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COUNSEL

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E-MAIL ADDRESS: [gsmithwick@fccworld.com](mailto:gsmithwick@fccworld.com)

October 24, 2017

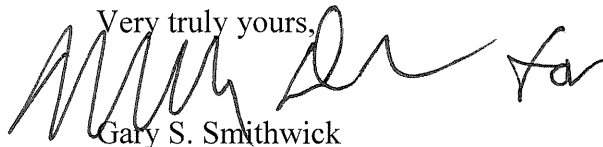
Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

Re: **Joint Request for Approval of Settlement Agreement**  
MX Group #31 (*Public Notice* DA 17-935, released September 28, 2017)

Dear Ms. Dortch:

Transmitted herewith, in triplicate, is a Joint Request for Approval of Settlement Agreement relative to MX Group #31 listed on Attachment A to Public Notice, *Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 99*, DA 17-935, released September 28, 2017. This request concerns applications filed by Saga Communications of New England, LLC (File No. BNPFT-20170726AMU; Facility ID No. 200011), and Port Broadcasting, LLC (File No. BNPFT-20170731ACY; Facility ID No. 201465). The applications are for a New FM Translator Station on Channel 228 at Biddeford, Maine.

If any question arises in connection with this request, please contact undersigned counsel or Allan G. Moskowitz, Esq., counsel for Port Broadcasting, LLC (301) 908-4165.

Very truly yours,  


Gary S. Smithwick

**Counsel for**

**Saga Communications of New England, LLC**

GSS/sls  
Enclosure

cc: Mr. Robert Gates, Audio Division, Media Bureau via email – [Robert.gates@fcc.gov](mailto:Robert.gates@fcc.gov)  
Allan G. Moskowitz, Esq. – [amoskowitz@amoskowitzlaw.com](mailto:amoskowitz@amoskowitzlaw.com)

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

In re Short-Form MX Group #31

Applications of

**SAGA COMMUNICATIONS OF  
NEW ENGLAND, LLC**

For

New FM Translator on Channel 228 at Biddeford, Maine

**PORT BROADCASTING, LLC**

For

New FM Translator on Channel 228 at Biddeford, Maine

)  
)  
)  
) FCC File No. BNPFT-20170726AMU  
) (Facility ID No. 200011)  
)  
)  
) FCC File No. BNPFT-20170731ACY  
) (Facility ID No. 201465)  
)

To: Office of the Secretary  
Attn: James D. Bradshaw, Deputy Chief  
Audio Division, Media Bureau

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

Saga Communications of New England, LLC (“Saga”) and Port Broadcasting, LLC (“Port”) by their respective attorneys, pursuant to Section 73.3525(a) of the Commission’s rules and Public Notice (*Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 99*, DA 17-935, released September 28, 2017 (the “*Public Notice*”), hereby request Commission approval of the attached Settlement Agreement. The Settlement Agreement will result in the elimination of mutual exclusivity between the applications in MX Group 31 by the amendment of the Port application with the result that the Saga application and the Port Application will become singletons.

Saga and Port jointly request that the Commission:

- Grant this Joint Request for Approval of Settlement Agreement and approve the settlement as proposed in the attached Settlement Agreement;
- Accept the amendment to Port's engineering proposal being filed today by Port to change the operating channel from 228 to 282; and
- Announce a window for the filing of the completed long form applications for the remaining singleton applications in MX Group #31.

In support of this Joint Request, the following is submitted:

1. The **Attachment** to this Joint Request is a copy of the Settlement Agreement by and between Saga and Port, reciting the above-requested actions and detailing the consideration being exchanged, which consists exclusively of the reimbursement of Port by Saga of Port's legitimate and prudent expenses. As no other consideration is being exchanged, the Settlement Agreement is in compliance with the requirements of Section 73.3525(a) of the Commission's rules and the *Public Notice*.

2. Each of the parties declares under penalty of perjury in **Schedule A to the Attachment**, as required by Section 73.3525(a) of the Commission's rules, that: (1) none of its filings were filed for the purpose of carrying out a settlement agreement; (2) neither party has paid, promised to pay, nor received or been promised the receipt of any consideration in connection with the Settlement Agreement except as specifically set forth in the Settlement Agreement; and (3) the FCC's approval of the Settlement Agreement would be in the public interest as it would allow for the prospect of a prompt initiation of service to the public from two new FM translator stations. **Schedule B to the Attachment** is an itemization of Port's expenses.

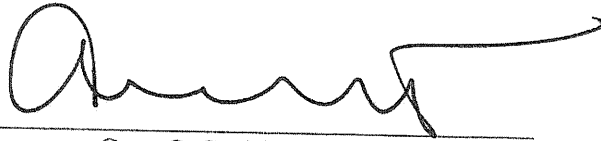
3. Saga and Port submit that a grant of this Joint Request would serve the public interest by conserving the resources of parties and the Commission, facilitate the resolution of MX Group #31, and speed the initiation of new FM translator broadcast service to the Biddeford, Maine, area. Accordingly, prompt action on this Joint Request is respectfully requested.

**WHEREFORE**, for the reasons above, Saga and Port respectfully request approval of this Joint Request, designation of the surviving applications in MX Group 31 as singletons, and the opening of a filing window for the singleton FCC Form 349 long-form applications.

Respectfully submitted,

**SAGA COMMUNICATIONS  
OF NEW ENGLAND, LLC**

By: \_\_\_\_\_

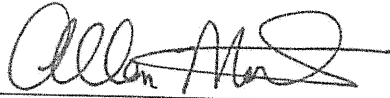


Gary S. Smithwick  
Its Attorney

Smithwick & Belendiuk, PC  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, DC 20016  
(202) 363-4560

**PORT BROADCASTING, LLC**

By: \_\_\_\_\_



Allan Moskowitz  
Its Attorney

10845 Tuckahoe Way  
North Potomac, MD 20878  
(301) 908-4165

October 24, 2017

ATTACHMENT

**SETTLEMENT AGREEMENT**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement") is entered into effective the \_\_\_\_ day of October, 2017, by and between Saga Communications of New England, LLC ("Saga") and Port Broadcasting, LLC ("Port").

**WHEREAS**, on July 26, 2017, Saga filed with the Federal Communications Commission ("FCC") an engineering proposal, FCC File No. BNPFT-20170726AMU ("Saga Application") and on July 31, 2017, Port filed an engineering proposal, FCC File No. BNPFT-20170731ACY ("Port Application") pursuant to the FCC's Public Notice, *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26-August 2, 2017*, 32 FCC Rcd 4663 (MB/WTB 2017) as the first stage in seeking a construction permit for a new FM translator at Biddeford, Maine, on FM Channel 228;

**WHEREAS**, on September 28, 2017, the FCC released a further Public Notice, *Settlement Period Announced for Cross-Service FM Translator Mutually Exclusive Applications for Auction 99*, DA 17-935. "Attachment A" thereto listed the Saga Application and the Port Application as mutually exclusive in Group 31; and

**WHEREAS**, Saga and Port desire to resolve the mutually exclusive condition through this Settlement Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Modification of Port Application.** Within 5 days following execution of this Settlement Agreement, Port will amend the Port Application to specify a channel 54 channels removed from Channel 228 which will not be mutually exclusive with the Saga Application.
2. **Consideration for Amendment.** In consideration for Port's amendment of the Port Application, Saga agrees to pay Port its legitimate and prudent expenses for preparing and filing the Port Application, in the amount of **\$4,975.00** ("Settlement Amount") subject to Port's submission of affidavits required by Section 73.3525(a) of the FCC's Rules and approval of the FCC. Simultaneous with the execution of this Settlement Agreement, Saga shall deposit an amount equal to the Settlement Amount in a trust account to be held by Port's attorney, Allan Moskowitz, Esq. ("Escrow Agent"). Escrow Agent shall release the Settlement Amount to Port upon written approval of the Settlement Agreement by the FCC. No other monetary consideration will be provided to any other party.
3. **No Opposition.** Upon Port's receipt of the Settlement Amount, Port agrees not to file, nor publicly oppose, nor assist in any way with the research, preparation or filing of, any petition to deny, informal objection or similar opposition at the FCC or any similar or successor governmental agency against any application filed by Saga associated with the Saga Application.

4. **Request for FCC Consent.**

(a) The parties hereto agree to file, within five (5) business days from the date hereof, a Joint Request for Approval of Settlement Agreement (the “Joint Request”) in the form required by Section 73.3525 of the Commission’s Rules, requesting that the FCC issue an order granting the Joint Request.

(b) The parties hereto shall in good faith pursue approval by the FCC of the Joint Request 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 Settlement Agreement. No party hereto shall take any action adverse to this Settlement Agreement or the Joint Request.

(c) Attached hereto as *Schedule A* are certifications from Saga and Port that neither such party, nor any of its principals, has received or will receive any money or other consideration (other than as herein provided) in exchange for the amendment of the Port Application.

(d) Attached hereto as *Schedule B* is an itemized accounting of the expenses for which Port seeks reimbursement.

5. **Authorization and Binding Obligation.** Each party hereto represents to each other party that such party each has the power and authority to enter into and carry out this Settlement Agreement and that this Settlement Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

6. **Confidentiality.** The parties shall keep the terms of this Settlement Agreement confidential and shall not disclose these terms to any third parties, except as required by law or with the written consent of each party hereto, *provided however*, that the parties shall be permitted to disclose the terms of this Settlement Agreement to their attorneys, accountants, consultants, business advisors, management, and any governmental agency, including the FCC.

7. **Miscellaneous.** The parties to this Settlement Agreement do hereby acknowledge and agree that the following terms and conditions shall govern the interpretation and enforcement of this Settlement Agreement:

(a) This writing and the schedules hereto constitute the entire agreement of the parties with respect to the subject matter hereof, and may not be modified, amended, or terminated except by a written agreement specifically referring to this Settlement Agreement and signed by any of the parties whose rights hereunder will be effected by the modification, amendment, or termination.

(b) This Settlement Agreement shall be binding upon, and inure to the benefit of, each corporate party hereto, its successors and assigns, and each individual party hereto, and his or his heirs, personal representatives, successors and assigns.

(c) The paragraph headings contained herein are for the purposes of convenience only, and are not intended to define or limit the contents of said paragraphs.

(d) Each party hereto shall cooperate, take such further action, and execute and deliver such further documents as may reasonably be requested by any other party in order to carry out the provisions and purposes of this Settlement Agreement.

(e) This Settlement Agreement may be executed electronically and in one or more counterparts, all of which taken together shall be deemed one original.

(f) The parties shall bear their own attorney's fees associated with the negotiation and execution of this Settlement Agreement.

(g) This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of Maine. Any dispute arising out of this Settlement Agreement or any of the obligations relating thereto shall be brought only in the courts of the State of Maine and the courts located in Maine shall be the exclusive venue for any such disputes.

(h) Because of the unique nature of the broadcast authorizations that are the subject matter of this Settlement Agreement, the parties agree that the failure of any party to perform its obligations under this Settlement Agreement is one for which there is likely no adequate remedy at law, and that in addition to other remedies that may be attempted to be sought at law or in equity, any party injured by such a breach shall have the right to obtain a decree of specific performance entitling it to a temporary restraining order, preliminary injunction or permanent injunction to specifically enforce and obtain specific performance of the terms and provisions of this Settlement Agreement. The party against which injunctive relief is sought hereby waives the defense in any such proceeding that the other party has an adequate remedy at law and agrees to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. The prevailing party in any such action shall be entitled to a reimbursement of its legal fees and costs.


(i) This Settlement Agreement is the product of negotiation and preparation by and between the parties 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.

[Signature Pages Follow]

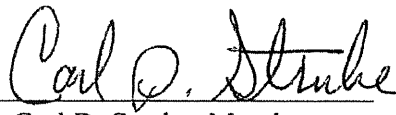


IN WITNESS WHEREOF, the parties have executed this Settlement Agreement or have caused this Settlement Agreement to be executed on their behalf to be effective as of the date first set forth above.

**SAGA COMMUNICATIONS OF NEW ENGLAND, LLC**

By   
Samuel D. Bush, Treasurer

**PORT BROADCASTING, LLC**

By   
Carl D. Strube, Member

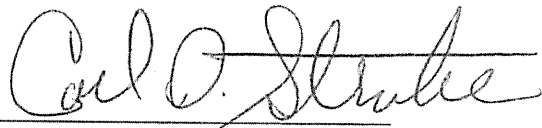
## SCHEDULE A

DECLARATION OF  
CARL D. STRUBE

I, Carl D. Strube, declare under penalty of perjury, that:

1. I am a Member of Port Broadcasting, LLC ("Port").
2. I have reviewed the attached Joint Request for Approval of Settlement Agreement and attest to the facts and representations made therein.
3. The enclosed Settlement Agreement was negotiated and entered into by and between Saga Communications of New England, LLC ("Saga"), and Port for the purpose of resolving Mutual Exclusive FM Translator Application Group No. 31.
4. Neither Port nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses that Port incurred in preparation its FM Translator Application File No. BNPFT-2010731ACY and the settlement of this matter.
5. The consideration, as set forth in the Settlement and Release Agreement, is limited to covering a portion of the legitimate and prudent expenses of Port.
6. An itemized accounting of the expenses Port has incurred associated with this proceeding is being provided as an exhibit to Attachment A to the Settlement Agreement.
7. Port did not file its application for the purpose of reaching or carrying out the Settlement Agreement.

Executed this 20 day of October, 2017.

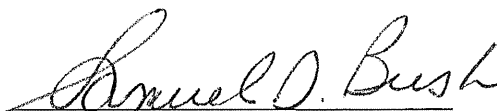
  
MEMBER

DECLARATION OF  
SAMUEL D. BUSH

I, Samuel D. Bush, declare under penalty of perjury, that:

1. I am the Senior Vice President, Treasurer and Chief Financial Officer of Saga Communications, Inc., the ultimate parent company of Saga Communications of New England, LLC ("Saga").
2. I have reviewed the attached Joint Request for Approval of Settlement Agreement and attest to the facts and representations made therein.
3. The enclosed Settlement Agreement was negotiated and entered into by and between Saga, and Port Broadcasting, LLC ("Port"), for the purpose of resolving Mutual Exclusive FM Translator Application Group No. 31.
4. Neither Saga nor its principals has paid or will pay any money or other consideration other than the consideration recited in the Settlement Agreement.
5. The consideration, as set forth in the Settlement Agreement, is limited to covering a portion of the legitimate and prudent expenses as reported by Port.
6. An itemized accounting of the expenses Port has incurred associated with this proceeding is being provided as an exhibit to Attachment A to the Settlement Agreement.
7. Saga did not file its application (File No. BNPFT-20170726AMU) for the purpose of reaching or carrying out the Settlement Agreement.

Executed this 23<sup>rd</sup> day of October, 2017.

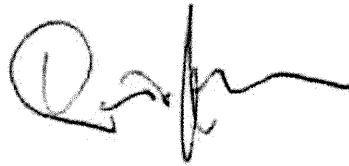
  
Samuel D. Bush

## SCHEDULE B

### **DECLARATION**

I, Dennis Jackson, hereby swear under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Federal Communications Commission technical consultant to Port Broadcasting, LLC ("Port"), applicant for a new FM Translator to operate at Biddeford, Maine, File No. BNPFT-2017731ACY.
2. I provided the engineering studies and prepared the FCC Form 349 Tech Box for the filing of the Translator application.
3. For the preparation, prosecution and filing of the application File No. BNPFT-201731ACY, my engineering fees to Port Broadcasting, LLC totaled Four Thousand Dollars (\$4,000.00).



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Dennis Jackson.

October 19, 2017

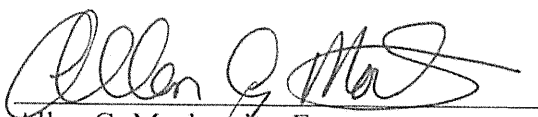
Date

## DECLARATION

I, Allan G. Moskowitz, Esq. hereby swear under penalty of perjury that the following is true and correct to the best of my knowledge;

1. I am Federal Communications Commission communications counsel to Port Broadcasting, LLC ("Port"), applicant for a new FM Translator to operate at Biddeford, Maine, File No. BNPFT-2017731ACY.
2. I represented Port in the legal preparation, prosecution and filing of the Translator application.
3. For the preparation, prosecution and filing of the application File No. BNPFT-201731ACY, my legal fees to Port Broadcasting, LLC totaled Nine Hundred and Seventy Five Dollars (\$975.00).

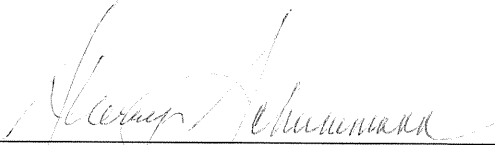
10/20/17  
Date

  
Allan G. Moskowitz, Esq.

### **CERTIFICATE OF SERVICE**

I, Sherry L. Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Joint Request for Approval of Settlement Agreement" was either delivered via electronic mail, or mailed by First Class U.S. Mail, postage prepaid, this 24<sup>th</sup> day of October, 2017, to the following:

Mr. Robert Gates  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554  
Robert.gates@fcc.gov

A handwritten signature in cursive script, appearing to read "Sherry L. Schunemann", is written over a horizontal line.

Sherry L. Schunemann