

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

ACCEPTED/FILED

In re Short-Form MX Group #247

JUL 22 2013

Applications of)

UNIVERSITY OF MASSACHUSETTS)

For)

New FM Translator on Channel 277 at Lee,)
Massachusetts (Facility ID No. 142210))

FCC File No. BNPFT-20030312ASE

New FM Translator on Channel 278 at Pittsfield,)
Massachusetts (Facility ID No. 143162))

FCC File No. BNPFT-20030312AQX

BERKSHIRE BROADCASTING CO., INC.)

For)

New FM Translator on Channel 277 at Pittsfield,)
Massachusetts (Facility ID No. 145171))

FCC File No. BNPFT-20030314AMI

To: Office of the Secretary

Attn: James D. Bradshaw, Deputy Chief
Audio Division, Media Bureau

Federal Communications Commission
Office of the Secretary

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

University of Massachusetts ("UMass") and Berkshire Broadcasting Co., Inc. ("BBC"), by its respective attorneys, pursuant to Section 73.3525(a) of the Commission's rules and *Public Notice* (FM Translator Auction 83 Mutually Exclusive Applications Subject to Auction), DA 13-1170, released May 21, 2013 (the "Public Notice"), hereby request Commission approval of the attached Settlement Agreement. The Settlement Agreement will result in the elimination of mutual exclusivities between all of the applications in MX Group #247 by the dismissal of one application and the amendment of one application, with the result that the remaining applications in MX Group #247 will become singletons.

UMass and BBC jointly request that the Commission:

- Grant this Joint Request for Approval of Settlement Agreement (“Joint Request”) and approve the settlement as proposed in the attached Settlement Agreement;
- Dismiss the UMass application for FM Channel 278 with FCC File No. BNPFT-20030312AQX; and
- Accept the minor amendment to the UMass application for FM Channel 277 with FCC File No. BNPFT-20030312ASE, to specify operation on Channel 278; and
- Open a filing window for the submission of FCC Form 349 long-form applications for the surviving proposed UMass and BBC facilities.

In support of this Joint Request, the following is submitted:

1. Attached to this Joint Request is a copy of the Settlement Agreement by and between UMass and BBC, reciting the above-requested actions and detailing the consideration being exchanged, which consists of reimbursement by BBC of expenses incurred by UMass up to a maximum of \$5,000.00. Since the amount of consideration does not exceed UMass’s legitimate and prudent expenses incurred in preparing, filing and prosecuting its application, the Settlement Agreement is in compliance with the requirements of Section 73.3525(a) of the Commission’s rules and the *Public Notice*.

2. In Section 4 of the Settlement Agreement, each of the parties declares under penalty of perjury, as required by Section 73.3525(a) of the Commission’s rules, that: None of its filings were filed for the purpose of carrying out a settlement agreement; and the FCC’s approval of the Settlement Agreement would be in the public interest, as it would allow for the prospect of a prompt initiation of service to the public from new FM translator stations.

3. UMass and BBC submit that a grant of this Joint Request would serve the public interest by conserving the resources of the parties and the Commission, facilitate the resolution of MX Group #247 and speed the initiation of new FM translator broadcast service to the Lee and Pittsfield areas. Accordingly, prompt action on this Joint Request is respectfully requested.

WHEREFORE, for the reasons above, the University of Massachusetts and Berkshire Broadcasting Co., Inc. respectfully request approval of this Joint Request, dismissal of the specified application, acceptance of the amended application, designation of the surviving applications in MX Group #247 as singletons, and the opening of a filing window for the singleton FCC Form 349 long-form applications.

Respectfully submitted,

UNIVERSITY OF MASSACHUSETTS

By: Marnie K. Sarver

Marnie K. Sarver
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-4289

Its Attorney

BERKSHIRE BROADCASTING CO., INC.

By: David G. O'Neil *mks*

David G. O'Neil
Rini O'Neil, PC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036
(202) 955-3931

Its Attorney

July 22, 2013

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) made and entered into this 22nd day of July, 2013, by and among the UNIVERSITY OF MASSACHUSETTS, operating pursuant to Massachusetts General Laws, Chapter 75, Sections 1 et seq. (hereafter “UMass”), and BERKSHIRE BROADCASTING CO., INC., a Massachusetts corporation (hereafter “BBC”). UMass and BBC are sometimes referred to herein individually as a “Party” and together as the “Parties.”

WITNESSETH:

WHEREAS, on February 6, 2003, the Federal Communications Commission (“FCC” or “Commission”) announced the Auction 83 FM translator application filing window and thereafter accepted FCC Form 349 Tech Box proposals in short-form applications for FM translators;

WHEREAS, UMass tendered to the FCC in the Auction 83 proceeding proposals for FM translators on FM Channel 277 at Lee, Massachusetts (FCC File No. BNPFT-20030312ASE) (the “Lee Application”), and FM Channel 278 at Pittsfield, Massachusetts (FCC File No. BNPFT-20030312AQX) (the “Pittsfield Application”);

WHEREAS, BBC tendered to the FCC in the Auction 83 proceeding a proposal for an FM translator on FM Channel 277 at Pittsfield, Massachusetts (FCC File No. BNPFT-20030314AMI) (the “BBC Application”);

WHEREAS, on May 21, 2013, the FCC released Public Notice DA 13-1170, which listed the UMass and BBC applications BNPFT-20030312ASE, -20030312AQX and -0030314AMI as mutually-exclusive in MX Group #247;

WHEREAS, the Parties desire to enter into this Agreement pursuant to which UMass will dismiss the Pittsfield Application and amend the Lee Application in return for a cash payment by BBC;

WHEREAS, as a result of the actions proposed in this Agreement, the surviving and amended applications of UMass and BBC will no longer be mutually-exclusive in MX Group #247;

WHEREAS, each Party to this Agreement filed its respective applications for the purpose of obtaining a grant and not for the purposes of settlement;

WHEREAS, this Agreement will obviate the commitment of Commission resources otherwise necessary to resolve mutual-exclusivity, will accelerate the inauguration of new FM translator service to the public, 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, 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 July 22, 2013, the Parties shall file with the FCC a Joint Request for Approval of Settlement Agreement (the "Joint Request") attaching this Agreement and seeking:
 - (a) The dismissal of the Pittsfield Application; and
 - (b) A minor amendment of the Lee Application to specify operation on channel 278 rather than Channel 277.
2. No later than July 22, 2013, UMass shall file the minor amendment specified in Section 1 of this Agreement. Each Party to this Agreement shall, upon the opening of a long-form filing window by the FCC for its respective short-form application, specify the exact

technical parameters as set forth in its short-form application, in the case of BBC, and in Section 1 of this Agreement, in the case of UMass, in its long-form application, and shall not amend nor further modify the technical parameters for such application until the close of the long-form filing window. After the close of the long-form filing window, there shall be no further restriction upon changes to the technical facilities for any of the applications that are the subject of this Agreement and each Party may thereafter amend, modify or otherwise change its specified facility without regard to the technical parameters specified in this Agreement.

3. BBC agrees to pay UMass, as consideration for the dismissal of the Pittsfield Application and the performance of its obligations under this Agreement, a sum not to exceed Five Thousand Dollars (\$5,000.00). Such amount is intended to reimburse the legitimate and prudent expenses that UMass incurred in preparing, filing and prosecuting the Lee Application. UMass will provide to BBC, for filing with the FCC, a declaration setting forth an itemized account of such expenses. If UMass's documented expenses are less than \$5,000.00, or if the FCC approves reimbursement in an amount less than that sum, then BBC shall be obligated to pay (1) UMass's documented expenses or (ii) the FCC-approved expenses, whichever is less.

BBC's payment to UMass will be made by a wire transfer of Federal funds no later than ten (10) business days after the latest to occur of the following: (i) FCC approval of the Joint Request, (ii) FCC dismissal of the Pittsfield Application, (iii) FCC grant of the minor amendment of the Lee Application; and (iv) FCC grant of the BBC Application.

4. Other than the agreements and understandings contained in this Agreement, neither UMass nor BBC, 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. Pursuant to Sections 73.3525 of the Commission's rules, UMass and BBC each hereby declare under penalty of perjury, that:

- (a) None of its filings 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 prospect of prompt initiation of service to the public from new FM translator stations.

5. 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.

6. Because of the unique nature of the broadcast authorizations which are the subject matter of this Agreement, the Parties agree that the failure of any 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.

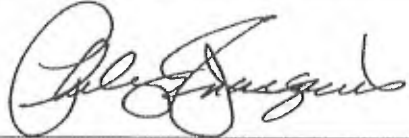
7. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any action brought under this Agreement shall be brought in courts having jurisdiction over matters arising in Lee and Pittsfield, Massachusetts.

8. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors, heirs and assigns. This Agreement may be executed in ink, via facsimile, or in scanned PDF, in one or more counterparts, none of which need to contain the signature of each Party, and each of which together shall be deemed to be one and the same original.

[Signature Page Follows]

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

UNIVERSITY OF MASSACHUSETTS

By 
Philip J. Marquis
Assistant Vice President for CAS,
Associate Treasurer

BERKSHIRE BROADCASTING CO., INC.


By _____
Bruce Danzinger
President

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

UNIVERSITY OF MASSACHUSETTS

By _____
Philip J. Marquis
Assistant Vice President for CAS,
Associate Treasurer

BERKSHIRE BROADCASTING CO., INC.

By  _____
Bruce Danzinger
President

DECLARATION OF PHILIP J. MARQUIS

I, Philip J. Marquis, hereby declare and state as follows:

I am Assistant Vice President for CAS, Associate Treasurer of the University of Massachusetts ("UMass").

UMass has entered into a Settlement Agreement (the "Agreement") with Berkshire Broadcasting Co., Inc. ("BBC"). UMass has pending before the Federal Communications Commission ("FCC" or the "Commission") an Auction 83 short-form application for a new FM Translator station on Channel 278 at Pittsfield, Massachusetts (FCC File No. BNPFT-20030312AQX) (the "Pittsfield Application").

Under the terms of the Agreement, UMass will withdraw the Pittsfield Application, in return for reimbursement by BBC of UMass's out-of-pocket expenses for preparation, filing and prosecution of the Pittsfield Application up to a total of \$5,000.00.

UMass's reimbursable out-of-pocket expenses totaled \$4,832.00, including the following payments:

1. Engineering and engineering consulting fees totaling \$1,940.00 to Carl E. Smith, Consulting Engineers;
2. Legal fees totaling \$780.00 to Wiley Rein LLP; and
3. Research, evaluation and internal expenses totaling \$2,112.00.

UMass can provide additional support for the expenses listed above upon Commission request.

UMass did not file the Pittsfield Application for the purpose of entering into or carrying out a settlement agreement.

Aside from the consideration set forth in the Agreement, neither UMass nor its principals has either been paid, or been promised to be paid, any consideration by BBC or by any other person or entity in relation to this proceeding or the Pittsfield Application.

The public interest will be served by approval of the Agreement submitted herewith because it will conserve scarce Commission resources and it will expedite the implementation of enhanced radio service.

All representations made herein are true and correct and made under penalty of perjury.

Signed and dated this 22nd day of July, 2013.

A handwritten signature in dark ink, appearing to read "Philip J. Marquis", written over a horizontal line.

Philip J. Marquis
Assistant Vice President for CAS, Associate Treasurer
University of Massachusetts

DECLARATION OF BRUCE G. DANZIGER

I, Bruce G. Danziger, hereby declare and state as follows:

I am President of Berkshire Broadcasting Co., Inc. ("BBC"). BBC has pending before the Federal Communications Commission ("FCC or the "Commission") an Auction 83 short-form application for a new FM translator station on Channel 277 at Pittsfield, Massachusetts (FCC File No. BNPFT-20030314AMI) (the "BBC Application").

BBC has entered into a Settlement Agreement (the "Agreement") with University of Massachusetts ("UMass"). UMass has pending before the FCC Auction 83 short-form applications for new FM Translator stations: (1) on Channel 277 at Lee, Massachusetts (FCC File No. BNPFT-20030312ASE) (the "Lee Application") and (2) on Channel 278 at Pittsfield, Massachusetts (FCC File No. BNPFT-20030312AQX) (the "Pittsfield Application").

Under the terms of the Agreement, UMass will withdraw the Pittsfield Application and amend the Lee Application, in return for reimbursement by BBC of UMass's out-of-pocket expenses for preparation, filing and prosecution of the Pittsfield Application up to a total of \$5,000.000.

BBC did not file the BBC Application for the purpose of entering into or carrying out a settlement agreement.

Aside from the consideration set forth in the Agreement, BBC has not paid or promised to pay, either UMass or its principals any consideration in relation to this proceeding, the Lee Application or the Pittsfield Application.

The public interest will be served by approval of the Agreement submitted herewith because it will conserve scarce Commission resources and it will expedite the implementation of enhanced radio service.

All representations made herein are true and correct and made under penalty of perjury.

Signed and dated this 22nd day of July, 2013.

A handwritten signature in cursive script, appearing to read "Bruce Danziger", written over a horizontal line.

Bruce G. Danziger
President
Berkshire Broadcasting Co., Inc.

**AMENDMENT OF APPLICATION
FOR
NEW FM TRANSLATOR AT LEE, MA**

(FCC File No. BNPFT-20030312ASE)

CONFIRMATION OF SUBMISSION

Federal Communications Commission

FCC MB - CDBS Electronic Filing

Account number: 273327

Description: LEE TRANSLATOR - AUCTION 83 AMENDMENT

Application Reference Number: 20030312ASE

Successfully filed at Jul 22 2013 4:55PM

Based on the information supplied, no fee is required.

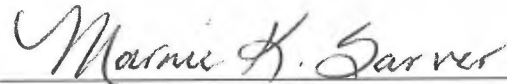
[Menu](#)

[Logout](#)

CERTIFICATE OF SERVICE

I, Marnie K. Sarver, hereby certify that on this 22nd day of July, 2013, a copy of the foregoing Joint Request for Approval of Settlement Agreement is being sent by hand delivery and email to the following:

James D. Bradshaw, Deputy Chief
Audio Division
Media Bureau
Federal Communications
Commission
445 12th Street, S.W.
Room 2-B450
Washington, DC 20554



Marnie K. Sarver