

FILED/ACCEPTED

MAR -9 2007

Federal Communications Commission
Office of the Secretary

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

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Burkesville, Greensburg, Hodgenville,)
Horse Cave Lebanon, Lebanon Junction, Lewisport,)
Louisville, Lyndon, New Haven, Springfield, and)
St. Matthews, Kentucky, Edinburgh, Hope,)
Tell City, and Versailles, Indiana, and Belle Meade,)
Goodlettsville, Hendersonville, Manchester, and)
Millersville, Tennessee))
)

MB Docket No. 06-77
RM-11324
RM-11334

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT AND
REQUEST FOR APPROVAL OF WITHDRAWAL**

Newberry Broadcasting, Inc. and Elizabethtown CBC, Inc. (together, "Newberry"), and Indiana University Student Broadcasting ("IUSB"), licensee of Station WIUX-LP by their respective representatives, pursuant to Section 1.420(j) of the Commission's Rules, hereby request that the FCC (i) approve the attached Settlement Agreement (ii) dismiss IUSB's Petition for Reconsideration in the above-captioned matter, and (iii) grant IUSB's separately filed minor change application specifying operation of Station WIUX-LP on Channel 256 (the "WIUX-LP

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Application”).¹ Accompanying this Request is a copy of the Settlement Agreement and the certifications required by Section 1.420(j) of the Commission’s Rules.

Indiana University Student Broadcasting is the licensee of Station WIUX-LP, which is presently authorized to operate on Channel 262 at Bloomington, Indiana. Newberry is the licensee of a number of stations involved in MB Docket No. 06-77. One of the stations in that proceeding is WYGB(FM), Edinburgh, Indiana.² Pursuant to the Bureau’s decision in this proceeding, WYGB’s channel was changed from 275A to 262A. Operation of WIUX-LP on Channel 262 is mutually exclusive with the substitution of Channel 262A for Channel 275A for use by WYGB and on November 9, 2006, IUSB filed a Petition for Reconsideration of the Bureau’s decision in this proceeding.

Newberry and IUSB have agreed upon a means of settling this proceeding that will permit WIUX-LP to continue operation. More specifically, IUSB has agreed to file a minor modification application to change the channel of WIUX-LP to Channel 256 pursuant to Section 73.870(a) of the FCC’s Rules. Additionally, IUSB has agreed to dismiss its Petition for Reconsideration (i) contingent upon grant of the WIUX-LP Application, and (ii) in exchange for reimbursement by Newberry of IUSB’s legitimate and prudent expenses incurred in implementing the WIUX-LP Application. There is precedent for this type of settlement. In *Arlington, Oregon*,³ the Commission approved a settlement agreement between a rule making petitioner and two Class D stations. As is the case here, the Class D stations were adversely impacted by a rule making decision and filed petitions for reconsideration of the decision. There were, however, alternate channels available for the Class D stations and the Commission

¹ Pursuant to the attached Settlement Agreement, Indiana will file the WIUX-LP Application within 15 days of the filing of this Joint Request.

² WYGB is licensed to Edinburgh Radio.

³ *Arlington, Oregon, et. al.*, MB Docket No. 02-136.

permitted the petitioner in the rule making proceeding to reimburse the Class D stations for the cost of changing channels in exchange for the Class D stations withdrawing their petitions for reconsideration.

In view of the foregoing, the parties respectfully submit that they have satisfied the requirements of the Commission's Rules and that the attached Settlement Agreement and IUSB's Request for Approval of Withdrawal should be approved.

Respectfully Submitted,

INDIANA UNIVERSITY
STUDENT BROADCASTING

By: Richard N. McKaig
Richard N. McKaig
Dean of Students & Vice President of Student
Affairs, Bloomington
Indiana University

Its Authorized Representative

NEWBERRY BROADCASTING, INC.
ELIZABETHTOWN CBC, INC.

By: Steven W. Newberry
Steven W. Newberry
President/CEO
Newberry Broadcasting, Inc.
Elizabethtown CBC, Inc.

March 9, 2007

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 1st day of March, 2007, by and between Elizabethtown CBC, Inc. and Newberry Broadcasting, Inc. (together, "Newberry"), and Indiana University Student Broadcasting ("IUSB"), licensee of Station WIUX-LP with reference to the following:

A. On October 13, 2006, the Federal Communications Commission ("FCC") released a *Report and Order* in MB Docket No. 06-77 amending the FM Table of Allotments by, *inter alia*, substituting Channel 262A for Channel 275A at Edinburgh, Indiana, and modifying the license of Station WYGB(FM) accordingly (the "Edinburgh R&O").

B. On November 9, 2006, Indiana University, on behalf of IUSB, filed a Petition for Reconsideration of the FCC's grant of the Edinburgh R&O on the basis that the allotment of Channel 262A at Edinburgh would interfere with the licensed operation of Station WIUX-LP on Channel 262 (the "Indiana Petition").

C. On December 29, 2006, Newberry filed an Opposition to the Indiana Petition, which noted that an alternate, fully-spaced channel (Channel 256) was available for use by WIUX-LP (the "WIUX-LP Alternate Channel").

D. IUSB is willing to file an application for Channel 256 in order to resolve this proceeding.

E. The parties believe that a settlement upon the terms and conditions set forth in this Agreement will serve the public interest in that it will facilitate a resolution in MB Docket No. 06-77 and enable WIUX-LP to continue operation.

NOW THEREFORE, in consideration of the foregoing and the mutual obligations and covenants set forth herein, the parties, intending to be legally bound hereby, agree as follows:

1. No later than the next business day after the execution of this Agreement, IUSB shall join with Newberry in the submission of a Joint Request for Approval of Settlement Agreement (the "Joint Request") in the form of Exhibit A hereto requesting that the FCC issue an order or orders (i) granting the Joint Request; (ii) dismissing the Indiana Petition; (iii) affirming the Edinburgh R&O; and (iv) granting the WIUX-LP Application (defined below). The Joint Request shall be accompanied by (x) a copy of this Settlement Agreement; (y) a certification signed by on behalf of IUSB, which is attached hereto as Exhibit B; and (z) a certification signed by a principal of Newberry, which is attached hereto as Exhibit C. The Joint Request shall state that the withdrawal of the Indiana Petition shall be contingent on grant of the WIUX-LP Application.

2. Within five (5) days after IUSB's receipt of a construction permit application prepared for IUSB by Newberry's consulting engineer specifying operation of WIUX-LP on Channel 256 (the "WIUX-LP Application"), IUSB shall review and file the WIUX-LP Application with the FCC. Newberry shall prepare and provide to IUSB the WIUX-LP Application within ten (10) days of the date hereof.

3. Except for the Joint Request and related documentation, IUSB agrees that it will not file (i) any additional pleadings or documents in MB Docket No. 06-77 or (ii) any pleadings or documents that oppose the grant of any application to implement the Edinburgh *R&O*. The parties shall in good faith pursue approval by the FCC of the Joint Request and this Agreement and grant of the WIUX-LP Application and shall cooperate fully with each other and with the FCC and take whatever additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, this Agreement. Except as otherwise provided herein, neither party shall take any action adverse to this Agreement, the Joint Request, or the WIUX-LP Application.

4. For and in consideration of IUSB's performance of this Agreement, Newberry shall reimburse IUSB according to the terms hereof for its legitimate and prudent expenses incurred in implementing the WIUX-LP Alternate Channel, including its expenses incurred in preparing, filing, and prosecuting the WIUX-LP Application (the "Indiana Payment"). In addition, Newberry will perform a search for full-power frequencies in the Bloomington area for use by IUSB and will provide the results of such search to IUSB by April 1, 2007. If there is a frequency available, Newberry hereby agrees to assist IUSB in preparing and filing an application for that frequency when the FCC opens a filing window for such applications.

5. Provided that IUSB is in compliance with its obligations under this Agreement, Newberry shall deliver the Indiana Payment within five (5) business days after (i) the Edinburgh *R&O* becomes a Final Order (defined below), (ii) IUSB files a license application to license the facilities specified in the WIUX-LP Application, and (iii) IUSB delivers to Newberry a written accounting of its legitimate and prudent expenses in a format reasonably satisfactory to Newberry.

6. For purposes of this Agreement, an action by the FCC shall be a "Final Order" when the time for (a) filing any requests for administrative or judicial review of such action, and (b) the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been filed or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.

7. Neither this agreement nor any right created hereunder shall be assignable by any party unless the other parties consent in writing. If any provision of this Agreement is determined to be void, unenforceable, or contrary to law, the remainder of this Agreement shall continue in full force and effect, provided that such continuation would not materially diminish the benefit of this Agreement for any party. This agreement sets forth the entire understanding of the parties hereto at the time of its execution and delivery with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to the subject matter hereof. This agreement may not be amended except by written amendment signed by all parties. Each of the undersigned represents and warrants that he/she has the requisite power and authority to bind his/her respective party to the terms and obligations hereof. This agreement may be signed in counterparts and delivered by facsimile, with the same effect as if the signature on each counterpart were on the same instrument. If any party breaches its obligations under this Agreement, the other parties shall have the right to seek injunctive relief and specific performance. The breaching party agrees to waive any defense as to the adequacy of the other

party's remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy. This agreement shall be governed by and construed according to the laws of the State of Indiana, without regard to its conflict-of-laws provisions.

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

**INDIANA UNIVERSITY STUDENT
BROADCASTING**

By: Richard N. McKaig

Name: Richard N. McKaig

Title: Dean of Students & Vice President of
Student Affairs, Bloomington, Indiana University
and Authorized Representative of Indiana
University Student Broadcasting

NEWBERRY BROADCASTING, INC.

By: _____

Name: _____

Title: _____

ELIZABETHTOWN CBC, INC.

By: _____

Name: _____

Title: _____

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

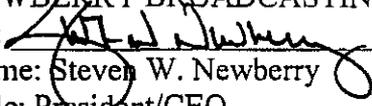
INDIANA UNIVERSITY STUDENT
BROADCASTING

By: _____

Name: Richard N. McKaig

Title: Dean of Students & Vice President of
Student Affairs, Bloomington, Indiana University
and Authorized Representative of Indiana
University Student Broadcasting

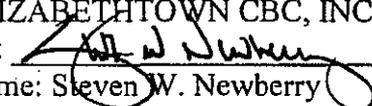
NEWBERRY BROADCASTING, INC.

By:  _____

Name: Steven W. Newberry

Title: President/CEO

ELIZABETHTOWN CBC, INC.

By:  _____

Name: Steven W. Newberry

Title: President/CEO

03/03/2007 01:08 PM 012 000 0001 DEAN OF STUDENTS 000/000

Exhibit B
CERTIFICATION

I, Richard N. McKaig, state as follows:

1. I am the Dean of Students and Vice President of Student Affairs of Indiana University and the authorized representative of Indiana University Student Broadcasting, the licensee of Station WIUX-LP, which has filed a Petition for Reconsideration in MB Docket No. 06-77.

2. Indiana University Student Broadcasting ("IUSB") has reached agreement with Newberry Broadcasting, Inc and Elizabethtown CBC, Inc. regarding the withdrawal of IUSB's Petition for Reconsideration in MB Docket No. 06-77.

3. Neither IUSB nor any of its principals, agents, or representatives has been promised or paid any money or other compensation in excess of IUSB's legitimate and prudent expenses incurred in implementing the change of WIUX-LP's channel.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 10 day of March 2007.

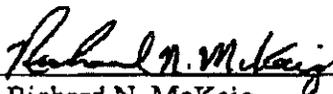

By: Richard N. McKaig

Exhibit C
CERTIFICATION

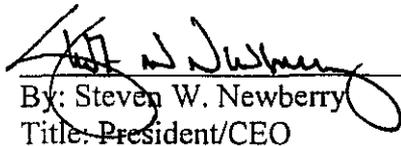
I, Steven W. Newberry, state as follows:

1. I am the President/CEO of Newberry Broadcasting, Inc. and Elizabethtown CBC, Inc. (together "Newberry").

2. Newberry has reached agreement with Indiana University Student Broadcasting regarding the withdrawal of the Petition for Reconsideration filed in MB Docket No. 06-77.

3. Neither Newberry nor any of its principals, agents, or representatives has promised or paid any money or other compensation in excess of Indiana University Student Broadcasting's legitimate and prudent expenses incurred in implementing the change of WIUX-LP's channel in exchange for the withdrawal of its Petition for Reconsideration.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 7th day of March 2007.


By: Steven W. Newberry
Title: President/CEO

CERTIFICATE OF SERVICE

I, Monica Mitchell, do hereby certify that I have on this 9th day of March, 2007, caused to be mailed by first class mail, postage prepaid, copies of the foregoing “**Joint Request**” to the following:

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*Via Hand Delivery



Monica Mitchell