

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

**In re Applications of FCC Group XX Applicants:**

<b>Smithtown Local Schools</b>	)	<b>BNPL-20010000AAA</b>	<b>111111</b>
<b>Smithtown Foundation</b>	)	<b>BNPL-20010000AAB</b>	<b>111112</b>
<b>Smithtown, Inc.</b>	)	<b>BNPL-20010000AAC</b>	<b>111113</b>
<b>Smithtown Ministries</b>	)	<b>BNPL-20010000AAD</b>	<b>111114</b>
<b>Smithtown University</b>	)	<b>BNPL-20010000AAE</b>	<b>111115</b>
		<b>MX Group XX</b>	

**For New Low Power FM Stations  
At [City, State]  
To Operate on a Timeshare Basis on Channel XXX (99.9 FM)**

**JOINT REQUEST FOR APPROVAL OF  
UNIVERSAL TIMESHARE AGREEMENT**

Smithtown Local Schools, Smithtown Foundation, Smithtown, Inc., Smithtown Ministries, and Smithtown University, mutually exclusive applicants for authority to construct new low power FM broadcast stations to serve [City, State] (FCC File Nos. BNPL-xxxxxx, BNPL-xxxxxx, BNPL-xxxxxx, BNPL-xxxxxx, BNPL-xxxxxx, respectively) (collectively, the "Applicants"), hereby jointly request that the Commission:

1. Approve the attached Settlement Agreement that resolves the mutual exclusivity among the applications; and
2. Grant the above-referenced applications subject to the operating hours specified in the Settlement Agreement;
3. Modify the application of Smithtown Foundation to specify the same technical facilities proposed by Smithtown University;
4. Modify the application of Smithtown Local Schools to specify the same technical facilities proposed by Smithtown Ministries.

In support of this request, the following is shown:

The Applicants constitute all the applicants identified as Mutually ExclusiveGroup XX in the Public Notice released [Month Day], 2003, DA [00-0000].

The Applicants have entered into a Settlement Agreement that resolves the mutual exclusivity among all their applications. A copy of that Settlement Agreement is attached hereto as Exhibit A.

The proposed settlement comports in all respects with Sections 73.3525 and 73.872(c) of the Commission's Rules. Attached to the Settlement Agreement are declarations whereby each of the Applicants specifies that it did not file its Application to achieve a settlement or for any other improper purpose and that, other than as disclosed and set forth in the Settlement Agreement, no consideration has been or will be paid or received, and that there are no other agreements or understandings for the receipt or payment of any consideration related to the settlement of the competing applications. The declarations also demonstrate that approval of the Settlement Agreement and grant of the Applicants' Applications as modified pursuant to the Settlement Agreement, would serve the public interest by providing new LPFM services to [City, State]. Grant of the proposed Settlement Agreement will also conserve Commission resources by terminating their proceeding without the need for further litigation.

Accordingly, the parties respectfully request that this Joint Request be granted, the Attached Settlement Agreement be approved, and that the above-captioned applications of Smithtown Local Schools, Smithtown Foundation, Smithtown Inc., Smithtown Ministries, and Smithtown University be granted, subject to the terms and conditions of the Settlement Agreement.

Respectfully Submitted,

Smithtown Local Schools

\_\_\_\_\_  
Name: John Smith  
Title: *Assistant Superintendent*

Smithtown Foundation

\_\_\_\_\_  
Name: Jane Jones  
Title: *President*

Smithtown, Inc.

\_\_\_\_\_  
Name: John Hancock  
Title: *Director*

Smithtown Ministries

\_\_\_\_\_  
Name: Mary Wilson  
Title: *Director*

Smithtown University

\_\_\_\_\_  
Name: David Bowie  
Title: *President*

Dated [Month Day], 2003

**SETTLEMENT AGREEMENT**

This Agreement is made this Xth day of Month, 2003, between and among Smithtown Local Schools, Smithtown Foundation, Smithtown, Inc., Smithtown Ministries, and Smithtown University (hereinafter, singularly, "Applicant", collectively, the "Applicants").

**Whereas**, each of the Applicants tendered to the Federal Communications Commission ("FCC" or "Commission") an application (collectively "Applications") for a construction permit ("Construction Permit") to build new a low power radio broadcast station on FM Channel XXX at [City, State] (the "Stations");

**Whereas**, each of the Applicants filed its application with the intention of obtaining a grant of the application and not for purposes of settlement;

**Whereas**, the Applications are mutually exclusive; and

**Whereas**, the Applicants constitute all the applications identified by the Public Notice issued by the Commission on [Month Day], 2003 as Group XX; and

**Whereas**, the public interest will best and most fully be served by grant of the Settlement Agreement because such grant will conserve the resources of the Commission and of the Applicants and hasten inauguration of new radio broadcast services to [City, State];

**Now Therefore**, in consideration of the foregoing and of the terms and conditions set forth herein, and with the intent of being legally bound hereby, the Applicants agree to the following:

**Article I**

**1. FCC Consent.** This Agreement is entered into subject to approval by the FCC and shall be void unless approved by the FCC. Should the FCC object to any part of this Agreement, the Applicants agree that they will immediately make good faith efforts to resolve each FCC objection in order to obtain FCC approval.

**2. Joint Request for Approval of Agreement.** Within five (5) days from the date of this Agreement, the Applicants will file with the FCC a Joint Request for Approval of this Agreement. The Joint Request shall be accompanied by a copy of the executed Agreement, and a Declaration of No Consideration, in the form attached hereto as Exhibits B-1 through B-5, signed by each Applicant, as well as any other supporting documentation required by Section 73.3525 of the FCC's Rules. The Joint Request shall request the FCC to grant the applications of the Applicants, as amended in accordance with the Agreement. In the event the Agreement is not approved by the FCC, the Applicants shall return to their status as though this Agreement had not been entered.

**3. Modification of Technical Facilities.** Within five (5) days from the date of this Agreement, Smithtown Foundation and Smithtown Local Schools will amend their respective applications as provided in paragraph 8 below.

**4. Limited Hours.** Each of the Applicants agrees to be licensed for the limited hours of operation described in paragraph 6 below.

**5. Finality.** This Agreement is subject to the condition that the grant of the Settlement Agreement and the modifications of technical facilities specified in paragraph 8 below each become a Final Order. A Final Order shall be an order of the FCC which is no longer subject to administrative or judicial review, reconsideration, or stay.

## **Article II**

**6. Hours of Operation.** The Applicants hereby request that the Commission grant each Application subject to the following hours of operation:

Weekdays (M-F)

6:00 a.m. to 9:00 a.m.:	Smithtown Local Schools
9:00 a.m. to 11:00 a.m.:	Smithtown University
11:00 a.m. to 1:00 p.m.:	Smithtown Foundation
1:00 p.m. to 3:00 p.m.:	Smithtown University
3:00 p.m. to 8:00 p.m.:	Smithtown Ministries
8:00 p.m. to 1:00 a.m.:	Smithtown, Inc.
1:00 a.m. to 6:00 a.m.:	Smithtown University

Weekends (Sa & Su)

6:00 a.m. to 9:00 a.m.:	Smithtown Local Schools
9:00 a.m. to 3:00 p.m.:	Smithtown University
3:00 p.m. to 8:00 p.m.:	Smithtown Ministries
8:00 p.m. to 1:00 a.m.:	Smithtown, Inc.
1:00 a.m. to 6:00 a.m.:	Smithtown University

**7. Minimal Operating Schedule.** The hours of operation proposed in this Agreement comply with Section 73.872(c) of the Commission's Rules by allowing each Applicant the following number of operating hours per week:

Smithtown University:	67 hours/week
Smithtown, Inc:	35 hours/week
Smithtown Ministries:	35 hours/week
Smithtown Local School District:	21 hours/week
Smithtown Foundation:	10 hours/week

**8. Shared Transmission Facilities.** As part of this Agreement:

- (a) Smithtown Foundation shall modify its application to specify the same transmission facilities as specified by Smithtown University.

(b) Smithtown Local Schools shall modify its application to specify the same transmission facilities as specified by Smithtown Ministries.

9. Each of the five Applicants seeks the issuance of its own construction permit and call letters.

### Article III

**10. Valid Organization and Warranty.** Each Applicant represents that (a) it is duly organized, validly existing and in good standing in its state of formation, and (b) the execution, delivery, and performance of this Agreement has been duly and effectively authorized by its governing board.

**11. Amendment.** This Agreement may be amended or modified by the Applicants only by a written instrument executed by all of the Applicants and submitted to the Commission.

**12. Expenses.** Except as otherwise provided herein, each Applicant shall bear its own expenses in relation to the preparation, filing, prosecution, and performance of the duties contemplated by this Agreement.

**13. Conduct of Applicants.** Each Applicant shall use its best efforts to cooperate in good faith with the other Applicants and with the FCC by expeditiously providing any additional information which reasonably may be required, and by doing all other acts reasonably necessary to effectuate the objectives of this Agreement.

**14. Confidentiality.** The Applicants shall henceforth maintain the confidentiality of any information received from any other Applicant in connection with the negotiation and filing of this Agreement.

**15. Remedies on Default; Attorneys' Fees.** In the event of a default on the part of any Applicant, any Applicant not in default shall have available to it all remedies, at law or equity, to which it is entitled under [STATE} law, including the right to obtain specific performance of the terms of this Agreement. The prevailing Party in any lawsuit to enforce this Agreement or to be compensated for the default of another Party shall be entitled to reasonable attorneys' fees, at trial and on appeal, as shall be determined by the court.

**16. Benefit and Assignment.** The Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives and successors. No Party may assign its interest under this Agreement, without the prior written consent of the other Parties, and in no event shall such assignment be permitted if it would violate Section 73.865 of the Commission's Rules.

**17. Paragraph and Section Headings.** All paragraph and section headings in the Agreement are for convenience of reference only and are not intended to qualify the meaning of any section or paragraph.

**18. Counterparts; Facsimile.** This agreement may be executed in counterparts, which, when executed, shall constitute one Agreement, binding on all Parties hereto, notwithstanding that

all Parties are not signatory to the original. The Parties agree that any signatures conveyed to other Parties by facsimile shall be deemed to have full force and effect.

**19. Entire Agreement.** This Agreement contains the entire understanding between and among the Parties and supercedes all prior written or oral agreements between them irrespective of the subject matter. There are no representations, agreements, arrangements or understandings, oral or written, among the Parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. By signing below, the Parties acknowledge that they have read this Agreement and fully understand each provision of this Agreement.

**20. Interpretation; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of [ ]. Any action under or pertaining to this Agreement shall be brought in [ ] County, [State].

**21. Notices.** Any notice required hereunder shall be in writing, and any notice or other communication shall be deemed given when delivered by: (i) confirmed facsimile transmission, provided a copy of the notice is mailed within 24 hours; (ii) certified mail, return receipt requested; (iii) electronic mail (email) with notice by telephone of same by the sender to the recipient; or (iv) a nationally-recognized overnight delivery service, to the following addresses, or such other addresses as may hereafter be specified in writing:

John Hancock, Director  
Smithtown, Inc.  
1234 Main Street.  
City, State 00000  
FAX: (000) 000-0000  
Email: jhancock@zzz.org

Mary Wilson, Director  
Smithtown Ministries  
123 Broad St.  
P. O. Box 0000  
City, State 00000  
Email: mwilson@yyy.org

John Smith, Superintendent  
Smithtown Local School District  
111 Main Rd.  
City, State 00000  
FAX: (000) 000-0000  
Email: jsmith@uuu.edu

Jane Jones, President  
Smithtown Foundation  
333 Main St.  
City, State 00000  
Email: jjones@vvv.org

David Bowie, President  
Smithtown University  
100 Broadway Ave.  
City, State 00000  
FAX: (000) 000-0000  
Email: dbowie@xxx.edu

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

**23. Liability.** Nothing contained herein shall limit any Party's other businesses; waive any claims any Party may have against another Party; except as provided for herein or under applicable [State] law; or allow any Party to bind any other Party except as may be expressly stated herein.

**24. Severability.** If any term or provision of this Agreement be invalid or unenforceable as to any Party, the remainder of this Agreement shall not be affected thereby, and each remaining term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**In Witness Whereof**, this Agreement is hereby executed as of the date first above written.

Smithtown Local Schools

\_\_\_\_\_  
John Smith  
Superintendent

Smithtown Foundation

\_\_\_\_\_  
Jane Jones  
President

Smithtown, Inc.

\_\_\_\_\_  
John Hancock  
Director

Smithtown Ministries

\_\_\_\_\_  
Mary Wilson  
Director

Smithtown University

\_\_\_\_\_  
David Bowie  
President

Dated Month, Day, 2003

**Declaration of No Consideration**

I, David Bowie, do hereby declare, under penalty of perjury, as follows:

I am President of Smithtown University, FCC File No. xxxxxx, an applicant for a construction permit for a new low power FM radio station to share time operating on Channel XXX at [City, State] ("Construction Permit").

Applicant has entered into a Settlement Agreement to share the Channel with Other Applicants and to receive a Construction Permit.

The Settlement Agreement constitutes the entire understanding between Smithtown University and the other applicants for settlement of this proceeding. Other than as stated in the Settlement Agreement, Smithtown University has not received any consideration or paid any consideration to the other applicants for a Construction Permit. Nor has any consideration been promised except as stated in the Settlement Agreement.

Smithtown University did not file its application for the purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission and will speed the delivery of low power FM radio service to the public.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of the Applicant.

By: \_\_\_\_\_  
David Bowie  
President  
Smithtown University

**Declaration of No Consideration**

I, John Hancock, do hereby declare, under penalty of perjury, as follows:

I am Director of Smithtown, Inc., FCC File No. xxxxxx, an applicant for a construction permit for a new low power FM radio station to share time operating on Channel XXX at [City, State] ("Construction Permit").

Applicant has entered into a Settlement Agreement to share the Channel with Other Applicants and to receive a Construction Permit.

The Settlement Agreement constitutes the entire understanding between Smithtown, Inc. and the other applicants for settlement of this proceeding. Other than as stated in the Settlement Agreement, Smithtown, Inc. has not received any consideration or paid any consideration to the other applicants for a Construction Permit. Nor has any consideration been promised except as stated in the Settlement Agreement.

Smithtown, Inc. did not file its application for the purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission and will speed the delivery of low power FM radio service to the public.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of the Applicant.

By: \_\_\_\_\_  
John Hancock, Director  
Smithtown, Inc.

**Declaration of No Consideration**

I, Mary Wilson, do hereby declare, under penalty of perjury, as follows:

I am Director of Smithtown Ministries, FCC File No. xxxxxx, an applicant for a construction permit for a new low power FM radio station to share time operating on Channel XXX at [City, State] ("Construction Permit").

Applicant has entered into a Settlement Agreement to share the Channel with Other Applicants and to receive a Construction Permit.

The Settlement Agreement constitutes the entire understanding between Smithtown Ministries and the other applicants for settlement of this proceeding. Other than as stated in the Settlement Agreement, Smithtown Ministries has not received any consideration or paid any consideration to the other applicants for a Construction Permit. Nor has any consideration been promised except as stated in the Settlement Agreement.

Smithtown Ministries did not file its application for the purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission and will speed the delivery of low power FM radio service to the public.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of the Applicant.

By: \_\_\_\_\_  
Mary Wilson, Director  
Smithtown Ministries

**Declaration of No Consideration**

I, John Smith, do hereby declare, under penalty of perjury, as follows:

I am Superintendent of Smithtown Local School District, FCC File No. xxxxxx, an applicant for a construction permit for a new low power FM radio station to share time operating on Channel XXX at [City, State] ("Construction Permit").

Applicant has entered into a Settlement Agreement to share the Channel with Other Applicants and to receive a Construction Permit.

The Settlement Agreement constitutes the entire understanding between Smithtown Local School District and the other applicants for settlement of this proceeding. Other than as stated in the Settlement Agreement, Smithtown Local School District has not received any consideration or paid any consideration to the other applicants for a Construction Permit. Nor has any consideration been promised except as stated in the Settlement Agreement.

Smithtown Local School District did not file its application for the purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission and will speed the delivery of low power FM radio service to the public.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of the Applicant.

By: \_\_\_\_\_  
John Smith, Superintendent

**Declaration of No Consideration**

I, Jane Jones, do hereby declare, under penalty of perjury, as follows:

I am President of the Smithtown Foundation, FCC File No. xxxxxx, an applicant for a construction permit for a new low power FM radio station to share time operating on Channel XXX at [City, State] ("Construction Permit").

Applicant has entered into a Settlement Agreement to share the Channel with Other Applicants and to receive a Construction Permit.

The Settlement Agreement constitutes the entire understanding between Smithtown Foundation and the other applicants for settlement of this proceeding. Other than as stated in the Settlement Agreement, Smithtown Foundation has not received any consideration or paid any consideration to the other applicants for a Construction Permit. Nor has any consideration been promised except as stated in the Settlement Agreement.

Smithtown Foundation did not file its application for the purpose of reaching or carrying out a settlement.

Approval of the Settlement Agreement is in the public interest. It will conserve the resources of the parties and the Commission and will speed the delivery of low power FM radio service to the public.

I am authorized to sign this Declaration and the Settlement Agreement on behalf of the Applicant.

By: \_\_\_\_\_  
Jane Jones, President  
Smithtown Foundation