

SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into as of this 7th day of March, 2002 (the "Effective Date"), by and between K Licensee Inc. ("the Petitioner"), the licensee of a Class A Low Power Television Station, WEBR(CA), Manhattan, New York; Zenon Reynarowych ("Assignor"), the licensee of Low Power Television Station W06BP, New Haven, Connecticut, and the permittee of Low Power Television Station W17CD, Stamford, Connecticut; and it@ Communications, Inc. ("Assignee"), the prospective assignee of W06BP and W17CD (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, Petitioner filed a DTV displacement application with the Federal Communications Commission ("FCC") to make minor changes in the authorization for WEBR(CA) (FCC File No. BPTTL-19991201AAP) ("DTV Displacement Application") pursuant to *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 82-268 (rel. February 23, 1998);

WHEREAS, Assignor and Assignee filed an application with the FCC to assign the W06BP license and the W17CD construction permit (FCC File No. BALTTTL-19991222AAN) ("Assignment Application");

WHEREAS, on February 9, 2000, Petitioner made allegations against Assignor in a Petition to Deny the Assignment Application;

WHEREAS, on March 9, 2000, Assignor denied those allegations and made counter-allegations against Petitioner in an Opposition to the Petition to Deny the Assignment Application;

WHEREAS, Assignor has filed an application with the FCC for a license to cover the W17CD construction permit (FCC File No. BLTTTL-20000316ABF);

WHEREAS, Assignor has filed an application with the FCC for modification of the W17CD construction permit (FCC File No. BMPTTL-20000407ACP);

WHEREAS, Petitioner and Assignor filed a series of joint requests with the FCC on May 2, 2000: (1) requesting suspension of processing of Assignor's application for modification of the W17CD construction permit; (2) requesting suspension of processing of Assignor's application for license to cover the W17CD construction permit; and (3) requesting suspension of processing of Petitioner's DTV Displacement Application;

WHEREAS, on April 12, 2000, Mountain Broadcasting Corporation filed a letter in the DTV Displacement Application proceeding which stated that it reserved the right to comment upon any "ultimate technical proposal made by K Licensee Inc.";

WHEREAS, on May 10, 2000, the Parties jointly filed a request to suspend processing of the Assignment Application; and

WHEREAS, the Parties desire to operate stations WEBR(CA) and W17CD in such a manner that each station may provide maximum service in the public interest.

NOW THEREFORE, in exchange for the consideration of the mutual promises and undertakings contained herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1 ***Amendment to DTV Displacement Application.*** Petitioner shall file with the FCC within ten (10) business days of the Effective Date of this Settlement Agreement an amendment to its DTV Displacement Application reducing the proposed power (ERP) to 10 kW assuming 0.5 degree beam tilt substantially in the form of the amendment in **Exhibit A** hereto ("Amendment").

2 ***Interference Agreement.*** Within five (5) business days of the Effective Date of this Settlement Agreement, Assignor and Assignee shall execute the written "Interference Agreement" (attached hereto as **Exhibit B**) indicating their consent to accept interference to W17CD, if any, from the facilities proposed in Petitioner's DTV Displacement Application (as amended in accordance with the provision set forth above in this Settlement Agreement). Assignor and Assignee hereby authorize Petitioner to submit said Interference Agreement to the FCC as part of the aforementioned Amendment.

3. ***Consideration.*** In consideration of Assignor's and Assignee's execution of the written Interference Agreement, and fulfillment of their respective obligations under this Settlement Agreement, Petitioner shall reimburse Assignor and Assignee for counsel and engineering fees and costs incurred by them in the preparation of the pleadings and documents respecting the Petition to Deny, up to an amount of SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) (the "Reimbursement Funds"), as approved by the FCC. In all cases, payment or deposit of the Reimbursement Funds shall be made in cash, United States currency, or by bankwire or certified or cashier's check. Within five (5) business days of the execution of this Agreement, Petitioner shall pay, deliver and deposit the Reimbursement Funds to Rosenman & Colin, LLP, 805 Fifteenth Street, N.W., 9th Floor, Washington, DC 20005-2212 ("Escrow Agent") which shall serve as the Escrow Agent with respect to the Reimbursement Funds, and shall deposit all the Reimbursement Funds in an interest bearing account at Citibank, a federally insured commercial bank. The timely deposit of the Reimbursement Funds with the Escrow Agent is a material condition of this Agreement. The conduct of the Escrow Agent (as that term is defined in the Escrow Agreement attached hereto as **Exhibit C**) shall be governed by the terms and conditions of the Escrow Agreement attached hereto.

3.1 ***Release of Reimbursement Funds.*** The Escrow Agent will release, disburse, pay and deliver the principal amount of the Reimbursement Funds to Assignee's attorneys, Rosenman & Colin LLP, at their offices, 805 15th Street, N.W., 9th Floor, Washington, DC, 20005-2212, within five (5) business days of the date the FCC Order (or Orders) approving the Settlement Agreement becomes a Final Order. Interest

earned on the deposited funds shall be paid and delivered to Petitioner. The Assignor and Assignee hereby expressly authorize Assignee's attorneys to accept and acknowledge receipt of such payment. Other than the approval of the Settlement Agreement by the FCC, the obligation to pay the Reimbursement Funds to Assignee shall *not* be contingent in any way upon any other event or circumstance, including the grant of Petitioner's DTV Displacement Application.

3.2 ***Final Order.*** A "Final Order" for purposes of this Settlement Agreement means an Order or action of the FCC (or any of its officials acting pursuant to delegated authority) as to which (a) the time for filing a petition for reconsideration, application for review or a court appeal, and the time within which the FCC may review said Order on its own motion, have all expired; (b) no such petition for reconsideration, application for review or court appeal has been timely filed; and (c) the FCC has not reviewed said Order on its own motion; or (d) in the event that any such petition, application or appeal has been filed or such action taken, such petition, application, appeal or action shall have been disposed of and the time for seeking further administrative or judicial review of the Commission's Order shall have expired without any request for such further review having been filed.

4 ***Reply to Opposition.*** Petitioner shall file its Reply to Opposition (attached hereto as Exhibit C), respecting the Assignment Application proceeding, within five (5) business days of the Effective date of this Settlement Agreement.

5 ***Joint Petitions.***

5.1 ***Approval Petition.*** Within five (5) days of the Effective Date of this Settlement Agreement the Parties will file with the FCC a Joint Request for Approval of Settlement Agreement ("Joint Request") seeking: (a) approval of this Settlement Agreement; and (b) approval of the Interference Agreement.

5.2 ***Resumption of Processing.*** The Joint Request also shall ask the FCC to promptly resume processing of and grant (1) Petitioner's DTV Displacement Application; (2) Assignor's application for modification of the W17CD construction permit; (3) Assignor's application for license to cover the W17CD construction permit; and (4) the Assignment Application.

5.3 ***Dismissal Petition.*** With the filing of the Joint Request Petitioner also shall seek dismissal of its Petition to Deny, with prejudice; and grant of the Assignment Application. Upon execution of this Settlement Agreement by the Parties, Petitioner shall deliver to counsel for Assignee, Petitioner's unilateral motion unequivocally requesting that FCC dismiss, with prejudice, the Petition to Deny ("Dismissal Request"), contingent upon the approval of this Settlement Agreement by the FCC. The Parties shall file the Dismissal Request with the FCC concurrently with, but no earlier than, the Joint Request. Petitioner shall prepare the Dismissal Request in a form and in substance that is reasonably acceptable to counsel for Assignee.

6 ***No Consideration Affidavits.*** Pursuant to 47 C.F.R. § 73.3588(a)(5), Petitioner, Assignor and Assignee each shall submit affidavits under penalty of perjury, certifying that none

of the parties has or will pay or receive money or other consideration in exchange for dismissal of the Petition to Deny or this Settlement Agreement other than as provided in this Settlement Agreement. These affidavits will be submitted to the FCC contemporaneously with the request for approval of the dismissal as required by 47 C.F.R. § 73.3588(a).

7 **Assignment.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. No Party shall sell, transfer or assign the license or permit for its station without the express written agreement of the buyer, transferee or assignee to be bound by this Settlement Agreement and the Interference Agreement.

8 **Counterparts.** This Settlement Agreement may be executed in any number of counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

9 **Mutual Cooperation/Non Litigation Covenant.** The Parties agree that this Settlement Agreement is an effort to expedite the processing and grant by the FCC of the applications described above. The Parties hereby represent and agree that they will cooperate in good faith with each other to ensure that the terms of this Settlement Agreement are achieved and will not, now or at any future time, oppose, and will affirmatively support, the Joint Request and all motions, documents, and applications on file or filed with the FCC which are described in this Settlement Agreement.

9.1 **Petitioner's Non Litigation Covenant.** In consideration of the actions and forbearances which are to be undertaken by Assignor in accordance with the terms and conditions of this Settlement Agreement, Petitioner and its Principals hereby agree that, should the FCC (or its delegate) approve this Settlement Agreement and should that approval become a Final Order, each jointly and severally covenants, promises, warrants and agrees that neither Petitioner nor any of its Principals, whether separately, collectively or in any combination whatsoever, will, for three (3) years from the Effective Date hereof, file – or cause, or instigate, or encourage, another individual, group or entity to file – any protest against an application which is filed by Assignor, or by a successor of Assignor which is controlled by Assignor, or by Assignee, its Principals, or any entity which it® Communications, Inc., may control, based on the allegations, direct or indirect, set forth in Petitioner's Petition to Deny, or anything known to Petitioner as of the date of this Settlement Agreement. Notwithstanding the foregoing, Petitioner may take all steps deemed reasonable and necessary in Petitioner's sole discretion, and Petitioner may rely on allegations, direct or indirect, set forth in the Petition to Deny or otherwise known to Petitioner as of the date of this Settlement Agreement, to protect against interference in the authorized service area or the service area proposed in the DTV Displacement Application of WEBR(CA) or the service area of any other station for which Petitioner, its affiliate, or its parent company may hold a valid FCC authorization now or in the future.

9.2 **Assignor's Non Litigation Covenant.** In consideration for the actions of Petitioner, Assignor, and Assignee and its Principals, hereby agree that, should the FCC (or its delegate) approve this Settlement Agreement; and should that approval become a

Final Order, each jointly and severally covenants, promises, warrants and agrees that neither Assignor nor Assignee, or any of its Principals, whether separately, collectively or in any combination whatsoever, will for three (3) years from the Effective Date hereof file, or cause, or instigate, or encourage, another individual, group or entity to file, any protest against an application which is filed by Petitioner, its Principals, or by a successor of Petitioner which is controlled by Petitioner, based on anything in the pleadings filed by the Assignor or Assignee in response to the Petition, or anything known to Assignor or Assignee as of the date of this Settlement Agreement. Notwithstanding the foregoing, but subject to all the terms, conditions and limitations of the Interference Agreement, it® Communications may take all steps reasonable and necessary to protect against interference in the authorized service area of W17CD or any other station for which Assignee may hold a valid FCC authorization now or in the future.

9.3 **Release of Claims.** Moreover, in consideration of the monetary compensation paid by Petitioner, and the other actions and forbearances which are to be undertaken by Assignor, Petitioner and Assignee in accordance with the terms and conditions of this Settlement Agreement (and except for breaches of, or failure to perform under, this Settlement Agreement), the Parties each jointly and severally agree that, should the FCC (or its delegate) approve this Settlement Agreement, and should the grant of the Assignment and the DTV Displacement Application become a Final Order, each shall release the other Party and its Principals and agents from any and all claims, demands, damages, causes of action, or suits of any kind or nature whatsoever, known or unknown, which have developed respecting any FCC applications or permits for held or applied for by the Parties hereto. Each of the undersigned hereby declares that the terms of this paragraph have been completely read and are fully understood and are voluntarily accepted for the purpose of making a full and final settlement of the claims that the Parties or their Principals may have against the other on account of the dispute between the Parties, and for the express purpose of precluding forever, unless otherwise provided herein, any further additional claims arising out of said dispute.

9.4 **Terminology.** For the purposes of this Agreement, the term "Principal" shall mean Assignor or any officer, director or shareholder of Petitioner or of Assignee.

10 **Extension of Agreement.** Should the FCC fail by December 31, 2002, to (i) approve this Settlement Agreement, (ii) grant the applications of Petitioner and Assignor, and (iii) dismiss the Petition to Deny, or should such Order or Orders not have become final by December 31, 2002, then this Settlement Agreement may be extended by mutual written agreement between Petitioner and Assignee.

11 **Confidentiality.** The Parties agree to maintain the confidentiality of the negotiations leading to this Settlement Agreement and, unless and until a Joint Request is filed with the Commission, the terms hereof.

12 **Interpretation.** This Settlement Agreement shall be governed and construed under the laws of the District of Columbia, the Communications Act of 1934, as amended, and the FCC's Rules and Regulations.

13 **Representations.** Except as disclosed below, each party represents to the other Party that (a) it is not under any restrictions, contractual or otherwise, that may be inconsistent with this Settlement Agreement or that would prevent or preclude such Party from entering into this Settlement Agreement or from performing such Party's obligations hereunder; and (b) this Settlement Agreement is a legally binding obligation of such Party and is enforceable against such Party in accordance with its terms.

13.1 **Disclosure.** The Parties acknowledge a certain agreement between Petitioner and the New York Metropolitan Advisory Committee ("NYMAC") dated March 27, 2000 and agree that the representations in clause (a) of Section 13 shall not apply to such agreement.

14 **Notices.** Any notices or other communications shall be in writing unless otherwise stated, and shall be considered to have been duly given when sent by a recognized overnight delivery service or when deposited into United States certified mail, postage paid, return receipt requested, as follows:

(a) If to Assignor, to: Mr. Zenon Reynarowych

.....
.....
.....

with copy to*

.....
.....

.....
.....

Fax:

(b) If to Petitioner, to: Mr. Young D. Kwon
K Licensee, Inc.

136-56 39th Avenue, 4th Floor
Flushing, NY 11354

with copy to*

Julian L. Shepard, Esq.
Venable, Baetjer, Howard &
Civiletti, LLP
1201 New York Avenue, N.W.
Suite 1000
Washington, DC 20005-3917
Fax: 202-962-8300

(c) If to Assignee, to: Mr. Allen Christopher
29 North Main Street
South Norwalk, CT 06854
Fax: 516-626-5502

with copy to*

Howard J. Braun, Esq.
Rosenman & Colin
805 15th Street, N.W., 9th Flr
Washington, DC 20005-2212
Fax: 202-216-4700

*Copies shall not constitute notice
to the Parties under this
Settlement Agreement.

15 **Complete Agreement.** This Settlement Agreement, along with the Interference Agreement, constitutes the entire understanding of the parties respecting the subject matter hereof, and supersedes any prior or contemporaneous written or oral agreements or understandings between them. No modification, amendment or waiver of any provision of this Settlement Agreement, in whole or in part, will be valid unless in writing and signed by the Parties.

16 ***Severability.*** In the event that any part or provision of this Settlement Agreement is found to be invalid, such invalidity shall not affect the enforceability or any other part or provision of this Settlement Agreement, unless the invalidity would cause a material change in the rights or obligations of any Party, in which case the Party or Parties affected may seek to amend the Settlement Agreement or may withdraw from the Settlement Agreement.

17 ***Essence of Time.*** Time is of the essence in this Settlement Agreement.

18 ***Voluntary Undertaking.*** Each of the Parties hereto respectively acknowledges that it is liable for the obligations as set forth in this Settlement Agreement. Each Party further respectively states that this Settlement Agreement has been voluntarily signed in good faith, is a fair and equitable settlement of all controversies and matters that each Party hereto may have with any other Party to this Settlement Agreement. Each Party hereto further respectively states and acknowledges, that it has consulted with and/or has been represented by counsel in connection with the negotiations of the transactions contemplated by this Settlement Agreement and the execution of this document.

19 ***Breach.*** Notwithstanding the above provisions of this Settlement Agreement, nothing herein shall be construed to act to release the Parties hereto and their respective principals from any claims, demands, damages, causes of action or suits of any kind or nature whatsoever, which may arise in the event of a breach of any of the terms, conditions and provisions of this Settlement Agreement, or any agreements incorporated by reference or otherwise herein.

20 ***No Waiver.*** Failure of any Party to complain of any act or omission on the part of any other Party in breach of this Settlement Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by any Party at any time, express or implied, of any breach of any provision of this Settlement Agreement shall be deemed a waiver of any other provision of this Settlement Agreement or a consent to any subsequent breach of the same or other provisions.

21 ***Compromise; No Admission.*** This Settlement Agreement is the result of a compromise and shall never, at any time or for any purpose, be considered an admission of liability or responsibility on the part of any Party herein released. Each Party hereto further respectively acknowledges and agrees that nothing contained herein may be or is to be construed as an admission by any Party hereto, or any of their affiliates, that they have engaged in any wrongdoing or any unlawful conduct.

22 ***Expenses.*** The Parties hereto acknowledge and agree that, except as provided in Section 3, and its subparts, of this Settlement Agreement, each of them shall bear the cost, expenses and attorneys' fees arising out of or connected with this Settlement Agreement, including the negotiation, drafting and execution of this Settlement Agreement and all matters arising out of or connected therewith; except that in the event any action is brought by either party to enforce this Settlement Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to all other relief in law or equity to which that party may be entitled.

23 **Construction.** This Settlement Agreement is the product of negotiation and preparation by, between and among the Parties hereto and their respective attorneys. Accordingly, the Parties hereto acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one Party or another, or the attorneys for one Party or another, and shall be construed accordingly.

24 **Good Standing.** Each corporate Party hereto is duly organized, validly existing and in good standing under the laws of its state of organization and, as applicable, the state or commonwealth of their incorporation or organization, and has full power and authority to carry on the business now being conducted by it.

24.1 **Authorization.** Each Party hereto has full power and authority to enter into this Settlement Agreement; and the execution, delivery and consummation of this Settlement Agreement have been duly authorized by all necessary action on its part. This Settlement Agreement constitutes a valid and binding obligation of each of the Parties hereto.

24.2 **Competency.** Each of the signatories hereto represents that he is competent and authorized to enter into this Settlement Agreement on behalf of the Party for whom he purports to sign; and each agrees to indemnify and hold harmless each other Party hereto against all claims, suits, actions and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, in which it may be asserted that he was not competent or so authorized to execute this Settlement Agreement and to receive the consideration therefor.

25 **Covenant of Further Assurances.** As of the Effective Date, each of the parties hereto, upon the commercially reasonable request of any other party hereto, in good faith agrees and shall take such other action and execute and deliver such further instruments or documents reasonably necessary to assure, complete and evidence the full and effective compliance with the intent and tenor of this Agreement.

26 **Explication.** Unless the context of this Settlement Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any genera include any other gender, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Settlement Agreement refer to this Settlement Agreement as a whole and not to any particular provision of this Settlement Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Settlement Agreement, unless otherwise specified. Any reference in or to this Settlement Agreement or any of the Ancillary Agreement includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

27 **Schedules and Exhibits.** All schedules, exhibits and riders attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. For the purposes of this Agreement, exhibits shall be public documents; and schedules shall be proprietary, and not routinely available for public review.

28 *Listing of Exhibits and Schedules.*

<u>EXHIBIT</u>	<u>DESCRIPTION</u>	<u>SECTION REFERENCE</u>
A	Amendment to Petitioner's DTV Displacement Application reducing the proposed ERP to 10 kW assuming 0.5 degree beam tilt	1
B	Interference Agreement	2
C	Escrow Agreement	3
D	Joint Request for Approval of Settlement Agreement	3

[THIS SPACE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE IS NEXT]

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the dates below.

K LICENSEE INC.

By: _____
Young D. Kwon
President

Date: _____

ZENON REYNAROWYCH


Zenon Reynarowych

Date: 01/08/02

IT COMMUNICATIONS, INC.

By: _____
Allen Christopher
President

Date: _____

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the dates below.

K LICENSEE INC.

By: _____
Young D. Kwon
President


Date: _____

ZENON REYNAROWYCH

Zenon Reynarowych

Date: _____

IT COMMUNICATIONS, INC.

By: _____
Allen Christopher
President

Date: 12/31/01