

FILE COPY

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In re Applications of)	NCE FM MX Group No. 412
)	
ST. JOSEPH'S CATHOLIC SCHOOL, INC.)	File No. BNPED-20071022BHF
Ch. 213, Gray Court, South Carolina)	Facility ID # 173384
)	
COMMUNITY BROADCAST SERVICES)	File No. BNPED-20071018AMP
Ch. 213, Laurens, South Carolina)	Facility ID # 172593
)	
For Construction Permit for)	
New Non-Commercial FM Broadcast)	
Stations)	

FILED/ACCEPTED

JAN 4 2013

*Federal Communications Commission
Office of the Secretary*

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: Audio Division, Media Bureau

**SUPPLEMENT TO
JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT
AND REQUEST FOR GRANT OF APPLICATION**

St. Joseph's Catholic School, Inc. (SJCS) and Community Broadcast Services (CB), by their respective attorneys, hereby respectfully submit this Supplement to their December 14, 2012 "Joint Request for Approval of Settlement Agreement". In so doing, the following is shown:

1. Attached hereto as Exhibit A is an executed Settlement Agreement by and between SJCS and CB. Attached hereto as Exhibit B is a justification by CB of the expenses it reasonably and prudently incurred in the

preparation, filing and prosecution of its above-captioned application at Laurens, South Carolina.

2. The agreement as attached in Exhibit A contains the representations required by Section 73.3525 of the Commission's Rules that the CB application was not filed for the purpose of delay and that no consideration, direct or indirect, has been paid or promised to CB for its decision to dismiss its application other than that which is disclosed in the Settlement Agreement.

3. Further, in their settlement agreement, both SJCS and CB declare under penalty of perjury that: (1) neither application was filed for the purpose of reaching or carrying out a settlement agreement; (2) their settlement agreement will serve the public interest by eliminating the need for expensive and protracted hearing proceedings before the FCC and enabling new service to the public to be implemented at the earliest possible date; and (3) no consideration, direct or indirect, has been paid or promised to be paid by SJCS or any other party to CB or its principals or affiliates to obtain the dismissal of the CB application at Laurens, South Carolina.

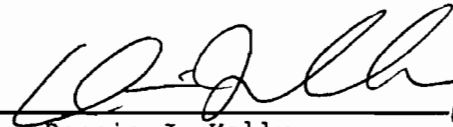
WHEREFORE, St. Joseph's Catholic School, Inc. and Community Broadcast Services urge that (1) their Joint Request for Approval of Settlement Agreement **BE GRANTED;**

(2) the application of Community Broadcast Services for a new NCE FM Station at Laurens, South Carolina (File No. BNPED-20071018AMP) **BE DISMISSED**; and (3) the application of St. Joseph's Catholic School, Inc. for a new NCE FM Station on Channel 213 at Gray Court, South Carolina (File No. BNPED-20071022BHF) **BE GRANTED**.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

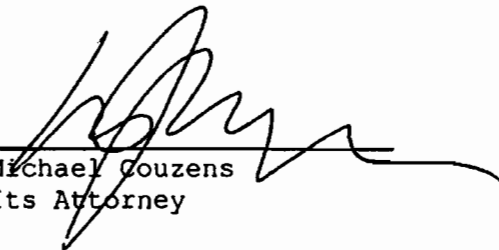
Respectfully submitted,

ST. JOSEPH'S CATHOLIC SCHOOL, INC.

By 
Dennis J. Kelly
Its Attorney

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COMMUNITY BROADCAST SERVICES

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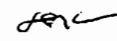
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January 2, 2013

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of the 14th day of December, 2012, by and between St. Joseph's Catholic School, Inc., a South Carolina non-profit corporation (SJCS) and Community Broadcast Services, a South Carolina non-profit corporation (CB);

WHEREAS, SJCS is an applicant at the Federal Communications Commission (FCC) for a construction permit for a new non-commercial (NCE) FM Broadcast Station on 91.7 MHz, Channel 217, at Gray Court, South Carolina, File No. BNPED-20071022BHF, FCC Facility ID # 173384; and

WHEREAS, CB is an applicant at the FCC for a construction permit for a new NCE FM Broadcast Station on 91.7 MHz, Channel 217, at Laurens, South Carolina, File No. BNPED-20071018AMP, FCC Facility ID # 172593; and

WHEREAS, these applications were determined by the FCC *en banc* to be the "tentative selectees on a timesharing basis" in NCE FM MX Group Number 412 in an order entitled ***In the Matter of Comparative Consideration of 26 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window***, FCC 10-142, 25 FCC Rcd 11108, released August 3, 2010; and

WHEREAS, SJCS and CB have concluded that a timesharing agreement between them would not be mutually satisfactory, but rather than their interests and the public interest would be best served by a settlement agreement, which would conserve scarce adjudicatory resources at the FCC and would result in one full-time station in South Carolina's "Upstate" region; and

WHEREAS, the following agreement will permit NCE FM broadcast service to commence over 91.7 MHz at Gray Court at the earliest possible time; and

WHEREAS, all of the obligations of the parties hereunder are subject to the prior approval of the FCC;

NOW, THEREFORE, the parties, intending to be bound, agree as follows:

1. **Dismissal of CB Application.** Subject to the approval of this Agreement by the FCC, CB hereby agrees to dismiss with prejudice its application at Laurens, South Carolina, File No. BNPED-20071018AMP. As soon as is practicable, CB and SJCS will file with the FCC a "Joint Request for Approval of Settlement" seeking FCC approval of the effectuation of the terms of this agreement, including the dismissal of CB application. The parties will diligently prosecute said "Joint Request" and do all things

reasonably necessary and/or appropriate to obtain a grant thereof.

2. **Consideration.** In consideration for CB's dismissal of its Laurens application, SJCS will pay to CB the sum of NINE THOUSAND FIVE HUNDRED DOLLARS (\$9,500.00), or such lesser amount as the FCC may approve, for the purpose of reimbursing CB for the reasonable and prudent expenses incurred by CB related to the preparation, filing and prosecution of its Laurens application. Payment will be made on or before the fifth (5th) business day subsequent to the date upon which the grant by the FCC of the SJCS application at Gray Court, South Carolina by the FCC staff acting pursuant to delegated authority becomes final and no longer subject to administrative or judicial action, review, rehearing or appeal (a "Final Order"). Should SJCS's application at Gray Court be dismissed or denied, CB may take any lawful action to seek that its application be reinstated and granted; in such event, SJCS would not be liable for the reimbursement payment to CB described in this application. CB shall solely be responsible for filing with the FCC such proof as may be necessary to demonstrate that its expenses reasonably and prudently incurred in the preparation, filing and prosecution of its

Laurens application equal or exceed the consideration to be paid by SJCS to CB hereunder.

3. **Conditions Precedent to SJCS's Obligation to Pay CB.** SJCS's obligation to pay CB is subject to the express conditions precedent that the CB application at Laurens, South Carolina be dismissed with prejudice and that the SJCS application at Gray Court, South Carolina be granted and has become a Final Order.

4. **Effective Date of this Agreement.** This Agreement may be executed in counterparts and, when so executed, the counterparts, taken together, shall constitute a complete and binding agreement, just as if the parties had signed the same document. Facsimile signatures or signatures electronically generated and transmitted shall be binding upon the parties. This Agreement may be signed in counterparts.

5. **Declarations of the Parties.** Pursuant to Section 311 of the Communications Act of 1934, as amended, and Sections 1.16 and 73.3525 of the Rules and Regulations of the FCC, each party signing this Agreement hereby declares under penalty of perjury that the following statements are true and correct:

- a. That neither he nor the company he represents filed its respective application for the purpose of reaching or carrying out a settlement agreement; and
- b. That approval of this Agreement will serve the public interest by eliminating the need for expensive and protracted hearing proceedings before the FCC and enabling new service to the public to be implemented at the earliest possible date.
- c. That no consideration, direct or indirect, has been paid or promised to be paid by SJCS or any other party to CB or its principals or affiliates to obtain the dismissal of the CB application at Laurens, South Carolina.

[THIS SECTION LEFT INTENTIONALLY BLANK;

SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties to this Agreement hereby indicate their agreement to all of the foregoing as of the date first written above.

ST. JOSEPH'S CATHOLIC SCHOOL, INC.

By Ann H O'Dee
Name: Ann H O'Dee
Title: Director of Finance

COMMUNITY BROADCAST SERVICES

By Leonard Neiman
Name: Leonard Neiman
Title: President

EXHIBIT B

DECLARATION

I, Michael Couzens, make the following declaration.

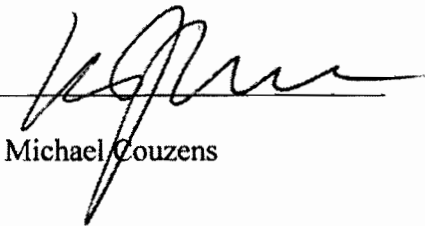
I am attorney practicing before the Federal Communications Commission and representing Community Broadcast Services, Inc. ("CBSI"). In their behalf I prepared and submitted an application for a new noncommercial educational FM station to serve Laurens, S.C., File No. BNPED-20071018AMP.

Since August, 2007, CBSI has incurred legal expenses at this firm, for attorneys' fees and costs, in direct support of its application, including preparation, filing, advocacy, and negotiations with other applicants, of not less than \$4,083.

The foregoing is sworn to, under the penalties for perjury provided in the laws of the United States.

Dated: 12 13 2012

By


Michael Couzens

MICHAEL COUZENS
ATTORNEY AT LAW
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OAKLAND, CA 94609
510-658-7654