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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 92-316
	)	
RIVERTOWN COMMUNICATIONS CO. INC.	)	File No. BPH-911008ME
	)	
SAMPLE BROADCASTING COMPANY, L.P.	)	File No. BPH-911010MA
	)	
For Construction Permit	)	
for a new FM Station on	)	
Channel 282C3 in Eldon, Iowa	)	

To: The Review Board

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Sample Broadcasting Company, L.P. ("Sample"), and Rivertown Communications Company, Inc., ("Rivertown"), by their attorneys, and pursuant to Section 73.3525 of the Commission's Rules, hereby respectfully request approval of the attached settlement agreement. The agreement (Attachment A hereto) contemplates dismissal of Rivertown's application for a new FM station in Eldon, Iowa (File No. BPH-911008ME), in return for Sample paying Rivertown the consideration specified in the agreement, upon Commission approval. In support of this request, the following is respectfully submitted:

1. The above-referenced applications of Rivertown and Sample, for a construction permit for Eldon, Iowa, are pending before the Commission. In order to simplify and expedite proceedings before the Commission and commencement of a first local broadcast service to Eldon, the parties hereto have entered into a settlement agreement which, if approved, would result in the dismissal with prejudice of the Rivertown application and the final grant of Sample's application.

2. Pursuant to the terms of the settlement agreement, in consideration for the dismissal of Rivertown's application, Sample will pay the

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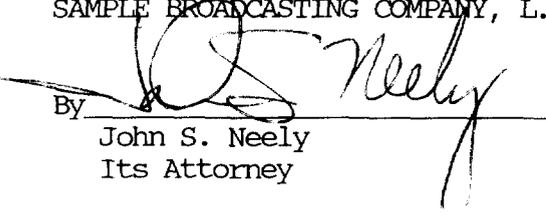
amount specified in the agreement to Rivertown, or such lesser amount as may be approved by the Commission.

3. The agreement is executed by the respective principals and is expressly made subject to prior Commission approval. The declarations of the parties (Attachment B, hereto) show that no party filed its application for the purpose of negotiating or reaching a settlement agreement, and state why the agreement serves the public interest. Rivertown's verification of its expenses is attached hereto as Attachment C.

4. The Commission is requested to approve the agreement, dismiss the Rivertown's application, and grant Sample's application under the terms of the agreement.

Respectfully Submitted,

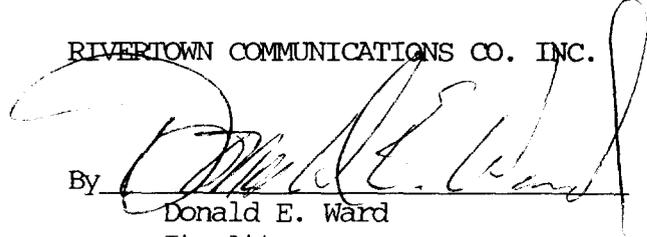
SAMPLE BROADCASTING COMPANY, L.P.

By 

John S. Neely  
Its Attorney

Miller & Miller, P.C.  
P.O. Box 33003  
Washington, DC 20033

RIVERTOWN COMMUNICATIONS CO. INC.

By 

Donald E. Ward  
Its Attorney

Donald E. Ward, P.C.  
1201 Pennsylvania Avenue, N.W.  
4th Floor  
Washington, DC 20004

November 4, 1994

**AGREEMENT**

THIS AGREEMENT is made this 31 day of OCTOBER, 1994, between Sample Broadcasting Company, L.P. ("Sample") and Rivertown Communications Company, Inc. ("Rivertown").

**WITNESSETH**

WHEREAS, Sample has tendered to the Federal Communications Commission ("Commission") an application for a construction permit for a new FM radio station to be located in Eldon, Iowa, File No. BPH-911010MA ("Sample Application"); and

WHEREAS, Rivertown has tendered to the Commission a mutually exclusive application for a construction permit for a new FM radio station to be located in Eldon, Iowa, File No. BPH-911008ME ("Rivertown Application"); and

WHEREAS, Sample is willing to make payment to Rivertown of the sum specified herein in exchange for Rivertown's request that the Commission dismiss its Application; and

WHEREAS, Sample and Rivertown believe that the public interest will best be served if the uncertainty surrounding their applications is resolved, because such resolution will conserve the resources of both the applicants and the Commission, by enabling settlement among both competing applicants for construction permit for a new FM radio station in Eldon, Iowa, thereby resulting in the inauguration of a new radio service to Eldon more quickly than otherwise would be possible; and

WHEREAS, Sample and Rivertown understand that this Agreement

will be submitted to the Commission for its approval with a Joint Request for Approval of Agreement, and as such this Agreement will constitute material representations to the Commission; and

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set out below, and with the intention of being legally bound hereby, Sample and Rivertown agree to the following:

1. Joint Request: Within the period prescribed by the Commission's rules, Sample and Rivertown shall jointly request in writing ("Joint Request") that the Commission do all of the following:

- (a) Approve the terms of this Agreement.
- (b) Dismiss the Rivertown application with prejudice.
- (c) Grant the Sample Application.

Sample and Rivertown shall cause the preparation of all documentation needed to properly support said Joint Request. Each party shall fully cooperate with the other and the Commission by expeditiously and completely providing the other or the Commission with any additional information reasonably requested. Except as otherwise provided herein, Sample and Rivertown agree that should the Commission refuse to approve this Agreement, Sample and Rivertown shall examine the objections of the Commission and timely make individual and joint good faith effort to resolve all objections in a manner which reflects as closely as possible the intentions of the parties as set forth herein, in order to resubmit the Agreement for approval. Sample and Rivertown shall each bear its own expenses in the prosecution of this Agreement and all

filings contemplated herein.

2. Covenants by Sample: Sample agrees that, in exchange for the agreements and covenants of Rivertown herein, it shall (a) assign to Rivertown whatever rights Sample may have to a refund from the Commission of Sample's hearing fee; and, (b) pay to Rivertown the sum of NINETEEN THOUSAND DOLLARS (\$19,000.00), or such lesser amount as approved by the Commission, as follows:

Within five (5) days of the date on which an order of the Commission approving this Agreement and granting Sample's Application becomes final and not subject to timely appeal or reconsideration by the Commission or by any court, Sample shall pay Rivertown the sum specified in the preceding paragraph. To assure such payment, within fifteen (15) days of the date this Agreement, together with the joint request for approval thereof, is filed with the Commission, Sample shall deposit the sum of Nineteen Thousand Dollars (\$19,000.00) with Miller and Miller, P.C. as escrow agent. The funds in escrow shall be placed into an interest-bearing federally insured account, with all accrued interest belonging to Sample. Said funds shall remain in escrow until paid to Rivertown pursuant to this Agreement or until this Agreement is otherwise terminated.

3. Covenants by Rivertown: Rivertown agrees that, in exchange for the agreements and covenants of Sample herein, it shall cause the dismissal with prejudice of its Application. Rivertown and each of its principals agree to take no action adverse to this Agreement, the Joint Request, any amendment which Sample may file

with respect to its application, the grant of Sample's application, or the dismissal of Rivertown's application. In addition, Rivertown shall take no action, other than in good faith, adverse to the construction and operation of Sample's new radio station. This latter provision shall continue in effect for so long as Sample, or either principal of Sample shall have ownership of the Eldon station. Rivertown shall file as a supplement, within five (5) days of the date of the filing of the Joint Request, an itemized accounting of its legitimate and prudent expenses in preparing and prosecuting the Rivertown application before the Commission.

4. Notices: All notices, demands, payments and requests required or permitted by this Agreement shall be deemed to have been made if mailed to the addresses stated below:

To Sample: Carmela Sample-Day  
214 N. Washington Street, #5  
Ottumwa, IA 52501

copy to: Miller & Miller, P.C.  
1990 M Street, NW, #760  
Washington, DC 20036

To Rivertown: Rivertown Communications Company, Inc.  
c/o David W. Brown  
Station WITY  
PO Box 142  
Danville, IL 61834

copy to: Donald Ward, Esq.  
Law Offices of Donald E. Ward  
1201 Pennsylvania Avenue, NW  
4th Floor  
Washington, DC 20004

5. Integration: This Agreement contains the entire understanding of the parties with respect to the subject matter, and

supersedes all previous oral or written agreements or understandings. This Agreement may be amended only by a written document executed by both parties.

6. Counterpart Signatures: This Agreement may be executed by the parties in counterpart with the same effect as if the signatures to both counterpart pages were upon the same copy of the Agreement.

7. Termination: In the event that the Commission has not approved the Joint Request within six (6) months from the date of filing, then either party hereto may, upon written notice to the other party, terminate this Agreement without liability and the parties shall, in that event, return to the status quo ante. In that event, all sums in escrow shall be returned to Sample.

8. Construction: This Agreement shall be construed under the laws of Iowa.

9. Specific Performance as a Remedy: Because of the unique nature of the broadcast authorization which is the subject matter of this Agreement, specific performance shall be available as a remedy for breach of this Agreement in addition to all other legal and equitable remedies that may be available under this Agreement.

10. Recovery of Costs: If, on account of any alleged breach or default by either party of its obligations under this Agreement, the other party shall take action to enforce its rights hereunder, the prevailing party shall be entitled to recover its reasonable cost incurred in such action, including, but not limited to, reasonable attorneys' fees and court costs.

IN WITNESS WHEREOF, and intending to be legally bound, Sample, Rivertown, and Rivertown's principals have duly executed this Agreement, on the date first mentioned above.

ATTEST:

Wendy Fyrestad

SAMPLE BROADCASTING COMPANY, L.P.

Sample Day

ATTEST:

\_\_\_\_\_

RIVERTOWN COMMUNICATIONS  
COMPANY, INC.

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

DAVID BROWN

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

ELLEN BOWEN

\_\_\_\_\_

ACCEPTED AS TO ESCROW PROVISIONS  
MILLER & MILLER, P.C.

BY Q S Neely

IN WITNESS WHEREOF and intending to be legally bound, Sample, Rivertown, and Rivertown's principals have duly executed this Agreement, on the date first mentioned above.

ATTEST:

SAMPLE BROADCASTING COMPANY, L.P.

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

RIVERTOWN COMMUNICATIONS  
COMPANY, INC.

Patricia T. Kuchepski

David W. Brown

ATTEST:

DAVID BROWN

Patricia T. Kuchepski

David W. Brown

ATTEST:

ELLEN BOWEN

\_\_\_\_\_

\_\_\_\_\_

ACCEPTED AS TO ESCROW PROVISIONS  
MILLER & MILLER, P.C.

By \_\_\_\_\_

IN WITNESS WHEREOF, and intending to be legally bound, Sample, Rivertown, and Rivertown's principals have duly executed this Agreement, on the date first mentioned above.

ATTEST:

SAMPLE BROADCASTING COMPANY, L.P.

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

RIVERTOWN COMMUNICATIONS  
COMPANY, INC.

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

DAVID BROWN

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

ELLEN BOWEN

Cathy Higdon

Ellen M Bowen

ACCEPTED AS TO ESCROW PROVISIONS  
MILLER & MILLER, P.C.

By \_\_\_\_\_

DECLARATION

I, Carmela Sample-Day, under penalty of perjury, state as follows:

1. I am the general partner of Sample Broadcasting Company, L.P., an applicant to the Federal Communications Commission for authority to construct a new FM radio station on Channel 282C3 at Eldon, Iowa, FCC File No. BPH-911010MA ("Sample").

2. Sample has entered into an agreement with Rivertown Communications, Inc., ("Rivertown") a mutually exclusive applicant for Channel 282C3, to settle the Eldon proceeding (the "Settlement Agreement"). The Settlement Agreement contemplates dismissal of Rivertown's application in consideration of the reimbursement by Sample of Rivertown's expenses up to \$19,000. Upon dismissal of Rivertown's application, Sample's application will be the only remaining application for the Eldon radio station and may be granted.

3. Approval of the Settlement Agreement is in the public interest. It will conserve resources of both the parties and the Commission. It will speed the inauguration of a first local radio service to Eldon, Iowa.

4. Sample did not file its application for the purpose of carrying out a settlement. It will pay no consideration other than that set forth in the Settlement Agreement.

5. The Settlement Agreement constitutes the entire understanding between Sample and Rivertown as to the settlement of this proceeding.

DATE: 10.31.94

Carmela Sample-Day  
Carmela Sample-Day

DECLARATION

I, David W. Brown, President of Rivertown Communications Company, Inc., do hereby declare under penalty of perjury that:

1. Rivertown is entering into a settlement agreement with Sample Broadcasting Company, L.P., in order to permit the early establishment of a first radio service to Eldon, Iowa, which was my objective in petitioning the Commission for the allocation of Channel 282C3 to Eldon in 1991. Neither Rivertown nor its principals has received, or will accept, any consideration for the dismissal of its application other than the \$19,000 payment stipulated in the settlement agreement. Rivertown did not file its application for the purpose of securing a settlement, but in order to secure a permit to build and operate the station.

2. Rivertown has incurred expenses substantially in excess of the \$19,000 consideration which Sample Broadcasting Company, L.P., has agreed to pay in return for the dismissal of Rivertown's application. A partial itemization of Rivertown's expenses includes:

Application Filing Fee	\$ 2,030
Hearing Fee	6,760
Legal Expenses (Donald E. Ward)	<u>57,694</u>
Total	\$66,484

3. The foregoing is true and correct, and is given under penalty of perjury.

  
\_\_\_\_\_  
David W. Brown

November 2, 1994

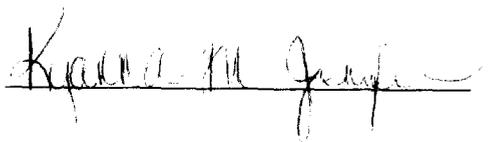
CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 1994, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

Charles Dziedzic  
Mass Media Bureau, Hearing Branch  
Federal Communications Commission  
Washington, DC 20554

Donald E. Ward, Esq.  
Law Offices of Donald E. Ward, P.C.  
1201 Pennsylvania Avenue, NW  
Fourth Floor  
Washington, DC 20004

Richard L. Sippel (Settlement Judge)  
Office of Administrative Law Judges  
2000 L Street, NW  
Room 220  
Washington, DC 20554

  
\_\_\_\_\_