

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

In the Matter of)	MX Group 11
)	
POINT BROADCASTING COMPANY)	File Nos. BNPDTL-20090825BEY
)	181925 Santa Barbara, CA
)	
CHANNEL 51 OF SAN DIEGO, INC.)	BNPTTL-200090825ACH
)	181406 Santa Barbara, CA
)	
For a New LPTV Station on Channel 22 at)	
Santa Barbara, California)	
 To: Chief, Video Division		

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT AND
DISMISSAL OF OBJECTION**

Point Broadcasting Company (“Point”), and Channel 51 of San Diego, Inc. (“Channel 51”), pursuant to Section 73.3588 of the Commission’s rules and the FCC Public Notice, DA 20-576, released June 1, 2020 (the “Public Notice”), hereby respectfully and jointly petition for approval of a settlement with respect to the above-captioned mutually exclusive applications for a new LPTV station on Channel 22 at Santa Barbara, California – designated MX Group 11 in the Public Notice.

To resolve the mutual exclusivity, the parties have agreed to a settlement where Point will reimburse Channel 51 for its expenses in the preparation and prosecution of its application, and Channel 51 will dismiss its application contingent on the application of Point being granted. That agreement is reflected in the settlement agreement attached hereto as Exhibit 1 (the “Settlement Agreement”).

Under the terms of the Settlement Agreement the parties respectfully request that the Commission:

1. Grant this Joint Request for Approval of Settlement Agreement;
2. Approve the settlement as proposed herein and in the Settlement Agreement;
3. Grant the Point application; and
4. Dismiss the Channel 51 application.

In accordance with Section 73.3588, the Settlement Agreement and Declarations attached hereto as Exhibit 2 demonstrate that (i) the proposed settlement will serve the public interest; (ii) no party has received any money or other consideration except that set out in the Settlement Agreement; and (iii) the Settlement Agreement sets out the exact nature of the consideration for each party. The Declaration of Channel 51 certifies that the consideration it will receive pursuant to the Settlement Agreement does not exceed its legitimate and prudent expenses incurred in connection with the application.

Approval of the proposed Settlement Agreement would serve the public interest in that it will conserve the resources of both the Commission and resolve the mutual exclusivity between the applications.

Accordingly, the parties respectfully request that this Joint Request be approved and that the applications be acted upon as set forth herein.

Respectfully submitted,

CHANNEL 51 OF SAN DIEGO, INC.

/s/

Howard Liberman
Attorney for Channel 51 of San Diego, Inc.
Wilkinson Barker Knauer, LLP
1800 M St, N.W.
Suite 800N
Washington, D.C. 20036
(202) 383-3373

POINT BROADCASTING COMPANY

/s/

David D. Oxenford
Attorney for Point Broadcasting Company
Wilkinson Barker Knauer, LLP
1800 M St, N.W.
Suite 800N
Washington, D.C. 20036
(202) 383-3337

Dated: July 31, 2020

EXHIBIT 1

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into this 31st day of July, 2020, by and between Point Broadcasting Company (“Point”) and Channel 51 of San Diego, Inc. (“Channel 51”) (Point and Channel 51 may each be referred to individually as a “Party” and collectively as the “Parties”).

WITNESSETH:

WHEREAS, Point and Channel 51 each has pending before the Federal Communications Commission (“FCC”) an application for a construction permit for a new Low Power Television station to operate on Channel 22 in Santa Barbara, California. The Point application bears the FCC File Number BNPDTL-20020825BEY (hereinafter the “Point Application”). The Channel 51 application bears the FCC File Number BNPDTL-20020825ACH (hereinafter the “Channel 51 Application”). (The Point Application and the Channel 51 Application are each referred to herein as an “Application,” and collectively as the “Applications”);

WHEREAS, the Applications constitute a group of mutually exclusive applications (“MX Group 12”) as identified on an FCC Public Notice, DA 20-576, released June 1, 2020, and only one of these applications may be granted by the FCC;

WHEREAS, Point has agreed to reimburse Channel 51 for its reasonable and prudent expenses incurred in the filing and prosecution of the Channel 51 Application and, in exchange, Channel 51 has agreed to cause the voluntary dismissal with prejudice of the Channel 51 Application in exchange for that consideration; and

WHEREAS, the Parties believe that a settlement upon the terms set forth in this Agreement will serve the public interest in that it will resolve the pending proceeding before the Commission, and thereby speed the inauguration of a new LPTV service to Santa Barbara.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. **Removal of Conflict Between Applications.** As soon as possible, but in no event later than July 31, 2020, the Parties shall jointly file with the FCC the Joint Request (defined below) requesting dismissal of Channel 51’s Application with prejudice and the grant of the Point Application.

2. **Consideration.** In consideration of Channel 51’s dismissal of its Application, Point shall pay to Channel 51 the amount approved by the FCC as the reasonable and prudent expenses of Channel 51 in the preparation and prosecution of the Channel 51 Application in an amount not to exceed Nine Thousand Seven Hundred Sixty One Dollars and Twenty-Five Cents (\$9,761.25).

3. **Request for FCC Consent.** As soon as possible, but in no event later than July 31, 2020, the Parties hereto shall file a Joint Request for Approval of Settlement Agreement (the “*Joint Request*”) in the form of Exhibit B hereto, as required by Section 73.3525 of the Commission’s rules, requesting that the FCC issue an order or orders: (i) granting the Joint Request; (ii) approving this Agreement; (iii) dismissing Channel 51’s Application; and (iv) granting Point’s Application. The Parties shall in good faith pursue approval by the FCC of this Joint Request 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. No Party shall take any action adverse to this Agreement or the Joint Request, and Channel 51 shall take no any action adverse to the grant of Point’s Application.

4. **Final Action.** The obligations of the Parties under this Agreement are expressly conditioned upon the FCC taking “Final Action” approving this Agreement in its entirety, dismissing Channel 51’s Application with prejudice, and granting Point’s Application. For purposes of this Agreement, an action by the FCC approving this Agreement, dismissing an Application, or granting an Application shall be a “Final Action” when the time for filing any requests for administrative or judicial review of such action, or for 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.

5. **Authorization and Binding Obligation.** The Parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

6. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by prepaid nationally recognized express delivery service able to provide a record of delivery and, pending the designation of another address, addressed as follows:

If to Point:

Point Broadcasting Company
Attn: John Q Hearne
715 Broadway
Suite 320
Santa Monica, CA 90401

If to Channel 51:

Channel 51 of San Diego, Inc.
Attn: Michael McKinnon, Jr.
4575 Viewridge Ave.
San Diego, CA 92123

7. **Entire Agreement.** Except as otherwise set forth herein, this Agreement constitutes the entire understanding of the Parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by each of the Parties to whom it pertains.

8. **Enforcement.** If any of the Parties engage in litigation arising out of this Agreement, the prevailing party or parties in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. Each of the Parties recognizes that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the Parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

9. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, all of the Parties hereto and their heirs, successors, executors, legal representatives and assigns, provided however that no Party may voluntarily assign this Agreement without the express written consent of each of the other Parties.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without application of conflicts of laws principles. Each of the Parties agrees to accept the jurisdiction of the courts of the State of California for the resolution of any disputes under this Agreement.

11. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12. **Counterparts.** This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the Parties. This Agreement will be binding upon the electronic exchange of signatures by the Parties.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

POINT BROADCASTING COMPANY

By: John Heasne
Its: PRESIDENT

CHANNEL 51 of SAN DIEGO, INC.

By: _____
Its: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

POINT BROADCASTING COMPANY

By: _____
Its: _____

CHANNEL 51 of SAN DIEGO, INC.

By:  _____
Its:  _____

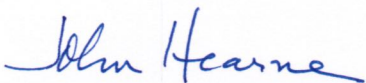
DECLARATION

Point Broadcasting Company ("Point"), hereby declares as follows:

1. Point is an applicant for a new Low Power Television station to operate on Channel 22 in Santa Barbara, California (FCC File No. BNPDTL-20020825BEY; FIN #181925).
2. Point's application was not filed for the purpose of reaching or carrying out a settlement agreement.
3. Pursuant to the Settlement Agreement between Point and Channel 51 of San Diego, Inc. ("*Channel 51*"), Point has agreed to pay to Channel 51 the amount approved by the FCC as its reasonable and prudent expenses incurred in the filing and prosecution of the Channel 51 Application, in an amount not to exceed Nine Thousand Seven Hundred Sixty One Dollars and 25 Cents (\$9,761.25), as consideration for Channel 51's dismissal of its application. Neither Point nor any of its principals has promised or paid to Channel 51 any other consideration in connection with the proposed settlement.
4. Approval of the Settlement Agreement between Point and Channel 51 will serve the public interest by saving substantial time and resources of the parties and the FCC and by hastening the initiation of new Low Power Television service to the Santa Barbara community.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 31, 2020.

POINT BROADCASTING COMPANY

By: 
Its: PRESIDENT

DECLARATION

CHANNEL 51 OF SAN DIEGO, INC. ("*Channel 51*"), hereby declares as follows:

1. Channel 51 is an applicant for a new Low Power Television station to operate on Channel 22 in Santa Barbara, California (BNPDTL-20020825ACH; FIN #181406).

2. Channel 51's application was not filed for the purpose of reaching or carrying out a settlement agreement.

3. Pursuant to the Settlement Agreement between Channel 51 and Point Broadcasting Company ("*Point*"), Point has agreed to pay Channel 51 the amount approved by the FCC as its reasonable and prudent expenses incurred in the filing and prosecution of the Channel 51 Application, in an amount not to exceed Nine Thousand Seven Hundred Sixty One Dollars and Twenty-Five Cents (\$9,761.25), as consideration for Channel 51's dismissal of its application. Neither Channel 51 nor any of its principals has been promised or paid any other consideration in connection with the proposed settlement.

4. Approval of the Settlement Agreement between Channel 51 and Point will serve the public interest by saving substantial time and resources of the parties and the FCC and by hastening the initiation of new Low Power Television service to the Santa Barbara, California community.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 31, 2020.

CHANNEL 51 of SAN DIEGO, INC.

By: _____

Its: _____