

LAW OFFICES
HALEY BADER & POTTS P.L.C.

4350 NORTH FAIRFAX DR., SUITE 900
ARLINGTON, VIRGINIA 22203-1633
TELEPHONE (703) 841-0606
FAX (703) 841-2345

POST OFFICE BOX 19006
WASHINGTON, D.C. 20036-9006
TELEPHONE
(202) 331-0606

LEE W. SHUBERT
ADMITTED IN VA & DC

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JAN 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DIRECT DIAL
(703) 841-3935

January 13, 1995

OUR FILE NO.
0992-102-60

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Docket MM 93-42
Calistoga, CA

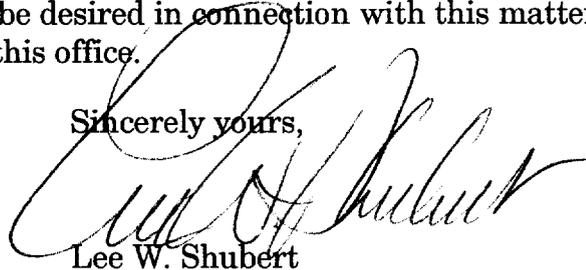
Dear Mr. Caton:

Transmitted herewith is an original, and six copies, of a Joint Request for Approval of Settlement Agreement between Moonbeam, Inc., and Gary E. Willson respecting the above-referenced proceeding for FM Channel 265A at Calistoga, California.

Documentation concerning the reimbursement of expenses presently is being compiled and shortly will be submitted *via* a supplement to the instant submission.

Should further information be desired in connection with this matter, kindly communicate directly with this office.

Sincerely yours,



Lee W. Shubert

Enclosures (7)

cc(w/enc.): Ms Mary F. Constant
Hon. John M. Frysiaik, Administrative Law Judge
Robert A. Zauner, Esq.

cc(w/2 encs): A. Wray Fitch, III, Esq.

LWS/blr

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JAN 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of

MM DOCKET NO. 93-42

MOONBEAM, INC.

) File No. BPH-911115MG

)

GARY E. WILLSON

) File No. BPH-911115MO

)

For a Construction Permit

)

New FM Station on Channel 265A

)

in Calistoga, California

)

DOCKET FILE COPY ORIGINAL

TO: **The Honorable Edward Luton**
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Pursuant to Rule 73.3525, Gary E. Willson ("Willson") and Moonbeam, Inc. ("Moonbeam")

respectfully request the Presiding Administrative Law Judge to:

- a. Approve the attached Settlement Agreement;
- b. Dismiss the application of Gary E. Willson contingent on approval by Final Order (as defined in the Settlement Agreement) of the Settlement Agreement and grant of the Moonbeam application; and
- c. Grant of the Moonbeam application.

A. Background.

Willson and Moonbeam are mutually exclusive applicants for a new construction permit to operate on Channel 265A in Calistoga, California. The parties have agreed to settle this proceeding. Under the terms of the Settlement Agreement, the application of Moonbeam will be granted in exchange for consideration to be paid to Willson. Willson is to be paid \$120,000 for reimbursement of expenses incurred in the prosecution of his application. Willson and Moonbeam have further agreed to enter into an Agreement whereby Willson in exchange for total consideration of \$143,000

will agree inter alia not to apply for or buy another station within the 1 mv contour of the Calistoga station. Moonbeam's obligations pursuant to this Agreement are secured by a Security Agreement, a Guaranty, and other security. The parties have also entered into an Escrow Agreement. All these agreements and documents are attached and incorporated. The Settlement Agreement contemplates approval of every component of the settlement. In the event that the FCC does not approve the Settlement Agreement and the attached agreements and documents in toto, the Settlement Agreement terminates and the applicants will continue to prosecute their respective applications.

Moonbeam currently has pending against it financial issues, which have been tried. Findings and Conclusions and Reply Findings and Conclusions have already been submitted on the issues. The issues will require favorable resolution prior to grant of the Moonbeam application.

B. Public Interest.

Section 311(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. Section 311(c)(3) provides in pertinent part that the Commission has authority to approve perspective merger or settlement agreements "only if it determines that the Agreement is consistent with the public interest, convenience, or necessity." In making this determination, the Commission has often expressed its policy, which is embedded in the Communications Act, that merger and settlement of pending litigation is in and of itself in the public interest. Anax Broadcasting, Inc., 88 FCC2d 607, 50 RR2d 798, 801 (1981) ("Commission practice strongly encourages settlement").

Approval of the Settlement Agreement will result in an earlier initiation of a first radio service to the residents of Calistoga, California. Approval will terminate this comparative proceeding and avoid further expense and litigation by significantly conserving the resources of the Commission and the parties. Attached are the signed declarations of principals of each of the

applicants stating that their applications were not filed for the purpose of reaching or carrying out a settlement and that the proposed settlement is in the public interest. Also attached is cost documentation submitted by Willson.

C. Conclusion.

Willson and Moonbeam therefore respectfully request that the attached Settlement Agreement be approved in toto, the application of Moonbeam be granted, and the Willson application be dismissed contingent on approval by Final Order of the Settlement Agreement in toto.¹

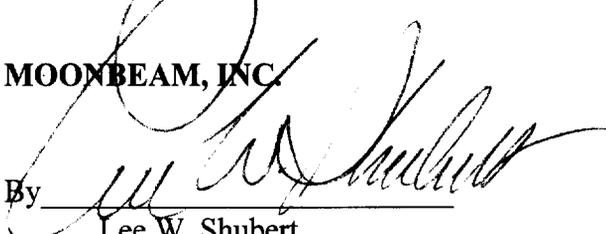
Respectfully submitted,

GARY E. WILLSON

By 
A. Wray Fitch III
His Attorney

GAMMON & GRANGE, P.C.
8280 Greensboro Drive
Seventh Floor
McLean, VA 22102-3807
(703) 761-5000

MOONBEAM, INC.

By 
Lee W. Shubert
Its Counsel

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

January 11, 1994
[K:\0068\C4JTREQ.AWF]

¹ Cost documentation, appraisals, and any necessary declarations will be filed shortly as a supplement to this Joint Request.

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("this Agreement") is made and effective as of the 9th day of January, 1995, by and between MOONBEAM, INC., or its successor corporation (hereinafter "Moonbeam"), and GARY E. WILLSON ("GEW").

WHEREAS, Moonbeam and GEW are mutually exclusive applicants before the Federal Communications Commission ("FCC" or "Commission") for a permit to construct a new station on Channel 265A at Calistoga, California; and

WHEREAS, the implementation of this Agreement would eliminate the need for further comparative hearing, conserve the resources of the Commission and of the parties, and expedite the provision of a new service to Calistoga, California;

WHEREAS, the parties believe that the public interest would be served by the inauguration of the new service to, by simplification of the pending proceedings before the FCC and further, by conserving the finite resources of the parties to this proceeding and of the FCC;

WHEREAS, the implementation of this Agreement is subject to prior FCC approval;

NOW THEREFORE, in consideration of the mutual covenants and obligations contained herein, and subject to the requirements of Section 73.3525 of the FCC's rules, it is agreed as follows:

1. *Commission Consent.* This Agreement is entered into subject to approval by the FCC, and shall be void unless the Commission shall approve it. Should the FCC refuse to approve this Agreement, then the parties hereby agree that they will immediately make good faith efforts to resolve each Commission objection in order to obtain FCC approval. In the event that the Commission has not approved this Agreement by Final Order, as defined herein, within six (6) months from the date hereof, then either party hereto, upon written notice to the other, may terminate this Agreement, provided however the applications must be returned to *status quo ante* (i.e., on file and pending before the FCC) as a necessary condition to termination. In addition, if any order or action approving this Agreement or the Moonbeam application is challenged by a third party Willson or Moonbeam may terminate this Agreement, provided however the applications must be returned to *status quo ante* as a necessary condition to termination.

2. *Joint Request for Approval of Agreement.* Within five (5) days of the date of this Agreement, the parties hereto agree to file with the Commission a Joint Request for Approval of this Agreement ("Joint Petition"). The Joint

Petition shall be accompanied by a copy of the executed Agreement as well as other supporting documentation as required by Section 73.3525 of the Commission's Rules. The Joint Petition shall seek: (a) approval of this Agreement; (b) dismissal with prejudice of the GEW application conditioned on prior approval of this Agreement *in toto*; and (c) grant of the application for Moonbeam.

2.1. Actions Promoting Approval of Agreement. Together with the Joint Petition, the parties shall file declarations of principals complying with the provisions of Section 73.3525 of the FCC's rules. The parties agree to provide the FCC with any additional information necessary to obtain approval of this Agreement within ten (10) business days of any request for such information. The parties further agree to take no action that is in any way adverse to this Agreement, the Joint Petition, the dismissal of the application of GEW or the grant of Moonbeam's application for Channel 265A at Calistoga, California. No party hereto is obligated to file or join in the prosecution of any request for reconsideration, review or appeal, or to actively oppose reconsideration, review or appeal, or actively participate in any such proceeding. Each party, however, so long as this Agreement is not terminated, will cooperate in such action by another party (or parties) directed to approval of this Agreement and the actions contemplated herein. For the purposes of this Agreement the term "business day" shall mean any calendar day, excluding Saturdays and Sundays, on which federally chartered banks in the state of California are regularly open for business.

2.2. Dismissal of GEW's Application. Concurrently with the filing of the Joint Petition, GEW agrees to request dismissal, with prejudice, of his pending application (File No. BPH-911115MO), contingent upon full FCC approval of this Agreement *in toto* by Final Order, as defined herein.

3. Consideration. It is agreed that Moonbeam shall pay to GEW the sum, in the aggregate, of One Hundred Twenty Thousand and No 100 Dollars (\$120,000.00) in return for dismissal of GEW's application. Such payment shall be made in cash, United States currency, or certified or cashiers check payable to GEW, at the address specified in Paragraph 6, hereof. GEW expressly authorizes its attorneys to acknowledge receipt of such payment. The payment shall be made on the fifth (5th) business day from the date that the Commission's order granting Moonbeam's application and dismissing GEW's application becomes a Final Order. As used herein, Final Order or Orders means actions taken by the Commission, or its delegatee, for which no judicial or administrative reconsideration or appeal is pending and for which the time for filing such judicial or administrative reconsideration or appeal has expired. In addition, Moonbeam shall enter into an Agreement with GEW, substantially in accordance

with the terms and conditions of the facilitation Agreement appended hereto as **Attachment No. 1**. The consideration for the facilitation Agreement shall be One Hundred Forty-Three Thousand and No 100 Dollars (\$143,000.00), to be paid by Moonbeam to GEW over a term of two years. Moonbeam shall provide reasonable security agreeable to GEW for the payments due in connection with the Agreement within ten (10) business days of the date this Agreement is filed with the FCC. If such security is not timely provided, Willson may terminate this Agreement. The obligation of Moonbeam to pay any sum to GEW shall arise only if Moonbeam's application is granted. Moonbeam is not obligated to pay the Settlement Amount or any portion thereof, or any other payments contemplated by this Settlement Agreement, except as specifically provided above. The payment by Moonbeam to GEW is a material term of this Agreement.

3.1. Escrow. Upon execution of this Agreement, Moonbeam shall place in a mutually acceptable escrow account the sum of ONE HUNDRED TWENTY THOUSAND and NO 100 DOLLARS (\$120,000.00) ("Escrow Deposit") to be held for payment to GEW as provided in Paragraph 3 of this Agreement. Moonbeam shall also, upon execution of this Agreement, deliver to escrow agents an executed facilitation Agreement, Guarantee, and Security Agreement. The Escrow Deposit, facilitation Agreement, Guarantee, and Security Agreement shall be held by the escrow agents pursuant to the Escrow Agreement which is appended hereto as **Attachment No. 2**. The escrow agents shall release the Escrow Deposit, facilitation Agreement, Guarantee, and Security Agreement to GEW on the fifty (5th) business day after the order granting Moonbeam's application has become a Final Order. In the event this Agreement is not approved by the FCC, the escrow agents shall be directed to release and return the Escrow Deposit, facilitation Agreement, Guarantee, and Security Agreement to Moonbeam.

3.3.1. Escrow Notice. On the date of execution of this Agreement, Moonbeam shall place into escrow as provided in Paragraph 3.1 the Escrow Deposit, executed facilitation Agreement, executed Guarantee, and Executed Security Agreement. Notice of such deposit and deliveries shall be given to GEW within twenty-four (24) hours of execution of this Agreement. In the event such deposit and deliveries are not timely made with the Escrow Agents as provided herein or notice is not timely made, GEW may at his sole option terminate this Agreement.

3.2. Indemnification of Escrow Agent(s). The parties hereto agree jointly and severally to indemnify and hold harmless the Escrow Agent(s) against any cause of action arising out of the performance of their duties under this Agreement.

4. Conditions Precedent. It is understood and agreed that Moonbeam and GEW have entered into an agreement seeking the dismissal of the GEW application for Calistoga, California in return for consideration paid by Moonbeam to GEW. The dismissal of the GEW application is conditioned on the prior approval of this Settlement Agreement in its entirety by Final Order, including prior approval, *in toto*, of the facilitation Agreement, the Guarantee, and Security Agreement. It is further understood that Moonbeam shall have no obligation to pay any consideration to GEW in the event this Agreement is not approved by the FCC. In such event, the GEW and Wilson applications shall return to the *status quo ante*.

5. Moonbeam's Qualifications. Moonbeam represents and warrants that to the best of Moonbeam's knowledge it is legally, technically, financially and otherwise qualified to obtain a construction permit from the FCC for Channel 265A at Calistoga, California, and that but for resolution of the financial issued designated against it, Moonbeam knows of no facts which would disqualify it under the Communications Act of 1934, as amended, from owning and operating a station on Channel 265A at Calistoga, California. Moonbeam further warrants and represents that should any such facts come to Moonbeam's attention, Moonbeam will promptly notify GEW and use reasonable efforts to attempt to remove such disqualification. Moonbeam further represents and warrants that it will continue to prosecute its application in good faith and will seek prompt issuance of a grant of the Moonbeam application by the FCC.

6. Notice. Any notice required hereunder shall be in writing and any payment, notice or other communications shall be deemed given when delivered personally, or mailed by certified mail or Federal Express Service, postage prepaid, with return receipt requested, to the following address:

To GEW:

Gary E. Willson
2 Corte Del Bayo
Larkspur, CA 94939

with copies to:

A. Wray Fitch, III, Esq.
Gammon & Grange
8280 Greensboro Drive,
Seventh Floor
McLean VA 22102-3807

To Moonbeam:

Mary F. Constant
2121 Diamond Mountain
Road
Calistoga, CA 94515

with copies to:

Lee W. Shubert, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633

6.1. Alternate Addressees. Notice, as provided by this paragraph, may be given to any other person or party, as any party hereto may in the future designate in writing, upon due notice to the other party(ies).

6.2. Date of Notice, Action. The postal receipt for deposit with the U.S. Mail or courier service specified herein shall establish the date of such notification or communication. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holiday by law in the State of California, the last day for such notification, communication or action shall be extended to the first date thereafter which is not a Saturday, Sunday or such legal holiday.

7. 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 by said party of any of its rights hereunder. No waiver by any party at any time, express or implied, of 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.

8. Amendment of Moonbeam's Application. Within thirty (30) business days of the date of this Agreement Moonbeam shall file with the Commission an amendment to Moonbeam's Application (File No. BPH-911115MG) that reflects that Moonbeam, upon approval of this Agreement and dismissal of GEW's Application, will change the engineering portion of Moonbeam's Application to incorporate, use, and rely upon the engineering set forth in GEW's Application (File No. BPH-911115MO). GEW hereby specifically authorizes Moonbeam to use and incorporate in Moonbeam's Application the engineering portion of GEW's Application without further consideration of any kind whatsoever to be promised or paid by Moonbeam. If this Agreement is not approved or is terminated, Moonbeam may specify use of GEW's transmitter and tower site only so long as such use reasonably would not interfere with GEW's use of the site, or in any way foreclose GEW from also using the site.

9. Valid Organization and Warranty. Each party hereto respectively represents that (a) it is duly organized, validly existing and in good standing under the laws of its state (commonwealth) of incorporation or organization, and (b) the execution, delivery and performance of this Agreement, without limitation, has been duly and effectively authorized by its board of directors, governing board, or general partners, or principal(s) and (c) it has full legal authority to enter into and perform its obligations under this Agreement.

10. Benefit: Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors and assigns; provided, however, this Agreement may not be assigned by Moonbeam without the prior written consent of GEW.

11. **Governing Law; Venue.** This Agreement shall be governed by, and construed in accordance with the laws of the District of Columbia and by the applicable rules and regulations of the FCC. Venue for any such action may be in Napa County, California.

12. **Entire Agreement.** This Agreement, with Attachments, and the agreements referenced herein are the only agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof, and may not be amended or modified except by an instrument in writing signed by all the parties hereto.

13. **Expenses.** Each party shall bear its own expenses for the preparation of this Agreement and all supporting documents.

14. **Counterparts and Effective Date.** This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto; notwithstanding that the parties are not signatory to the original or the same counterpart.

15. **Nonseverability.** In the event the FCC fails to approve the total consideration to be paid to GEW pursuant to this Agreement or fails to approve without modification or condition the facilitation Agreement, the Guarantee, Security Agreement, or other security referenced in Paragraph 3, then this Agreement shall terminate and the parties shall return to *status quo ante*. This Agreement contemplates FCC approval *in toto*.

16. **Headings.** The headings of the paragraphs of this Agreement are for the convenience of reference only, and do not form a part hereof, and in no way define, limit, describe, modify, interpret or construe the meanings of the parties, the scope of this Agreement or the intent of any paragraph hereof.

17. **Republication.** It is expressly understood and agreed that it is a condition of this Agreement that no republication be required pursuant to Section 73.3525 of the Commission's Rules. In the event that FCC rules, for whatever reason, that republication would be required, and such ruling becomes final (as herein defined), this Agreement shall be null and void.

18. **Further Assurances.** The parties hereto agree to execute and deliver any additional or supplemental document as may be necessary or required to effectuate the purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date and year first above written.

MOONBEAM, INC.

By: 
Mary F. Constant, President

GARY E. WILLSON

By: _____
Gary E. Willson, Individually

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date and year first above written.

MOONBEAM, INC.

By: _____
Mary F. Constant, President

GARY E. WILLSON

By: _____
Gary E. Willson, Individually

ATTACHMENT 1

AGREEMENT

AGREEMENT

This Agreement is made and entered into this ____ day of _____, 1995, by and between Gary E. Willson (Willson), an individual residing at Larkspur, California, and Moonbeam, Inc. (Moonbeam), a California corporation.

WITNESSETH:

WHEREAS, Willson and Moonbeam have entered into a Settlement Agreement and this Agreement as part of a universal settlement contemplating grant of the Moonbeam application for a new FM radio station in Calistoga, California, and further providing that Willson will dismiss his mutually exclusive application for a new FM radio station in Calistoga, California;

WHEREAS, Willson has extensive broadcast experience, having owned and managed KIOY(FM), Hanford, California from 1976 to 1981;

WHEREAS, Willson resides within a short distance of the proposed service area of the Calistoga station;

WHEREAS, Moonbeam desires that Mr. Willson dismiss his application for the Calistoga station in order that its application be granted, and that it inaugurate service to Calistoga as quickly as possible; and

WHEREAS, Moonbeam further desires to maximize the value of the Calistoga station.

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

1. Term. This Agreement shall commence on the date the Federal Communications Commission (FCC) order approving the dismissal of Willson's application and granting the application of Moonbeam becomes a Final Order and shall terminate thirty-six (36) months

thereafter. A Final Order shall be an order no longer subject to appeal or reconsideration and for which the time to file such appeal or reconsideration has expired.

2. Willson's Obligations. During the term of this Agreement, Willson will not, directly or indirectly, purchase or operate pursuant to a lease management agreement any radio broadcasting business now or hereafter licensed to a community within the predicted 1 mv contour of the Calistoga station as currently predicted in the Willson application on file with the FCC. See Exhibit 1. Willson further agrees during the term of this Agreement not to file an application for a new radio station within the same area.

3. Consideration. The consideration payable by Moonbeam to Willson shall be the sum of ONE HUNDRED FORTY-THREE THOUSAND (\$143,000) payable in the amount of FIVE THOUSAND NINE HUNDRED FIFTY EIGHT DOLLARS and 33/100 (\$5,918.33) per month for twenty-four (24) consecutive months, with the first payment due on the date of finality as provided in Paragraph 1, and all subsequent payments due on a monthly basis 30 days thereafter.

4. Default. In the event any payment is not received by Willson within five (5) days of the date due as required pursuant to Paragraph 3, Moonbeam shall be deemed in default. In the event of such default, all amounts not yet paid pursuant to this Agreement shall be accelerated and the total amount due pursuant to this Agreement shall be immediately due and owing. Interest shall accrue on any amount in default at the rate of eight percent (8%) per annum.

5. Specific Performance. In the event of a breach by Willson of the provisions of Paragraph 2 of this Agreement, Moonbeam shall be entitled to an injunction restraining Willson from engaging in any of the aforementioned prohibited activities.

6. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any party or circumstance shall to any extent be held invalid or unenforceable by a judicial order, the remainder of this Agreement or application of such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant, condition or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

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

8. Notices. All notices demands and requests required or permitted to be given under the provisions of this Agreement shall be deemed duly given if sent by registered or certified mail, postage prepaid, addressed as follows:

(a) If to Willson: Gary Willson
2 Corte del Bayo
Larkspur, CA 94939

With a copy to: A. Wray Fitch III
Gammon & Grange
8280 Greensboro Drive
7th Floor
McLean, VA 22102-3807

(b) If to Moonbeam: Mary Constant
2121 Diamond Mountain Road
Calistoga, CA 94515

With a copy to: Lee W. Shubert, Esq.
Haley Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633

or any such other addresses as the parties may from time to time designate in writing.

9. Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective administrators, executors, personal representatives, executors, personal representatives, beneficiaries, heirs, successors and assigns. Any such assignment or otherwise shall not relieve Moonbeam nor Willson of their obligations hereunder.

10. Choice of Law. The parties acknowledge that this Agreement involves broadcast-related matters and that both Moonbeam and Willson have or had pending applications for a new Calistoga station before the FCC in Washington, D.C. This Agreement shall be governed, construed and enforced in accordance with the laws of the District of Columbia without regard to choice of law in that jurisdiction. Both parties waive application of California law.

11. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument.

12. Headings. The headings of the paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only and in no respect define, limit or describe the scope of this Agreement or the intent of any paragraph hereof.

13. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior negotiations between such parties, and can be amended, supplemented or changed only by an agreement in writing which makes specific reference to this Agreement and which is signed by the party against whom enforcement of any such amendment, supplement or modification is sought.

14. Attorneys Fees. In the event of a breach by either party under this Agreement, the prevailing party in any action for breach of this Agreement shall be entitled to recovery of all its reasonable attorneys fees and costs.

15. Organization and Standing. Moonbeam is a corporation duly organized, validly existing, and in good standing under the laws of the State of California. Moonbeam's execution and delivery of, and the performance of, its obligations under this Agreement have been duly authorized and approved by all necessary corporate action on the part of Moonbeam. This Agreement constitutes a legal and valid obligation of Moonbeam enforceable against Moonbeam in accordance with its terms.

16. Security. Moonbeam's performance under the terms of this Agreement is personally guaranteed by Fred Constant and Mary Constant pursuant to a separately executed Guaranty, and is further guaranteed by a Security Agreement and a security interest in a certain Note for payment of purchase of a house boat. These are incorporated by reference.

17. FCC Approval. This Agreement is to be submitted to the FCC for approval as part of a universal settlement agreement of the Calistoga, California proceeding. This Agreement contemplates prior FCC approval of the Settlement Agreement submitted to the FCC.

18. Acknowledgment. Both parties have consulted with counsel prior to execution of this Agreement, and believe this is a valid, enforceable Agreement under the law of the District of Columbia. Both parties knowingly waive any claim or right under any law that this Agreement is invalid or unenforceable for any reason.

IN WITNESS WHEREOF, Willson has executed this Agreement, and Moonbeam has caused this Agreement to be executed by its duly authorized officer, as of the day and year first above written.

MOONBEAM, INC.

Attest

By _____
Mary Constant
President

GARY E. WILLSON

ATTACHMENT 2

ESCROW AGREEMENT

ESCROW AGREEMENT

This Escrow Agreement ("*Escrow Agreement*") effective the 9th day of January, 1995, by and among GARY E. WILLSON ("*GEW*"), MOONBEAM, INC. ("*Moonbeam*"), and GAMMON & GRANGE and HALEY BADER & POTTS P.L.C., acting jointly as escrow agents ("*Escrow Agents*").

GEW and Moonbeam have entered into a Settlement Agreement ("*Settlement Agreement*") effective as of January 9th 1995, for the reimbursement Moonbeam to GEW of certain sums of money pertaining to GEW's reasonable and prudent expenses incurred by GEW in the preparation and prosecution of his application for a new FM broadcast station on Channel 265 A at Calistoga, California. Pursuant to the Settlement Agreement, Moonbeam is required on this date to deposit One Hundred Twenty Thousand Dollars (\$120,000) in escrow to secure its obligations under the Settlement Agreement. Moonbeam and GEW desire that Escrow Agents hold these funds as provided in this Escrow Agreement.

In consideration of the mutual covenants contained herein, the parties, intending to be legally bound, hereby agree as follows:

1. *Receipt of Escrow Deposit.* By its signature below, Escrow Agents acknowledge receipt of funds from Moonbeam totaling One Hundred Twenty Thousand Dollars (\$120,000) (the "*Escrow Deposit*"). Escrow Agents also acknowledge receipt of an executed Guaranty, Security and Agreement (hereinafter "*Documents*"). Escrow Agents agree to hold and to disburse the Escrow Deposit and Documents only in accordance with this Escrow Agreement and the Settlement Agreement. If the Settlement Agreement and this Escrow Agreement conflict, the Settlement Agreement shall control.

2. *Investment of Escrow Deposit.* The Escrow Deposit shall be invested by Escrow Agents in interest bearing bank accounts or certificates of deposit of federally insured financial institutions or in treasury bills or other investments as may be directed by the instructions of Moonbeam. All interest earned on the Escrow Deposit shall be paid by Escrow Agents to Moonbeam upon the termination of this Escrow Deposit.

3. *Release of Escrow Deposit and Documents.*

3.1. *Written Instructions.* Except as provided in Section 3.2, Escrow Agents shall release the Escrow Deposit and Documents only upon receipt of (i) joint written instructions executed by GEW and Moonbeam, (ii) an order of an arbitrator pursuant to Section 7 hereunder or (iii) an order of a court in accordance with Section 4.1.2 hereunder. Unless the Escrow Deposit is earlier released pursuant to this Escrow Agreement, the Escrow Deposit shall be delivered to GEW as provided in Paragraphs 3 and 3.1 of the Settlement Agreement. Upon release of the Escrow Deposit and

Documents as provided for herein, this Escrow Agreement shall terminate, and the Escrow Agents shall be discharged of any further liability.

3.2. *Claims.* Either party may notify the Escrow Agents and the other party, of its claim that it is entitled to the Escrow Deposit. Such claiming party shall, in reasonable detail, cite the Section(s) of the Settlement Agreement and the facts and circumstances supporting its claim. Unless the other party objects by notice to the Escrow Agents and the other party within seven (7) days of its receipt of the claim, the Escrow Agents shall promptly release the Escrow Deposit to the claiming party. If the other party does so object, then the Escrow Agents shall continue to hold the Escrow Deposit and shall release it only in accordance with the terms hereof. Each party agrees that it will act only in good faith in making any claim or any objection pursuant to this Section 3.2.

4. *Duties of the Escrow Agents.*

4.1. *Duties in General.*

4.1.1. *Duties Expressed in Escrow Agreement.* The Escrow Agents undertakes to perform only such duties as are expressly set forth herein or as described in the Settlement Agreement (and required by applicable law), which the parties agree are ministerial in nature. If in doubt as to their duties and responsibilities hereunder, the Escrow Agents may consult with counsel of their choice and shall be protected in any action taken or omitted in good faith in connection with the advice or opinion of such counsel.

4.1.2. *Implications of Litigation.* Subject to Section 7 herein, if the Escrow Agents should become involved in litigation with respect to this Escrow Agreement for any reason, it is hereby authorized to deposit the Escrow Deposit with the Clerk of such court in which such litigation is pending, or to interplead all interested parties in any court of competent jurisdiction and to deposit with the Clerk of such court the Escrow Deposit. Upon the happening of either of the above, the Escrow Agents shall stand fully relieved and discharged of any further duties hereunder.

4.2. *Exculpation.* Except for the Escrow Agents' own willful misconduct, bad faith or gross negligence; (i) the Escrow Agents shall have no liability of any kind whatsoever for their performance of any duties imposed upon the Escrow Agents under this Escrow Agreement or for any of their acts or omissions hereunder; (ii) the Escrow Agents shall not be responsible for any of the acts or omissions of the parties hereto; (iii) the Escrow Agents shall not be liable to anyone for damages, losses or expenses arising out of this Escrow Agreement; and (iv) the Escrow Agents may rely and/or act upon any written instrument, document or request believed by the Escrow Agents in good faith to be genuine and to be ex-

cuted and delivered by the proper person, and may assume in good faith the authenticity, validity and effectiveness thereof and shall not be obligated to make any investigation or determination as to the truth and accuracy of any information contained therein.

4.3. *No Additional Duties.* The Escrow Agents shall have no duties except those that are expressly set forth herein, and it shall not be bound by any notice of a claim or demand hereunder, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless received by it in writing.

4.4. *Miscellaneous.* The Escrow Agents may execute any of their powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through their Agents or attorneys. The Escrow Agents shall not be responsible for and shall not be under a duty to examine or pass upon the validity, binding effect, execution or sufficiency of the Escrow Agreement or of any agreement amendatory or supplemental hereto.

5. *Indemnification of the Escrow Agents.* In consideration of their acceptance of the appointment as Escrow Agents, Moonbeam and GEW jointly and severally agree (i) to indemnify and hold the Escrow Agents harmless as to any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct by the Escrow Agents to any person by reason of their having accepted the same or in carrying out any of the terms hereof, and (ii) to reimburse the Escrow Agents on request for all their reasonable attorneys' fees and other reasonable costs and expenses incurred by Escrow Agents in connection with carrying out their duties hereunder.

6. *Resignation of the Escrow Agents.* The Escrow Agents, and any successor Escrow Agents, may resign at any time as Escrow Agents hereunder by giving at least fifteen (15) business days written notice to the parties. Upon such resignation and the appointment of a successor Escrow Agents, the resigning Escrow Agents shall be absolved from any and all liability in connection with the exercise of their powers and duties as Escrow Agents hereunder. Upon their receipt of notice of resignation from the Escrow Agents, Moonbeam and GEW shall use their reasonable best efforts jointly to designate a successor Escrow Agent(s). If the parties do not agree upon a successor Escrow Agent(s) within fifteen (15) business days after the receipt by the parties of the Escrow Agents' resignation notice, the Escrow Agents may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent(s) or other appropriate relief and any such resulting appointment shall be binding upon all parties hereto. By mutual agreement, the parties shall have the right at any time upon not less than seven (7) business days written notice to terminate their appointment of the Escrow Agents, or the successor Escrow Agent(s), as Escrow Agents hereunder. Notwithstanding anything to the contrary in the foregoing, the

Escrow Agents or the successor Escrow Agent(s) shall continue to act as Escrow Agents until a successor is appointed and qualified to act as Escrow Agent(s).

7. *Dispute Resolution.* If a dispute arises concerning a party's entitlement to some or all of the Escrow Deposit, the parties hereby agree to submit such dispute to binding arbitration. The rules and procedures of the American Arbitration Association then in effect shall govern the proceedings conducted by the arbitrator. The parties agree that time is of the essence in a dispute over the Escrow Deposit, and the parties hereby agree to use their reasonable efforts to expedite the resolution of any disputes. The prevailing party shall be entitled to recover its reasonable costs (including attorneys' fees) incurred in connection with such dispute. The venue for such arbitration shall be the American Arbitration Association in San Francisco, California.

8. *Notices.* All notices, requests, demands, and other communications pertaining to this Escrow Agreement shall be in writing and shall be deemed duly given when delivered personally (which shall include delivery by Federal Express or other nationally recognized, reputable overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended, or three (3) business days after the date mailed by certified or registered U.S. mail, return receipt requested, postage prepaid, to addressees listed in Exhibit A, hereto, or to such other address as such party shall specify by written notice to the other parties hereto. Any notice sent to Escrow Agents shall also be sent to the other party to this Escrow Agreement.

9. *Assignment.* Moonbeam and GEW may assign their rights under this Escrow Agreement to the same extent they are permitted to assign their rights and obligations under the Settlement Agreement.

10. *Counterparts.* This Escrow Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto; notwithstanding that the parties are not signatory to the original or the same counterpart.

11. *Miscellaneous.* This Escrow Agreement, and with respect to Moonbeam and GEW, the Settlement Agreement, the Guaranty, Security Agreement and the Agreement, embody the entire agreements and understandings of the parties concerning the Escrow Deposit. This Escrow Agreement may be amended only by a writing signed by the party against whom enforcement is sought. The headings in this Escrow Agreement are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of this Escrow Agreement. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Virginia, without regard to the choice of law rules utilized in that jurisdiction. This Escrow Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.