

Colorado Christian University
971209M1, Loveland, CO
(Facility ID No. 89401)
FCC Form 314

EXHIBIT 4

Submitted herewith is the July 19, 2001 Settlement Agreement between Colorado Christian University and WAY-FM Media Group, Inc., which provides for the exchange of facilities of which this application is a part in Paragraph 2.B. Also attached is a recent Amendment to the Settlement Agreement.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("*Agreement*") is entered into this 19 day of July, 2001, by and between Colorado Christian University ("*CCU*") and WAY-FM Media Group, Inc. (formerly known as S.W. Florida Community Radio) ("*WAY-FM*") (CCU and WAY-FM each referred to as a "*Party*" and collectively as the "*Parties*").

WITNESSETH:

WHEREAS, CCU has pending before the Federal Communications Commission ("*FCC*") an application for a construction permit for a new noncommercial educational FM broadcast station to operate on Channel 201 at Lakewood, Colorado (FCC File No. BPED-19960926MD) and another application for a construction permit for a new noncommercial educational FM broadcast station to operate on Channel 205 at Loveland, Colorado (FCC File No. BPED-19961112MD); and

WHEREAS, WAY-FM has pending before the FCC an application for a new noncommercial educational FM broadcast station to operate on Channel 201 at Westminster, Colorado (FCC File No. BPED-19960521MA) and another application for a new noncommercial educational FM broadcast station to operate on Channel 205 at Fort Collins, Colorado (FCC File No. BPED 19961112ME); and

WHEREAS, BPED-19960926MD and BPED-19960521MA are mutually exclusive with each other and also with another application filed with the FCC by Educational Media Foundation ("*EMF*") for a new noncommercial educational FM broadcast station to operate on Channel 201 at Westminster, Colorado, FCC File No. BPED-19960926ME); and

WHEREAS, BPED-19961112MD and BPED-19961112ME are mutually exclusive with each other and also with two other applications filed with the FCC by (1) EMF for a new noncommercial educational FM broadcast station to operate on Channel 205 at Eaton, Colorado, FCC File No. BPED-19961112MF), and (2) Public Radio for the Front Range ("*PRFR*") for a new noncommercial educational FM broadcast station to operate on Channel 205 at Fort Collins, Colorado (FCC File No. BPED-19960731MA); and

WHEREAS in its *Memorandum Opinion and Order* in MM Docket No. 95-31, the FCC designated BPED-19960926MD, BPED-19960521MA, and BPED-19960926ME as mutually exclusive group # 96054E and BPED-19961112MD, BPED-19971112ME, BPED-19961112MF and BPED-19960731MA as mutually exclusive group # 9607B3, such that only one application of each group may be granted in its present state and established a deadline of June 4, 2001 (subsequently extended by FCC *Public Notice* DA 01-1245 to July 19, 2001) for the submission of settlements and engineering solutions, in the absence of which the Commission is to grant one of the applications in each group and deny the others pursuant to a lottery; and

WHEREAS, CCU has discussed this situation with EMF and PRFR and believes that a complete settlement of both cases is possible; 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 facilitate resolution of the two cases, and thereby speed the inauguration of new noncommercial educational FM services; and

WHEREAS, WAY-FM is willing to dismiss BPED-19960521MA and to amend BPED-19961112ME in exchange for the consideration and subject to the conditions set forth herein;

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 hereby agree as follows:

1. **Dismissal and Amendment of Applications.** As soon as possible, but in no event later than July 19, 2001 (or such later date as the FCC may designate as the last day for the filing of settlements by mutually exclusive "closed group" applicants for noncommercial educational broadcast stations), WAY-FM shall (a) request that the FCC dismiss BPED-19960521MA with prejudice (the "Dismissal Request"), (b) file an amendment (the "WAY-FM Amendment") to BPED-19961112ME to specify operation on Channel 202 at a new transmitter site that will eliminate mutual exclusivity with (i) an amendment to be filed by EMF to BPED-19961112MF to specify operation on Channel 205 at Cheyenne, Wyoming (the "EMF Amendment") and (ii) an amendment to be filed by PRFR to BPED-19960731MA to reduce power to 3,000 watts at its currently specified site (the "PRFR Amendment"), and (c) take all steps appropriate to prosecute the WAY-FM Amendment and the Dismissal Request in good faith such that the settlements proposed herein may be approved by the FCC at the earliest possible date. CCU acknowledges that the WAY-FM Amendment has been filed and that WAY-FM's obligation to file the WAY-FM Amendment has been fulfilled by such filing.

2. **Consideration.** The consideration for the commitments of CCU and WAY-FM herein shall be as follows:

- A. CCU shall issue to WAY-FM within five (5) days of Final Action a negotiable promissory note in the form attached in the face amount of One Hundred Fifty Thousand Dollars (\$150,000), to bear interest at a rate of nine percent (9%) per annum and shall require equal annual payments over a period of five (5) years, with the first such payment due one year after the date upon which the FCC takes "Final Action," as defined below, granting CCU's Application.
- B. CCU shall issue to WAY-FM within five (5) days of Final Action a second negotiable promissory note in the form attached in the face amount of Eight Hundred Fifty Thousand Dollars (\$850,000), to bear interest at a rate of nine percent (9%) per annum and shall require equal annual payments over a period of five (5) years, with the first such payment due one year after the Final Action, as defined below. Within ninety (90) days of the latter of the grant of BPED-19961112ME to WAY-FM and BPED-19971209M1 (Channel 209, Loveland, Colorado) to CCU, either CCU or WAY-FM shall have the option to elect to require that these facilities be exchanged such that CCU would acquire BPED-19961112ME and WAY-FM would acquire PBED-19971209M1, and upon such election the Second Note will be cancelled and no payments shall be due thereunder. Any necessary consent for such transfer shall

be filed with the FCC within thirty (30) days of the notice to exercise the option and the Parties shall diligently and in good faith take all action necessary to consummate the exchange of ownership of the facilities, including the construction permits and/or licenses, and any assets used or useful in the operation of the stations.

Notwithstanding anything to the contrary in this Agreement, in the event the Commission fails to grant the WAY-FM Amendment, WAY-FM may determine in its sole discretion that the Agreement shall remain in full force and effect. In such event, WAY-FM shall not be required to exchange Channel 205 in Fort Collins for CCU's Channel 209 in Loveland, Colorado but, instead, shall provide consideration of \$25,000. On exercise of the option for the exchange, CCU shall be required to assign Channel 209 in Loveland, Colorado to WAY-FM in exchange for consideration in the amount of \$25,000.

- C. For a period of seven (7) years from the date of such Final Action, WAY-FM shall provide program time for the promotion of CCU and CCU's programs/events. In each such year, CCU may elect one of the following types and amounts of time for the broadcast of programming and announcements produced by CCU, provided, however, that all such programming and announcements shall meet WAY-FM's reasonable standards, consistent with other such material broadcast over the respective outlet:
- (1) 1600 minutes per year to be evenly divided among however many stations of which WAY-FM or its successors is the licensee or holds programming rights (*ie*: if there are ten stations, each station would air 160 minutes); or
 - (2) (a) 800 minutes per year to be evenly divided among however many stations of which WAY-FM or its successors is the licensee or holds programming rights (*ie*: if there are ten stations, each station would air 80 minutes), PLUS (b) 300 minutes per year on Christian Hit Radio Satellite Network, or on such successor national satellite network in which WAY-FM or its successors has a majority ownership or programming interest

3. **Request for FCC Consent.** As soon as possible, but in no event later than July 19, 2001 (or such later date as the FCC may designate as the last day for the filing of settlements by mutually exclusive "closed group" applicants for noncommercial educational broadcast stations), the Parties shall (a) together with EMF file a Joint Request for Approval of Settlement Agreements, as required by Section 73.3525 of the Commission's rules, requesting that the FCC issue an order: (i) approving this Agreement; (ii) approving an agreement between CCU and EMF resolving the mutual exclusivity among their respective applications in group 96054E, (iii) dismissing BPED-19960521MA and BPED-19960926ME and (iv) granting BPED-19960926MD; and (b) together with EMF and PRFR file a Joint Request for Approval of Settlement Agreements requesting that the FCC issue an order (i) approving this Agreement, (ii) approving agreements among CCU and each of EMF and PRFR resolving the mutual exclusivity among their respective applications in group 9607B3, (iii) dismissing BPED-19961112MD with prejudice, (iv) granting BPED-19961112ME as modified by the WAY-FM Amendment, (v) granting BPED-19961112MF as modified by the EMF amendment and waiving, to the extent appropriate, the FCC's community of license coverage requirements with respect to such EMF

Amendment or, if it reasonably appears that approval of the settlement proposed herein is jeopardized as a result of such waiver request and/or EMF Amendment, then dismissing BPED-19961112MF with prejudice, and (vi) granting BPED-19960731MA as modified by the PRFR Amendment. The Parties shall in good faith pursue approval by the FCC of both of the foregoing Joint Requests 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. Neither Party shall take any action adverse to this Agreement or the Joint Requests.

4. **Final Action.** The obligations of the Parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" approving this Agreement and the Joint Requests in their entirety so as to fully resolve the mutual exclusivity in groups 96054E and 9607B3. For purposes of this Agreement, an action by the FCC 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. **Additional Condition.** The obligations of the Parties under this Agreement are expressly conditioned upon CCU's entry into settlement agreements (a) with EMF to resolve 96054E and (b) with EMF and PRFR to resolve 9607B3. If all of such settlement agreements are not reached prior to July 19, 2001 (or such later date as the FCC may designate as the last day for the filing of settlements by mutually exclusive "closed group" applicants for noncommercial educational broadcast stations), then notwithstanding anything herein to the contrary, this Agreement shall become null and void and the Parties shall have no further obligation to each other with respect hereto.

6. **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.

7. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows:

If to CCU:

Colorado Christian University
Attn: Brian Bissell, MBA, Assistant to the President
Colorado Christian University
180 Garrison Street
Lakewood, Colorado 80226

With copy to:

Peter Gutmann, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, NW
Suite 200
Washington, DC 20006

If to WAY-FM:

WAY-FM-FM Media Group, Inc.
Attn: Robert D. Augsburg, President
P. O. Box 367
Monument, Colorado 80132

With copy to:

A Wray Fitch, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive, Seventh Floor
McLean, Virginia 22102

8. **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 both Parties.

9. **Enforcement.** Should the Parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. The Parties recognize 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.

10. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their heirs, successors, executors, legal representatives and assigns.

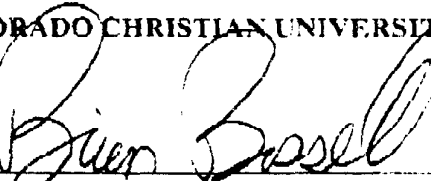
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without application of conflicts of laws principles. The Parties agree to accept the jurisdiction of the courts of the State of Colorado for the resolution of any disputes under 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.

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.

COLORADO CHRISTIAN UNIVERSITY

By: _____



Brian Bissell, Corporate Secretary

WAY-FM-FM MEDIA GROUP, INC.

By: _____

Its: _____

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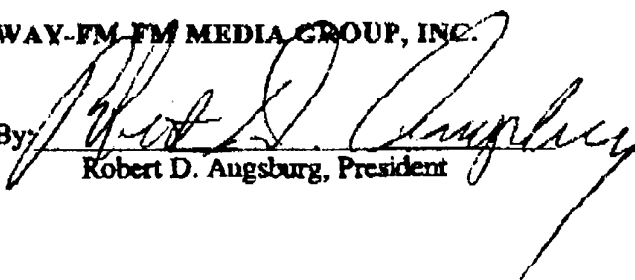
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IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

COLORADO CHRISTIAN UNIVERSITY

By: _____
Its: _____

WAY-FM-FM MEDIA GROUP, INC.

By: 
Robert D. Angsburg, President

AMENDMENT TO SETTLEMENT AGREEMENT

This Amendment is made this 8 day of October 2002 by Colorado Christian University ("CCU") and WAY-FM Media Group, Inc. ("WAY-FM") to that certain Settlement Agreement dated July __, 2001 between CCU and WAY-FM (the "Settlement Agreement").

WHEREAS, the Settlement Agreement provided, among other things, that following certain action by the Federal Communications Commission ("FCC") CCU would issue to WAY-FM a \$150,000 negotiable Promissory Note; and

WHEREAS, the Settlement Agreement further provided that upon the same FCC action CCU would issue to WAY-FM an \$850,000 promissory note, subject to cancellation in the event that the parties agreed to exchange CCU's construction permit for a new FM station on Channel 209 at Loveland, Colorado (FCC File No. BPED-19971209M1) and WAY-FM's construction permit for new FM station KWWY, Fort Collins, Colorado (FCC File No. BPED-19961112ME); and

WHEREAS, the parties have negotiated a discounted cash payment in lieu of the \$150,000 Note which CCU was to have issued to WAY-FM, and have agreed to exchange the foregoing facilities:

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein and in the Settlement Agreement, CCU and WAY-FM hereby agree as follows:

1. In lieu of the \$150,000 Promissory Note provided in Paragraph 2.A of the Settlement Agreement, CCU agrees to pay to WAY-FM the sum of \$125,000 within five (5) business days of execution of this Amendment.
2. As the election to exchange KWWY for BPED-19971209M1 has been made, CCU shall not issue its \$850,000 Promissory Note to WAY-FM.
3. CCU and WAY-FM shall each use their best respective efforts to expeditiously file, prosecute and obtain grant of applications for Commission consent to exchange KWWY and BPED-19971209M1 and, upon receipt of such FCC consent, to expeditiously consummate the transactions reasonably necessary to effect the exchange of such facilities.
4. In all other respects the provisions of the Settlement Agreement shall be unamended and shall remain in full force and effect.
5. This Amendment may be executed in one or more counterparts and shall be binding when it has been executed by each of the parties. When so executed, it shall inure to the benefit of, and be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and assigns.

IN WITNESS WHEREOF, the parties have executed this Amendment, effective as of the date first set forth above.

COLORADO CHRISTIAN UNIVERSITY

By: _____



Brian Bissell, MBA

Vice-President for Business Affairs

WAY-FM MEDIA GROUP, INC.

By: _____

Robert D. Augsburg
President

IN WITNESS WHEREOF, the parties have executed this Amendment, effective as of the date first set forth above.

COLORADO CHRISTIAN UNIVERSITY

By: _____
Brian Bissell, MBA
Vice-President for Business Affairs

WAY-FM MEDIA GROUP, INC.

By: _____
Robert D. Augsburg
President