

ORIGINAL

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

FILED
3/4/13
mw

In re Applications of)

HAYDEN CHRISTIAN
BROADCASTING CORPORATION
Hayden, Idaho)

) File No. BNPL-20010119ADW
) Facility ID #132087

LAKE CITY LIGHTHOUSE, INC.
Lake City, Idaho)

) File No. BNPL-20010122AGW
) Facility ID #132369

For a Construction Permit for a
New Low Power FM Station)

FILED/ACCEPTED

FEB 28 2013

TO: The Secretary
ATTN: Chief, Audio Division
Media Bureau

Federal Communications Commission
Office of the Secretary

**JOINT REQUEST FOR RECONSIDERATION AND
APPROVAL OF SETTLEMENT AGREEMENT**

Hayden Christian Broadcasting Corporation ("HCBC") and Lake City Lighthouse, Inc. ("LCL"), by their respective counsel and pursuant to Sections 1.106(c) and 73.3525 of the FCC's rules, hereby jointly request reconsideration of the decision in *Lake City Lighthouse, Inc.*, DA 13-113 (M.B., released January 29, 2013), through which grant of LCL's captioned application was affirmed, and approval of the attached Settlement Agreement, which is intended to resolve the conflict between the parties' mutually-exclusive applications.

This petition is timely filed and otherwise consistent with Commission procedures. The grant of LCL's application is not yet final because it is subject to requests for reconsideration or review through February 28, 2013, the 30th day after the release of *Lake City Lighthouse, Inc.* *supra*. Thus, HCBC's application is still pending and eligible for disposition through a

settlement. Further, this request qualifies for treatment under Section 1.106(c) by virtue of the new facts presented by the attached Settlement Agreement.

HCBC has an application pending for a new LPFM station at Hayden, Idaho, to operate on Channel 295. LCL has an application pending for a new LPFM at an area designated as Lake City, Idaho, also to operate on Channel 295. The applications are mutually exclusive and cannot both be granted without causing interference.

The parties have agreed to resolve their conflict by way a settlement pursuant to the attached Settlement Agreement. LCL has agreed to dismiss its application in exchange for reimbursement from HCBC for its legitimate and prudent expenses incurred in the preparation and prosecution of its application, not to exceed \$5,000.00, or such lesser amount as the FCC may approve.

The certifications required by Section 73.3525 of the Commission's rules are incorporated into the final paragraph of the Settlement Agreement.

The dismissal of LCL's application removes it as an impediment to the grant of HCBC's application. Approval of this Settlement Agreement will be in the public interest because it will conserve the resources of the parties and of the Commission, and it will foster the sooner inauguration of new LPFM services to the community of Hayden, Idaho.

Wherefore, the parties respectfully urge the Commission to reconsider grant of the LCL application, approve the accompanying Settlement Agreement, dismiss with prejudice LCL's application, and to grant HCBC's application.

Respectfully submitted,

HAYDEN CHRISTIAN BROADCASTING
CORPORATION

By: Donald E. Martin
Donald E. Martin *by him*

DONALD E. MARTIN, P.C.
P.O. Box 8433
Falls Church, Virginia 22041
703-642-2344

Its Attorney

LAKE CITY LIGHTHOUSE, INC.

By: Harry C. Martin
Harry C. Martin

FLETCHER HEALD & HILDRETH
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
703-812-0400

Its Attorney

February 27, 2013

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 27th day of February, 2013, by and between Hayden Christian Broadcasting Corporation ("HCBC"), and Lake City Lighthouse, Inc. ("LCL"), collectively referred to as the Parties.

WITNESSETH:

WHEREAS, HCBC has pending before the Federal Communications Commission ("FCC" or the "Commission") an application for a new low power FM ("LPFM") station on Channel 295 at Hayden, Idaho (File No. BNPL-20010119ADW); and

WHEREAS, LCL also has pending before the Commission an application for a new LPFM station on Channel 295 at Lake City, Idaho (File No. 20010122AGW); and

WHEREAS, the Applications are mutually exclusive with each other, and cannot both be granted by the FCC without interference; and

WHEREAS, the FCC has granted LCL's application, but that grant is not final because HCBC timely filed a Petition for Reconsideration of the Commission's action in granting LCL's application; and

WHEREAS, the Commission's Media Bureau has denied HCBC's Petition for Reconsideration in *Lake City Lighthouse, Inc.*, DA 13-113, released January 29, 2013, but that action is not yet final; and

WHEREAS, the Parties believe that settlement upon the terms set forth in this Agreement will serve the public interest in that it will resolve this pending proceeding before the Commission and thereby conserve the resources of the parties and of the Commission, and accelerate the inauguration of new LPFM service to the public;

NOW THEREFORE, in consideration of the mutual covenants, conditions, representations and warranties contained herein, the Parties hereby agree as follows:

1. **Dismissal of LCL Application.** LCL agrees to request the dismissal with prejudice of its application. Such request shall be filed on or before the date on which this Settlement Agreement is submitted to the FCC for its approval.

2. **Monetary Consideration for LCL's Dismissal.** In exchange for LCL's request to dismiss its application, HCBC agrees to reimburse LCL for its legitimate and prudent expenses incurred in the preparation and prosecution of its application, but not exceeding Five Thousand Dollars (\$5,000.00), or such lesser amount as the Commission may approve. Such payment will be made by check or wire transfer to Fletcher, Heald & Hildreth, PLC within five (5) business days after approval of HCBC's application.

3. **Request for FCC Consent.** As soon as possible, but in no event later than February 28, 2013, the Parties shall file a Joint Request for Approval of Settlement Agreement as required by Section 73.3525 of the Commission's rules, requesting that the FCC issue an order or orders: (a) granting the Joint Request; (b) approving this Settlement Agreement; (c) dismissing LCL's application with prejudice, and granting HCBC's application.

4. **FCC Consent.** This Agreement is entered into subject to approval by the Commission, and shall be void unless the Commission shall approve it. Should the Commission refuse to approve this Agreement, then the Parties hereby agree that they will immediately make good faith efforts to resolve each Commission objection in order to obtain Commission approval. In the event that the Commission has not approved this Agreement within two years from the date hereof, then either Party hereto, upon written notice to the other, may terminate this Agreement. HBHC shall not be obligated to pay the consideration to LCL until the FCC's order or orders approving this Settlement Agreement, dismissing LCL's application and granting HBHC's application shall have become final. An FCC order is considered final when it is no longer subject to administrative or judicial appeal or reconsideration, and no unresolved request for such appeal or reconsideration is pending.

5. **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.

6. **Further Assurances.** The Parties covenant to cooperate with each other and with the FCC to accomplish the objectives of this Agreement, including the submission of amendments and/or additional filings as may be requested by the Commission or as may be reasonably necessary to effectuate this Agreement; and to refrain from opposing or taking any adverse action with respect to each other's application or such amendments and filings submitted by the other Party to this Agreement.

7. **Notice.** 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 HCBC:

Hayden Christian Broadcasting Corporation
P.O. Box 2197
Hayden, Idaho 83835

With a copy (which shall not constitute notice) to:

Donald E. Martin, Esq.
P.O. Box 8433
Falls Church, Virginia 22041

If to LCL:

Lake City Lighthouse, Inc.
510 Best Avenue
P.O. Box 2790
Coeur d'Alene, Idaho 83816

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.** The Parties recognize that this Agreement confers unique benefits, 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 Idaho without application of conflicts of law principles adopted by that jurisdiction. The Parties agree that any action arising out of a dispute under this Agreement must be brought in the state or Federal courts having jurisdiction over Coeur d'Alene, Idaho and the Parties hereby accept the jurisdiction of those courts for the resolution of any disputes under this Agreement not preempted by the Federal Communications Commission.

12. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

13. **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.

14. **Certifications.** By execution of this Agreement, each Party hereby certifies under the penalty of perjury that the following statements are true with respect to itself as required by Section 73.3525 of the FCC's rules:

- A. Its application was not filed for the purpose of entering into or implementing this or any other settlement agreement.
- B. Neither the Applicant nor any of its principals has received, been promised, paid or promised to pay consideration of any type, including merger of interests, except as set forth in this Agreement.
- C. Approval of this Settlement Agreement would serve the public interest because it would conserve the resources of the Parties and of the Commission, and it would allow the sooner initiation of a new LPFM service for the community of Hayden, Idaho.

IN WITNESS WHEREOF, and intending to be legally bound, 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.


Dan Cole 2/26/13
By: Dan Cole
Title: Board Member
Hayden Christian Broadcasting Corporation

By:
Title:
Lake City Lighthouse, Inc.

- A. Its application was not filed for the purpose of entering into or implementing this or any other settlement agreement.
- B. Neither the Applicant nor any of its principals has received, been promised, paid or promised to pay consideration of any type, including merger of interests, except as set forth in this Agreement.
- C. Approval of this Settlement Agreement would serve the public interest because it would conserve the resources of the Parties and of the Commission, and it would allow the sooner initiation of a new LPFM service for the community of Hayden, Idaho.

IN WITNESS WHEREOF, and intending to be legally bound, 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.

By:
Title:
Hayden Christian Broadcasting Corporation


By: Ken Smith
Title: Pastor
Lake City Lighthouse, Inc.