

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made this \_\_\_ day of July, 2001, by and between EDUCATIONAL MEDIA FOUNDATION ("EMF"), PACIFIC LUTHERAN UNIVERSITY, INC. ("PLU"), and WESTERN WASHINGTON UNIVERSITY ("WWU") (collectively, the "Parties").

WHEREAS, EMF and PLU have applied to the Federal Communications Commission (the "FCC" or "Commission") for authority to construct new FM noncommercial broadcast stations in a number of communities and WWU has applied to the FCC for authority to modify Station KUGS(FM), Bellingham, Washington (each an "Application", collectively the "Applications");

WHEREAS, the FCC has announced a number of groups (each an "MX Group") of mutually exclusive applicants in which the applications within each group cannot all be granted;

WHEREAS, in a number of instances and in the case of MX Group 980811, the Applications of the Parties are mutually exclusive and the Applications of only one of these parties may be granted by the FCC;

WHEREAS, there are other timely filed applications which are also mutually exclusive with some of the Applications, and settlements with those parties are being negotiated by EMF;

WHEREAS, the FCC has announced a number of groups (each an "MX Group") of mutually exclusive applicants in which the applications within each group cannot all be granted;

WHEREAS, the commitments set forth in this Agreement will result in a universal settlement of MX Group 980811 and contribute to the settlement of other MX Groups;

WHEREAS, the Parties believe that this Agreement will be in the public interest in that it will assist in the resolution of the pending proceedings before the Commission, and thereby speed the inauguration of new FM noncommercial broadcast service; and

WHEREAS, the obligations of the Parties hereunder are subject to the prior approval of the Commission and the conditions 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 to this Agreement hereby agree as follows:

1. PLU agrees to do the following:

(a) PLU shall request that the FCC dismiss its Application for a new noncommercial educational FM station at Hammond, Oregon (FCC File No. BPED-19990610ME), contingent upon the issuance by the FCC of a Final Order (defined below)

19990610ME), contingent upon the issuance by the FCC of a Final Order (defined below) approving this Agreement in its entirety and granting the Parties' Joint Petitions (defined below).

(b) PLU shall amend its Application for a new noncommercial educational FM station at Warrenton, Oregon (FCC File No. BPED-19990610MD) (the "Warrenton Station") to specify operation on Channel 215 from the same transmitter site as KMUN(FM), Astoria, Oregon, at an effective radiated power of approximately 8 watts. **The PLU amendment shall eliminate mutual exclusivity with the application of World Radio Network, Inc. ("World") for a new noncommercial educational FM station at Astoria, Oregon (FCC File No. BPED-19990104ME), as amended to specify operation at or near the transmitter site of KAST-FM, Astoria, Oregon, at an effective radiated power of approximately 48 watts.**

(c) PLU shall enter into an agreement with EMF to sell, assign, transfer and convey to EMF the licenses, the tower lease agreement, and the equipment held by PLU and used in connection with the operation of FM translator station K215DP, Port Angeles, Washington (the "Port Angeles Translator") and such agreement shall contain customary terms, including a representation by PLU to EMF that (i) it has all necessary power and authority to transfer the Port Angeles Translator, (ii) the assets to be transferred by it are, or at the Closing will be, held free and clear of liens and encumbrances, and will be transferred to EMF free and clear of all liens and encumbrances; (iii) it will use commercially reasonable efforts to obtain all necessary consents to the transfer of any tower leases prior to the effectuation of this Agreement; and (iv) the equipment used in connection with the operation of the Port Angeles Translator is operating in compliance with its FCC license and is in good repair, maintained in accordance with customary industry standards (the "Translator Sale Agreement"). PLU will, within 30 days of the date of this Settlement Agreement, provide to EMF (i) a true and correct list of the equipment to be transferred in connection with the Translator Sale Agreement; and (ii) a true and complete copy of the lease agreement for the tower space used by the Port Angeles Translator.

(d) PLU shall reimburse EMF the sum of Twenty-Five Thousand Dollars (\$25,000) as consideration to secure the dismissal of the application of Catholic Broadcasting Northwest, Inc. ("Catholic") for a new noncommercial educational FM station at Astoria, Oregon (FCC File No. BPED-19990714MD) within ten (10) business days of the later to occur of: (1) the FCC's issuance of a Final Order, as defined below, dismissing Catholic's Astoria application; or (2) the FCC's issuance of a Final Order, as defined below, granting PLU's Port Angeles Application, but such payment shall only be due in the event that EMF provides PLU with adequate documentation of Catholic's receipt of such payment.

(e) PLU shall enter into an agreement with the Tillicum Foundation ("Tillicum"), the applicant for a new noncommercial educational FM station at Astoria, Oregon (BPED-19990806MA), granting Tillicum an option to acquire the Warrenton Station,

provided that the FCC grants the Warrenton Application. **Such option shall be on terms similar to those on which the Tillicum Foundation ("Tillicum"), applicant for a new noncommercial educational FM station at Astoria, Oregon (BPED-19990806MA), (the "Tillicum Station"), grants an option to EMF to acquire the Tillicum Station or on other terms reasonably acceptable to PLU and Tillicum. PLU shall enter into this agreement within thirty (30) days of the filing of the Joint Petitions (defined below).**

(f) PLU shall prepare a technical amendment to PLU's Port Angeles application (BPED-19980813ME) that shall resolve the mutual exclusivity with WWU's Bellingham, Washington (BPED-19990318ME) application. The amendment shall be mutually agreeable to PLU and WWU and shall comply with all technical requirements of the FCC.

**The request for dismissal of the Hammond Application and the amendment to the Warrenton Application shall be submitted to the FCC on or before July 19, 2001.**

2. Provided that the conditions set forth in paragraph (1)(f) are satisfied, WWU agrees to take such other steps as are necessary to effectuate this Settlement Agreement.

3. In consideration of PLU's and WWU's actions set forth in Paragraphs 1 and 2 above, **on or before July 19, 2001**, EMF shall request that the FCC dismiss its Application for a new noncommercial educational FM station at Sequim, Washington (FCC File No. BPED-19990319MG) contingent upon the issuance by the FCC of a Final Order (defined below) approving this Agreement in its entirety and granting the Parties' Joint Petitions (defined below). As further consideration, EMF shall secure the amendment of World's Astoria application so as to eliminate mutual exclusivity with and permit grant of PLU's Warrenton Application **as amended and to leave sufficient clearance for PLU to upgrade the Warrenton Station without causing interference to the facilities specified in World's Astoria application as amended**, and EMF shall secure the dismissal of the application for a new noncommercial educational FM station in Rainer, Oregon (FCC File No. BPED-19990104MQ) in MX Group 980702, which is necessary for grant of PLU's Warrenton Application. **EMF reserves the right to file an amendment to its Application for a new noncommercial educational FM station at Rockaway Beach, Oregon (BPED-19990719MK) to specify a new tower site, which amendment shall not cause prohibited interference to PLU's Warrenton Station.**

4. The Parties, along with all other parties in each MX Group, will file Joint Petitions (each a "Joint Petition") with the Commission pursuant to Section 73.3525 of the Commission's Rules on or before July 19, 2001, which request, among other things, that the Mass Media Bureau:

(a) approve those portions of this Agreement relevant to the particular MX Group;

(b) dismiss PLU's Hammond Application and EMF's Sequim Application with prejudice; and

(c) grant the other applications of EMF, WWU, PLU, and such other parties whose applications are to be granted pursuant to the Settlement Agreements filed in that MX Group.

The Parties shall file with each Joint Petition a copy of this Agreement together with all supporting documentation required by Section 73.3525 of the Commission's Rules.

5. PLU and EMF will also file, within ten days after the Translator Sale Agreement is executed, an appropriate application with the FCC seeking approval for the agreement for transfer of the Port Angeles Translator to EMF. No consideration other than the promises made herein will be provided by EMF for the Port Angeles Translator.

6. PLU recognizes that this Agreement is expressly conditioned on EMF's entry into agreements with the other mutually exclusive applicants. If an agreement is not reached with each of the other parties who timely filed mutually exclusive applications prior to July 19, 2001, this Agreement shall become null and void. Once those agreements have been reached, the Parties agree to pursue in good faith the agreements made herein and to take all reasonable actions necessary or appropriate to implement the provisions of this Agreement.

7. Recognizing that this Agreement is expressly subject to the prior consent of the Commission and the need for Commission approval prior to its consummation, EMF and PLU shall cooperate with each other and with the Commission by expeditiously providing to each other or to the Commission, or both, all additional information that may be necessary or appropriate to comply with Section 73.3525 of the Commission's Rules. The Parties agree to provide the Commission in a timely manner with such information as it reasonably requests. The Parties further agree to use their best efforts in the preparation and filing of all Commission applications and related documents that may be necessary or appropriate to reach the results contemplated by Paragraphs 1 and 2 of this Agreement. Each party shall bear its own expenses for the preparation of this Agreement and all supporting documents.

8. The closing of the agreement for the transfer of the Port Angeles Translator to EMF (the "Closing") shall be held on a date mutually agreed upon by PLU and EMF within fourteen (14) days following the date on which the station specified in PLU's Application for a new noncommercial educational FM broadcast station in Port Angeles, Washington (FCC File No. BPED-19990318ME) (the "Port Angeles Station") commences operation pursuant to program test authority, so long as the FCC has granted its consent to the assignment of the Port Angeles Translator's FCC Authorizations to EMF by that time. If the FCC has not granted its consent by the time the Port Angeles Station commences operations pursuant to program test authority, the Closing shall occur fourteen (14) days following the date on which the FCC grant of its consent to the assignment of the Port Angeles Translator's FCC Authorizations to Buyer becomes a Final Order. A Final Order shall be an order of the FCC no longer subject to administrative or judicial review, reconsideration or appeal. Should the Commission deny the

Joint Petitions or any EMF or PLU Application to be granted hereunder, or should the Agreement otherwise be terminated before the Joint Petitions are approved, without there having been a breach hereof, the agreement for transfer of the Port Angeles Translator shall also be terminated. Each party agrees to negotiate in good faith the Translator Sale Agreement and to execute such documents as are necessary to complete the Translator Sale Agreement, and take such steps and obtain such consents as are necessary or required to complete the agreement in the manner set forth above.

9. Except as set forth above, this Agreement is the only agreement between the Parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof and cannot be amended or modified except by an instrument in writing signed by the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, and assigns. Each party warrants to the other that it has full power and authority to enter into this Agreement, and to perform its obligations hereunder. The Parties further represent and warrant that they are not under any restrictions, contractual or otherwise, which prevent or preclude them from entering into this Agreement and from carrying out their obligations hereunder.

10. The Parties agree that this Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument. This Agreement shall be effective upon the delivery of facsimile signatures.

11. This Agreement shall be construed under the laws of the State of Washington.

12. The Parties agree that the benefits conferred on the Parties under this Agreement and on EMF under the agreement for the transfer of the Port Angeles Translator are unique, and that monetary damages for the breach would be difficult or impossible to quantify. Therefore, the Parties stipulate that specific performance shall be appropriate as a remedy for breach of this Agreement or for failure to close on the transfer of the Port Angeles Translator, in addition to other legal or equitable remedies available under this Agreement or under the laws of the State of Washington. In addition to any other remedy that may be ordered by any court in connection with any litigation hereunder, the prevailing party shall also be entitled to the recovery of its reasonable costs and expenses in prosecuting such action, including reasonable attorney's fees.

13. A notice, request, statement or other communication to be given hereunder will be in writing and will be sent by first-class mail, postage prepaid to the party as follows:

If to EMF:

Joe Miller  
Educational Media Foundation  
1425 North Market Blvd.  
Suite 9E  
Sacramento, CA 95834

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

David D. Oxenford, Esq.  
Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037

If to PLU.:

Kerry Swanson  
Station KPLU  
121st and Park Avenue, South  
Pacific Lutheran University  
Tacoma, WA 98447-0003

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

Margaret L. Miller, Esq.  
Dow Lohnes & Albertson, P.L.L.C.  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036-6802

If to WWU:

Kevin Majkut  
Viking Union  
Western Washington University  
Bellingham, Washington 98225

With a copy to:

John Crigler  
Garvey, Schubert & Barer  
1000 Potomac Street, NW, 5<sup>th</sup> Floor  
Washington, DC 20007

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.

**EDUCATIONAL MEDIA FOUNDATION**



Name: *Richard Jenkins*  
Title: *President*

Date: *JULY 18*, 2001

**PACIFIC LUTHERAN UNIVERSITY, INC.**

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2001

**WESTERN WASHINGTON UNIVERSITY**

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2001

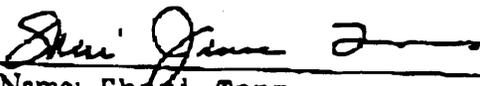
IN WITNESS WHEREOF, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.

**EDUCATIONAL MEDIA FOUNDATION**

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2001

**PACIFIC LUTHERAN UNIVERSITY, INC.**

  
\_\_\_\_\_  
Name: Sheri Tonn  
Title: Vice President of Finance & Operation

Date: 7-18, 2001

**WESTERN WASHINGTON UNIVERSITY**

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2001

IN WITNESS WHEREOF, the Parties have affixed their signatures to this Agreement on the date(s) indicated below.

**EDUCATIONAL MEDIA FOUNDATION**

\_\_\_\_\_  
Name:  
Title:

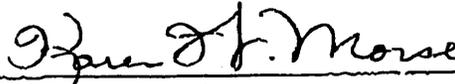
Date: \_\_\_\_\_, 2001

**PACIFIC LUTHERAN UNIVERSITY, INC.**

\_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_, 2001

**WESTERN WASHINGTON UNIVERSITY**

  
\_\_\_\_\_  
Name: Karen W. Morse  
Title: President

Date: July 18, 2001