

SETTLEMENT AGREEMENT

This and Settlement Agreement (“Agreement”) is entered into by and between Two Harbors Community Radio (“Two Harbors”), and Elemental Public Media (“Elemental”) each of which may be referred to herein individually as a “Party” and collectively as the “Parties,” effective as of January 10, 2022 (“Effective Date”).

RECITALS

WHEREAS, each Party individually applied to the Federal Communications Commission (“FCC”) for a license to operate a Noncommercial Educational FM radio station (“NCE”) on Channel 202 to serve various communities in Minnesota, as such applications are identified on Appendix A hereto;

WHEREAS, by Public Notice released on November 29, 2021 (DA 21-1476), the FCC announced that the Parties’ applications are considered mutually exclusive and assigned them to Group 123;

WHEREAS, the Parties wish to settle such mutual exclusivity in a manner that maximizes service to the public without significant cost burdens to the Parties;

NOW, THEREFORE, in consideration of their mutual promises, covenants, and obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Engineering Resolution of the Remaining Mutual Exclusivity

- A.** Elemental shall take all steps necessary to amend its application in FCC File No. 0000167697 for a new NCE station at Babbitt Minnesota (Facility ID No. 768676) (“Elemental Proposal”), to specify a different channel that will not cause mutual exclusivity with any remaining parties. Elemental’s technical consultant has confirmed an FCC-compliant spectrum availability for the Elemental Proposal on Channel 212, as a substitute for the mutually exclusive channel 202. As a result, Elemental is hereby bound to file to change its application to specify Channel 212 to eliminate the mutual exclusivity among the Parties’ proposals for new NCE stations.
- B.** Insofar as time is of the essence, Elemental agrees that it will file an amendment to its FCC application for the Elemental Proposal with the FCC no later than the **THIRD BUSINESS DAY AFTER THE EFFECTIVE DATE**.
- C.** Two Harbors agrees to provide any necessary support and assistance to further FCC approval of the channel substitution for the Elemental Proposal from the originally proposed Channel 202 to available spectrum on Channel 212 (or to any other Channel of Elemental’s choosing) to eliminate the parties’ mutual exclusivity in MX Group 123.

II. FCC Filings and Compliance

- A.** The Parties shall execute and file with the FCC the Joint Request for Approval for Settlement Agreement, attached hereto as Appendix B and such other filings as may be necessary to obtain the FCC's approval of this Agreement and the actions contemplated herein.
- B.** The Parties agree to comply at all times with all applicable FCC rules governing such amendments and settlements.
- C.** The Parties agree that they shall not file, nor cause the filing of, petitions to deny, informal objections or similar pleadings against any FCC applications subject to this Agreement, as long as this Agreement remains in force. The Parties further agree to withdraw any petitions to deny, informal objections or similar pleadings against any of the FCC applications subject to the Agreement within three business days of the Effective Date.

III. MISCELLANEOUS

- A. Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs arising from reaching this Agreement and shall not seek reimbursement from any other of the Parties for legal or engineering costs arising from assistance provided in furtherance of the Agreement's goals and terms. Any legal or engineering costs provided to assist in furtherance of the Agreement's goals and terms shall be considered in-kind consideration to other parties in order to meet contract law requirement for consideration.
- B. Entire Agreement.** This Agreement contains the complete agreement between the Parties with regard to the matters set forth herein and supersedes any prior agreement, representation or warranties, verbal or written. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective executors, administrators, personal representatives, heirs, successors and assigns. This Agreement may not be amended or modified except by written consent of the Parties.
- C. Advice and Counsel.** Each of the Parties expressly affirms that it has had an opportunity to engage its own legal counsel and technical consultants to review the terms and FCC filing obligations of this Agreement and is not relying on any representation made by any other Party in voluntarily entering into this Agreement.
- D. Governing Law and Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State Minnesota without regard to any choice or conflicts of law principals thereof. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement shall be in a court of competent jurisdiction in Lake County, Minnesota.

- E. Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- F. Assignment.** No Party may sell, assign, delegate or otherwise transfer this Agreement, or any of its rights and obligations under this Agreement, without the prior written consent of the other Parties.
- G. Notices.** Any notice required to be given by one Party to the other under this Agreement will be delivered by Certified Mail to the signatory or signatories for the affected Parties; a Party may change its contact for notice by delivering a notice of change to the other Parties in the manner described in this Section IV.F.
- H. Severability.** If any provision of this Agreement is found to be illegal, invalid, or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, unless continued enforcement of the provisions frustrates the intent of the Parties.
- I. Construction.** This Agreement will be interpreted in accordance with its terms and without any strict construction in favor of or against either Party based on draftsmanship of the Agreement or otherwise.
- J. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall be deemed to be one and the same instrument. Signatures transmitted by electronic means shall have the same effect as original signatures.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the above date, and the persons signing below represent and warrant that they are duly authorized to do so.

ELEMENTAL PUBLIC MEDIA

By *Matthew Butler*
Matthew Butler, President

TWO HARBORS COMMUNITY RADIO

By _____
Leo Babeu, President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the above date, and the persons signing below represent and warrant that they are duly authorized to do so.

ELEMENTAL PUBLIC MEDIA

By Matthew Butler, President

TWO HARBORS COMMUNITY RADIO

By Leo Babeu
Leo Babeu, President

SIGNATURE PAGE TO FOLLOW

APPENDIX A

APPLICATIONS

Elemental Public Media, Facility ID No. 768676 (FCC File No. 0000167697), Babbitt, MN

Two Harbors Community Radio, Facility ID No. 764466 (FCC File No. 0000167420), Two Harbors, MN

APPENDIX B
JOINT REQUEST FOR APPROVAL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	NCE FM MX Group 123
)	
Elemental Public Media)	
)	
Application for a New Noncommercial)	FCC File No. 0000167697
Educational FM Station Babbitt, MN;)	
)	
and)	
)	
Two Harbors Community Radio)	
)	
Application for a New Noncommercial)	FCC File No. 0000167420
Educational FM at Two Harbors, MN)	

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Elemental Public Media (“Elemental”) and Two Harbors Community Radio (“Two Harbors”) (collectively, “Parties”) have filed applications for new noncommercial educational FM stations (“NCEs”) which the Commission deemed mutually exclusive with each other under Group 123.¹

The Parties hereby request that the Commission approve the Settlement Agreement, attached hereto as Exhibit A (the “Agreement”).

In the Agreement, (1) Elemental has agreed to voluntarily amend its application to specify a different channel to eliminate any remaining Mutual Exclusivity; and (2) Two Harbors has agreed to support and assist the other Parties to eliminate the mutual exclusivities so that both it and Elemental may become grantable singleton applicants on their respective, non-mutually exclusive channels.

¹ Public Notice DA 21-1476 (Nov. 29, 2021).

As the Agreement resolves mutual exclusivities describe herein for MX Group 123, approval of the agreement will permit the three proposed licensees to provide new community-based content to their communities in the most rapid way possible. Approval of the agreement will further the public interest in increasing access to local and diverse programming.

The Parties respectfully request that the Commission approve the Agreement and issue LPFM construction permits for Elemental's amended proposal for authorization on Channel 212 and Two Harbors's original proposal for authorization on Channel 202.

Respectfully submitted,

ELEMENTAL PUBLIC MEDIA

/s/

Matthew Butler, President

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Tel. (612) 432-7955

TWO HARBORS COMMUNITY RADIO

/s/

Michael W. Richards, Its attorney

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Dated: Jan. 10, 2022