

**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)
(Coal Run, Kentucky, and Clinchco, Virginia))
)
And)
)
In re Applications of)
)
DICKENSON COUNTY BROADCASTING)
CORPORATION)
)
For Renewal of License of)
Station WDIC-FM, Clinchco, VA)
)
and)
)
EAST KENTUCKY BROADCASTING)
CORPORATION)
)
For Renewal of License of)
Station WPKE-FM, Coal Run, KY)
)
EAST KENTUCKY BROADCASTING)
CORPORATION)
)
For Construction Permit for Channel 221C3)
Coal Run, KY)

MB Docket No. 04-319
RM-10984

FILED/ACCEPTED

FEB 22 2013

Federal Communications Commission
Office of the Secretary

File No. BRH-20110601AAT
Facility ID No. 16905

File No. BRH-20120329AFO
Facility ID No. 32973

File No. BPH-20111031AIP

To: Office of the Secretary

Attn: Chief, Audio Division, Media Bureau

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

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Dickenson County Broadcasting Corp. (“DCBC”) and East Kentucky Broadcasting Corporation (“EKBC”) by their attorneys and pursuant to Section 73.3588 of the Commission’s Rules, submit this request for approval of the withdrawal of DCBC’s Petition to Deny (“WPKE-FM License Renewal Petition to Deny”) filed July 2, 2012, directed against EKBC’s application (BRH-20120329AFO) for renewal of license of WPKE-FM, Coal Run, KY, and EKBC’s Informal Objection (“WDIC-FM License Renewal Informal Objection”), filed August 2, 2011, directed against DCBC’s application (BPH-20110601AAT) for renewal of license of WDIC-FM, Clinchco, Virginia.

EKBC also requests approval, pursuant to Section 73.3525 of the Commission’s Rules, of the attached Settlement Agreement and Conditional Mutual Release (“Settlement Agreement”). Upon the approval of the Settlement Agreement, WDIC-FM and WPKE-FM will return to the *status quo ante* the Petition for Rulemaking (“WPKE-FM Petition for Rule Making”) filed February 19, 2004 by EKBC which was the subject of several Commission orders in MB Docket No. 04-319. This will require the dismissal of DCBC’s pending Application for Review, filed July 18, 2011, and the simultaneous termination of the orders set forth in *Notice of Proposed Rule Making and Order to Show Cause*, 19 FCC Rcd 15395 (2004), *Report and Order*, 22 FCC Rcd 5347 (2007), and *Memorandum Opinion and Order*, 26 FCC Rcd 8557 (2011) (these orders are collectively referred to herein as “Rule Making Orders”), and the amendment of the Commission’s consolidated database system (“CDBS”) to reflect that Channel 276A is used and licensed to WPKE-FM at Coal Run, KY, and that Channel 221A is used and licensed to WDIC-FM at Clinchco, VA. The clause : “Allotment reserved for a designated station” shall be deleted from the CDBS record for WDIC-FM.

Pursuant to the Settlement Agreement, EKBC is requesting the cancellation of its conditional¹ construction permit (FCC File No. BPH-20111103AIP) (“WPKE-FM Construction Permit”) for the minor modification of Station WPKE-FM, Coal Run, KY, to operate on Channel 221C3. The Settlement Agreement would also result in the dismissal of the “Request for Cancellation of WDIC-FM Special Temporary Authority, and Deletion of WPKE-FM Construction Permit Condition #8” (the “Request for Cancellation and Deletion”) and a Request for Imposition of Sanctions (the “Request for Sanctions”) filed September 11, 2012 by EKBC against DCBC.

The Settlement Agreement contemplates the filing of minor change applications to return WDIC-FM to operation on Channel 221A and WPKE-FM to operation on Channel 276A; however, informal FCC staff advice now indicates such a filing is unnecessary and the parties will do so only if later requested to do so by the staff. Grant of the EKBC cancellation request, dismissal of the pending objections against the renewal applications and approval of the Settlement Agreement will promote the public interest by resolving litigation which has endured for nearly 10 years. The declarations of each party satisfying the requirements listed in Sections 73.3525(a) and 73.3588(a) are incorporated in the Settlement Agreement.

In sum, in order to further the public interest, it is requested that the Commission approve the Settlement Agreement and take the following simultaneous actions:

- (a) Dismiss with prejudice the WPKE-FM Petition for Rule Making and rescind the *Memorandum Opinion and Order* and all related FCC orders in MB Docket 04-319;

¹ The WPKE-FM Construction Permit contains the following condition:
“This construction permit is granted subject to the final outcome of MB Docket No. 04-319. Any construction or operation pursuant to this construction permit before MB Docket No. 04-319 becomes final is at the permittee’s sole risk.”

- (b) Cancel the WPKE-FM conditional Construction Permit;
- (c) Dismiss with prejudice the WDIC-FM License Renewal Informal Objection;
- (d) Dismiss with prejudice the WPKE-FM License Renewal Petition to Deny;
- (e) Dismiss with prejudice the Request for Sanctions; and
- (f) Dismiss with prejudice the Request for Cancellation and Deletion and all ancillary filings, oppositions, replies, requests and motions responding to or relating to the above.

The parties respectfully request: (1) the approval of this Agreement; (2) that the actions taken in the *Memorandum Opinion and Order* [26 FCC Rcd 8557] be reversed, rendering the Application for Review moot; (3) the cancellation of the WPKE-FM Construction Permit, rendering the WPKE-FM Construction Permit Petition for Reconsideration and the Request for Cancellation and Deletion moot; (4) the modification of the FCC's database to reflect a dismissal and reversal of all actions taken in the *Memorandum Opinion and Order* so that the WPKE-FM reserved assignment is and remains Channel 276A and the WDIC-FM reserved assignment is and remains Channel 221A; (5) the grant of the WDIC-FM License Renewal Application; and (6) the grant of the WPKE-FM License Renewal Application.

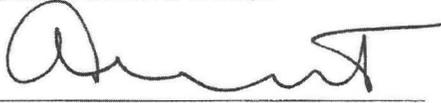
The parties respectfully request that each of the actions and dismissals requested of the Commission set forth in Paragraphs 1 and 2 of the Agreement be contingent and conditioned upon each of the other actions and dismissals, and the parties request that each action taken by the FCC be simultaneously and concurrently taken and be effective the same day.

Wherefore, in light of the foregoing, the parties respectfully request approval of the Settlement Agreement in the public interest.

Wherefore, in light of the foregoing, the parties respectfully request approval of the Settlement Agreement in the public interest.

Respectfully submitted,

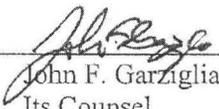
**DICKENSON COUNTY
BROADCASTING CORP.**

By: 

Gary S. Smithwick
Its Counsel

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
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**EAST KENTUCKY
BROADCASTING CORPORATION**

By: 

John F. Garziglia
Its Counsel

Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036
Telephone: (202) 857-4455

February 22, 2013

SETTLEMENT AGREEMENT AND CONDITIONAL MUTUAL RELEASE
AFFIDAVITS CONTAINED IN AGREEMENT

SETTLEMENT AGREEMENT AND CONDITIONAL MUTUAL RELEASE

This Settlement Agreement and Conditional Mutual Release (this "Agreement") made and entered into this 20th day of February, 2013, by and among EAST KENTUCKY BROADCASTING CORPORATION ("EKBC"), the licensee of WPKE-FM, Coal Run, Kentucky, and DICKENSON COUNTY BROADCASTING CORP. ("DCBC"), the licensee of WDIC-FM, Clinchco, Virginia.

WITNESSETH:

WHEREAS, EKBC on February 19, 2004, in MB Docket No. 04-319 filed a petition for rule making with the Federal Communications Commission (the "FCC" or "Commission") seeking the upgrade of WPKE-FM from FM Channel 276A to FM Channel 221C3 (the "WPKE-FM Petition for Rule Making"); and

WHEREAS, the Commission in MB Docket No. 04-319 issued a show cause order to DCBC as to why its license for WDIC-FM should not be modified from FM Channel 221A to FM Channel 276A, to which DCBC responded in opposition; and

WHEREAS, on June 17, 2011, the FCC released a *Memorandum Opinion and Order*, 26 FCC Rcd 8557 (2011) in MB Docket No. 04-319 (the "Memorandum Opinion and Order")¹ ordering that FM Channel 221C3 is the reserved assignment for WPKE-FM and FM Channel 276A is the reserved channel for WDIC-FM, and DCBC timely filed a Petition for Reconsideration of the Memorandum Opinion and Order; and

WHEREAS, on July 18, 2011, DCBC filed at the FCC an Application for Review (the "Application for Review") of the Memorandum Opinion and Order; and

¹ See also *Report and Order*, 22 FCC Rcd 5347 (2007), and *Notice of Proposed Rule Making and Order to Show Cause*, 19 FCC Rcd 15395 (2004).

WHEREAS, EKBC on October 31, 2011, filed an FCC Form 301 application (FCC File No. BPH-20110131AIP) seeking a construction permit for a WPKE-FM modification of license (the “WPKE-FM Construction Permit Application”), to which DCBC on November 3, 2011 filed an Informal Objection (the “WPKE-FM Construction Permit Informal Objection”); and

WHEREAS, on June 25, 2012, the FCC released a decision in the form of a letter to DCBC and EKBC (Reply Reference 1800B3-AJR) that denied the WPKE-FM Construction Permit Informal Objection, denied a DCBC Motion for Stay, granted DCBC’s Motion to Strike and granted the WPKE-FM Construction Permit Application (FCC File No. BPH-20111103AIP) (“WPKE-FM Construction Permit”) for the minor modification of Station WPKE-FM, Coal Run, KY, to which DCBC on July 30, 2012, filed a Petition for Reconsideration (the “WPKE-FM Construction Permit Petition for Reconsideration”). The WPKE-FM Construction Permit recognizes that the Proceedings (as defined below) are not final actions and contains the following condition:

“This construction permit is granted subject to the final outcome of MB Docket No. 04-319. Any construction or operation pursuant to this construction permit before MB Docket No. 04-319 becomes final is at the permittee’s sole risk”; and

WHEREAS, on June 1, 2011 DCBC filed its WDIC-FM license renewal application (File No. BRH-20110601AAT -- the “WDIC-FM License Renewal Application”), to which EKBC on August 2, 2011, filed an Informal Objection (the “WDIC-FM License Renewal Informal Objection”); and

WHEREAS, on March 29, 2012, EKBC filed its WPKE-FM license renewal application (File No. BRH-20120329AFO the “WPKE-FM License Renewal Application”), to which DKBC

on July 2, 2012, filed a Petition to Deny (the “WPKE-FM License Renewal Petition to Deny”);
and

WHEREAS, on September 11, 2012, EKBC filed a “Request for Cancellation of WDIC-FM Special Temporary Authority, and Deletion of WPKE-FM Construction Permit Condition #8” (the “Request for Cancellation and Deletion”) and a Request for Imposition of Sanctions (the “Request for Sanctions”); and

WHEREAS, the MB Docket No. 04-319 proceeding has consumed almost a decade of Commission resources without a final resolution; and

WHEREAS, EKBC and DCBC are the only two parties to MB Docket No. 04-319 and have reached a mutual accommodation and settlement that seeks to finally resolve the issues raised in MB Docket No. 04-319 along with grants of the WDIC-FM License Renewal Application and the WPKE-FM License Renewal Application; and

WHEREAS, EKBC and DCBC agree as part of this Agreement to seek the withdrawal of all FCC filings in the MB Docket No. 04-319, the WDIC-FM License Renewal Application and the WPKE-FM License Renewal Application proceedings (hereafter, the “Proceedings”), and thereafter to fully, completely and forever release each other from further claims, allegations, complaints and filings related in any manner to the Proceedings; and

WHEREAS, this Agreement will obviate the commitment of Commission resources otherwise necessary to resolve the Proceedings and accordingly the public interest will be served by FCC approval of this Agreement; and

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

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

1. No later than five (5) business days from the date of this Agreement, the parties shall file with the FCC a Request for Approval of Settlement Agreement (the “Request for Approval of Settlement Agreement”) attaching this Agreement and seeking the simultaneous actions of the following:

- (a) the dismissal with prejudice of the WPKE-FM Petition for Rule Making and rescission of the Memorandum Opinion and Order and all related orders in MB Docket No. 04-319;
- (b) the cancellation of the WPKE-FM Construction Permit;
- (c) the dismissal with prejudice of the WDIC-FM License Renewal Informal Objection;
- (d) the dismissal with prejudice of the WPKE-FM License Renewal Petition to Deny;
- (e) the dismissal with prejudice of the Request for Sanctions;
- (f) the dismissal with prejudice of the Request for Cancellation and Deletion; and
- (g) the dismissal as moot of DCBC’s Application for Review.

and all ancillary filings, oppositions, replies, requests and motions responding to or relating to the above.

2. In the Request for Approval of Settlement Agreement, the parties shall further request:

- (a) the approval of this Agreement;
- (b) that the actions taken in the Memorandum Opinion and Order be reversed, rendering the Application for Review moot;

- (c) the cancellation of the WPKE-FM Construction Permit, rendering the WPKE-FM Construction Permit Petition for Reconsideration and the Request for Cancellation and Deletion moot;
- (d) the modification of the FCC's database to reflect a dismissal and reversal of all actions taken in the Memorandum Opinion and Order so that the WPKE-FM reserved assignment is and remains Channel 276A and the WDIC-FM reserved assignment is and remains Channel 221A;
- (e) the grant of the WDIC-FM License Renewal Application; and
- (f) the grant of the WPKE-FM License Renewal Application.

3. The parties shall request that each of the actions and dismissals requested of the Commission set forth in Paragraphs 1 and 2 of this Agreement be contingent and conditioned upon each of the other actions and dismissals, and the parties shall request that each action taken by the FCC be simultaneously and concurrently taken and be effective the same day. To expedite this settlement, the parties shall simultaneously with the filing of the Request for Approval of Settlement Agreement, file contingent applications for minor change construction permits to return WPKE-FM to operation on Channel 276A and to permit WDIC-FM to remain on Channel 221A. Each party shall pay its own FCC filing fee relative to its application.

4. Signing this Agreement shall constitute a declaration under penalty of perjury that, other than the agreements and understandings contained in this Agreement, neither EKBC nor DCBC, nor any of its principals, shall receive, nor has agreed in the future to pay, any money or other consideration to one another to enter into, or perform its obligations under, this Agreement.

5. Pursuant to Sections 73.3525 and 73.3588 of the Commission's rules, each of EKBC and DCBC hereby declare under penalty of perjury, that:

- (a) none of its filings in the Proceedings were filed for the purpose of carrying out a settlement agreement;

- (b) it has not paid, promised to pay, nor received or been promised the receipt of any consideration in connection with this Agreement except as specifically set forth in this Agreement; and
- (c) the FCC's approval of this Agreement would be in the public interest as it would allow for the resolution of the Proceedings.

6. This Agreement is entered into subject to the approval of the FCC. Should the Commission decline to approve any provision of this Agreement, the parties agree to proceed in good faith to attempt to resolve any Commission objections so as to secure an approval of the Agreement which most nearly reflects the original intentions of the parties as reflected herein which is the return to the *status quo ante* of the respective FM channels upon which each of WDIC-FM and WPKE-FM were authorized on the date that the WPKE-FM Rule Making Petition was filed, and a grant of each of the WDIC-FM License Renewal Application and the WPKE-FM License Renewal Application. The parties shall take any action or actions reasonably requested by each other to file with the FCC any applications, pleadings, or other documents in order to give effect to the intentions of the parties as set out in this Section 6.

7. EKBC and DCBC each hereby affirms, for itself, its successors and assigns, that upon the return of WPKE-FM to operate on Channel 276A at Coal Run, Kentucky, and the authorization of WDIC-FM to remain on Channel 221 A at Clinchco, Virginia, the effective date of the actions and dismissals requested of the Commission set forth in Paragraphs 1 and 2 of this Agreement, there will exist no further obligations of any kind of either EKBC to DCBC, or DCBC to EKBC, for itself, its successors and its assigns. Upon the effective date of the actions and dismissals requested of the Commission set forth in Paragraphs 1 and 2 of this Agreement, EKBC hereby releases DCBC from any and all further obligations, liabilities, actions, causes of action, suits, debts, sums of money, accounts, contracts, controversies, agreements, claims and demands, known, unknown, or hereafter arising, resulting from, arising out of or relating to the

Proceedings. Upon the effective date of the actions and dismissals requested of the Commission set forth in Paragraphs 1 and 2 of this Agreement, DCBC hereby releases EKBC from any and all further obligations, liabilities, actions, causes of action, suits, debts, sums of money, accounts, contracts, controversies, agreements, claims and demands, known, unknown, or hereafter arising, resulting from, arising out of or relating to the Proceedings.

8. Because of the unique nature of the broadcast authorizations which are the subject matter of this Agreement, the parties agree that the failure of either party to perform its obligations under this Agreement is one for which there is likely no adequate remedy at law, and that in addition to other remedies that may be attempted to be sought at law or in equity, any party injured by such a breach shall have the right to obtain a decree of specific performance entitling it to a temporary restraining order, preliminary injunction or permanent injunction to specifically enforce and obtain specific performance of the terms and provisions of this Agreement. The party against which injunctive relief is sought hereby waives the defense in any such proceeding that the other party has an adequate remedy at law and agrees to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. The prevailing party in any such action shall be entitled to a reimbursement of its legal fees and costs.

9. This Agreement shall be governed by the laws of the District of Columbia. Any action brought under this Agreement shall be brought in courts having jurisdiction over matters arising in Washington, DC.

10. All notices, requests or other communications required or permitted hereunder shall be written and shall be deemed a given when sent by nationally recognized overnight air courier, addressed as follows:

If to EKBC:

East Kentucky Broadcasting Corporation
1200 Radio Drive
Pikeville, KY 41502
Attn: Walter E. May, President

With a copy to:

John F. Garziglia, Esq.
Womble Carlyle Sandridge & Rice, LLP
1200 19th Street, N.W. Suite 500
Washington, DC 20036

If to DCBC:

Dickenson County Broadcasting Corp.
Rt. 1, Box 412
Clintwood, VA 24228
Attn: Richard W. Edwards

With a copy to:

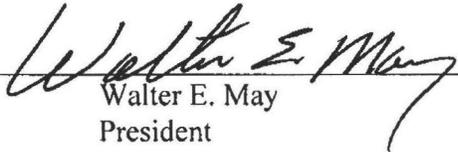
Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, DC 20016

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, heirs and assigns. The rights and obligations of each party to this Agreement shall be assigned to, and be assumed by, any entity or person to which or whom the underlying WPKE-FM and/or WDIC-FM licenses, as the case may be, may be assigned.

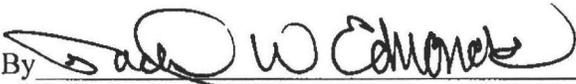
12. This Agreement may be executed in ink or via facsimile, in one or more counterparts, neither of which need to contain the signature of each party hereto, and each of which together shall be deemed to be one and the same original.

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

EAST KENTUCKY BROADCASTING CORPORATION

By  _____
Walter E. May
President

DICKENSON COUNTY BROADCASTING CORP.

By  _____
Richard W. Edwards
President

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that on this 22nd day of February, 2013, a copy of the foregoing **Joint Request for Approval of Settlement Agreement** is being sent by hand delivery (and electronic delivery), to the following:

Peter H. Doyle, Chief
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 2-A320
Washington, D.C. 20554
(Email: peter.doyle@fcc.gov)

Mr. Rodolfo Bonacci, Assistant Chief
Audio Division, Media Bureau
Federal Communications Commission?
Room 2A-230
445 – 12th Street, S.W.
Washington, D.C. 20554
(Email: Rodolfo.bonacci@fcc.gov)

Nazifa Sawez, Esquire
Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(Email: nazifa.sawez@fcc.gov)



Sherry L. Schunemann