Filings. This Settlement Agreement is entered into subject to approval by the Commission. The parties shall file with the Joint Request a copy of this Settlement Agreement, together with all supporting documentation required by Section 73.3525 of the FCC's Rules, including a showing by Staton that the Settlement Price does not exceed its legitimate and prudent out-of-pocket expenses incurred in the preparation, filing and prosecution of Staton's application.

7. Cooperation. The Parties shall cooperate with each other and with the Commission by expeditiously filing the Joint Request and by providing to one another or to the Commission, all additional information that may be reasonably required, and by expeditiously filing the additional documents that may be necessary or appropriate to comply with Section 73.3525 of the FCC's Rules, to effectuate the objectives of this Settlement Agreement, or to satisfy the conditions to settlement. The Parties agree to provide the Commission with such information requested by the Commission within seven (7) days after each such request.

8. **Termination.** This Settlement Agreement may be terminated at the option of any party upon the occurrence of any event necessitating further hearings before Administrative Law Judge Sippel prior to a grant of the Joint Request, or by Staton in the event the Merging Parties fail to establish the Escrow Account specified in Paragraph 5 above. Upon such termination the Parties may withdraw from the Joint Request and may continue to prosecute their respective applications.

9. **Scope and Binding Effect.** This Settlement Agreement supersedes any and all previous agreements and understandings among the Parties. It is the only Agreement between Staton and the Merging Parties, and contains all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by an instrument in writing signed by all Parties. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns, heirs or legal representatives. Staton understands and agrees that the Merging Parties may assign their rights and obligations hereunder to the Corporation.

10. **Expenses.** Except as otherwise provided herein, each party to this Settlement Agreement shall bear its own expenses in relation to this agreement, including preparation of this agreement, the filings and transactions contemplated thereby.

11. **Counterparts.** The Parties agree that this Settlement Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

12. **Governing Law.** This Settlement Agreement shall be construed under the laws of the State of Indiana, the Communications Act of 1934, as amended, and the rules and regulations of the Commission.

13. **Execution.** Each party hereto expressly warrants that it has the full power and authority to enter into this Settlement Agreement and to execute the same, and that there is no constraint upon such party's legal capacity and ability to perform its responsibilities hereunder.

14. **Specific Performance.** In the event of a breach of this Settlement Agreement then the injured party or parties 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. If, on account of an alleged breach or default by any party of its obligations under this Settlement Agreement, any other party shall employ an attorney to enforce or defend any of its rights or remedies under this Settlement Agreement, the prevailing (or parties) shall be entitled to recover reasonable costs incurred in such connection, including but not limited to reasonable attorneys' fees.

15. Waiver. Failure of any party to complain of any act or omission on the part of any other party in breach of this Settlement Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party shall be deemed a waiver of any other provision of this Settlement Agreement or consent to any subsequent breach of the same or other provisions.

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Settlement Agreement on the dates set forth below, contemplating the effective date hereof to be the date last set forth below.

**[THE NEXT PAGE IS THE SIGNATURE PAGE. THIS SPACE
INTENTIONALLY LEFT BLANK]**

STATON COMMUNICATIONS, INC.

By *Richard J. Staton*
President

Signed and dated this 19th day of November, 1993

MARTHA J. HUBER

By _____

Signed and dated this ___ day of November, 1993

**MIDAMERICA ELECTRONICS SERVICE,
INC.**

By _____
President

Signed and dated this ___ day of November, 1993

STATON COMMUNICATIONS, INC.

By _____
President

Signed and dated this ___ day of November, 1993

MARTHA J. HUBER

By Martha J. Huber

Signed and dated this 15 day of November, 1993

**MIDAMERICA ELECTRONICS SERVICE,
INC.**

By John A. Ayer
President

Signed and dated this 17 day of November, 1993

MERGER SETTLEMENT AGREEMENT

This Merger Settlement Agreement, by and among **MARTHA J. HUBER** ("Huber"), and **MIDAMERICA ELECTRONICS SERVICE, INC.** ("Midamerica") (together, the "Parties") is made and entered into as of the date last set forth below.

W I T N E S S E T H:

WHEREAS, the Parties and Rita Reyna Brent ("Brent") and Staton Communications, Inc. ("Staton") have been prosecuting mutually exclusive applications before the Federal Communications Commission ("Commission" or "FCC") for a construction permit for a new FM station on Channel 234A, allocated to New Albany, Indiana (the "Station"), MM Docket No. 93-51; and

WHEREAS, the Parties believe that the public interest would be served by settling and terminating the conflict among them, to permit the prompt initiation of a new FM broadcast service to New Albany, Indiana;

WHEREAS, the Parties have formed New Albany Broadcasting Co., Inc., ("NBC"), a corporation organized under the laws of the State of Indiana;

WHEREAS, the Parties each own a one-half (1/2) interest in NBC;

WHEREAS, subject to the prior approval of the Commission, under separate agreement, the Parties have entered into a Settlement Agreement with Staton wherein Staton has agreed to dismiss its application for the Station in return for a sum not to exceed Twenty-Five Thousand Dollars (\$25,000);

WHEREAS, subject to the prior approval of the Commission, under separate agreement, the Parties have entered into a Settlement Agreement with Brent wherein Brent has agreed to dismiss its application for the Station in return for a sum not to exceed Fifty-One Thousand Dollars (\$51,000); and

WHEREAS, the obligations of the Parties hereunder are subject to and expressly contingent upon prior approval of the Commission;

NOW, THEREFORE, in consideration of the mutual promises herein contained and intending to be legally bound, the Parties hereby agree as follows:

1. **MERGER OF INTERESTS.** The Parties, each having a one-half interest in NBC, hereby agree that NBC shall become the successor applicant to the application (File No. BPH 911115ML) of Midamerica

2. **MOTION FOR SUMMARY DECISION.** Midamerica shall promptly file a Motion for Summary Decision with the Commission seeking favorable resolution of the financial issues designated against Midamerica's application in FCC 93M-276, released May 18, 1993.

3. **AMENDMENT.** Midamerica shall promptly seek leave to amend its application to substitute NBC in place thereof.

4. **JOINT REQUEST.** The Parties shall file a Joint Request for Approval of Settlement Agreements ("Joint Request") with the FCC, pursuant to Section 73.3525 of the Commission's Rules, seeking the following actions by the Commission: (a) approval of this Merger Settlement Agreement; (b) approval of the settlement agreements dated November ___, 1993, by and between the Parties and Staton and the Parties and Brent ; (c) dismissals of Staton's and Brent's applications with prejudice; (d) dismissal with prejudice of Huber's application and approval of the amendment to Midamerica's application which substitutes NBC as the surviving applicant; and (e) grant of NBC's application with no condition materially adverse to the NBC. The Parties understand that the foregoing actions are conditioned upon the Presiding Administrative Law Judge's prior determinations that each of the Parties is qualified to be a Commission licensee.

5. **CONDITION PRECEDENT TO DISMISSAL.** The Parties hereby agree that the requests for dismissal of Huber's application, and the amendment of the Midamerica application to specify NBC as the applicant referred to in Paragraph 4 hereof, are expressly contingent upon the Commission granting the Motion for Summary Decision referred to in Paragraph 3 hereof, and concurrently granting the application of NBC; and that the Joint Request for Approval of Settlement Agreements shall so state.

6. **COOPERATION.** The Parties shall cooperate with each other and with the Commission by expeditiously filing the Joint Request and by providing to one another or to the Commission, all additional information that may be reasonably required, and by expeditiously filing the additional documents that may be necessary or appropriate to comply with Section 73.3525 of the FCC's Rules, to effectuate the objectives of this Settlement Agreement, or to satisfy the conditions to settlement. The Parties agree to provide the Commission with such information requested by the Commission within seven (7) days after each such request.

7. **TERMINATION.** This Settlement Agreement may be terminated at the option of either party, upon notice to all other party, if the Commission determines that the Joint Request cannot be granted unless an evidentiary hearing is first held, and/or upon the failure of the conditions precedent referred to in Paragraph 5 hereof. Upon such termination the Parties may withdraw from the Joint Request and may continue to prosecute their respective applications.

8. **SCOPE AND BINDING EFFECT.** This Settlement Agreement supersedes any and all previous agreements and understandings among the Parties. It is the only Agreement between the Parties, and contains all of the terms and conditions agreed upon with respect to the subject matter hereof, and cannot be amended or modified except by an instrument in writing signed by all Parties. This Settlement Agreement shall be binding upon and inure to the

benefit of the Parties hereto, their successors and assigns, heirs or legal representatives.

9. **EXPENSES.** Except as otherwise provided herein, each party to this Settlement Agreement shall bear its own expenses in relation to this agreement, including preparation of this agreement, the filings and transactions contemplated thereby.

10. **COUNTERPARTS.** The Parties agree that this Settlement Agreement may be executed in counterparts, all of which together, so executed, shall constitute one and the same instrument.

11. **GOVERNING LAW.** This Settlement Agreement shall be construed under the laws of the State of Indiana, the Communications Act of 1934, as amended, and the rules and regulations of the Commission.

12. **EXECUTION.** Each party hereto expressly warrants that it has the full power and authority to enter into this Settlement Agreement and to execute the same, and that there is no constraint upon such party's legal capacity and ability to perform its responsibilities hereunder.

13. **SPECIFIC PERFORMANCE.** In the event of a breach of this Settlement Agreement then the injured 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. If, on

account of an alleged breach or default by any party of its obligations under this Settlement Agreement, the other party shall employ an attorney to enforce or defend any of its rights or remedies under this Settlement Agreement, the prevailing party shall be entitled to recover reasonable costs incurred in such connection, including but not limited to reasonable attorneys' fees

14. **WAIVER.** Failure of a party to complain of any act or omission on the part of the other party in breach of this Settlement Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party shall be deemed a waiver of any other provision of this Settlement Agreement or consent to any subsequent breach of the same or other provisions.

15. **Notices.** All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be delivered by personal delivery or sent by commercial delivery service or registered or certified mail to the parties at their addresses set forth below.

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