

FEDERAL COMMUNICATIONS COMMISSION

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**IN REPLY REFER TO:
1800B3-JWR**

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In re: **NEW(FM), Farmington, NM**
Your Christian Companion, Inc.
Facility ID No. 106593
File No. BPED-19991013AAF

NEW(FM), Flora Vista, NM
Native American Christian Voice, Inc.
Facility ID No. 124178
File No. BNPED-20000512AAK

NEW(FM), Pagosa Springs, CO
KUTE, Inc.
Facility ID No. 123206
File No. BNPED-20000413ABA

Joint Request for Approval of Settlement
Agreement

MX Group 200401

Dear Counsel:

We have on file the above-referenced mutually exclusive applications for new noncommercial educational FM ("NCE-FM") stations in Farmington and Flora Vista, New

Mexico and Pagosa Springs, Colorado filed by Your Christian Companion, Inc. ("YCC"),¹ Native American Christian Voice, Inc. ("NACV")² and KUTE, Inc. ("KUTE").³ Also on file is a Joint Request for Approval of Settlement Agreement ("Joint Request"), filed on by the applicants on July 19, 2001 and KUTE's request for waiver of 47 C.F.R. Section 73.1125, the main studio rule, as supplemented on August 22, 2002. For the reasons set forth below, we will grant the Joint Request, dismiss the YCC application, grant the NACV application, and retain the KUTE application in pending status pending notification to the staff of KUTE's receipt of funding from the National Telecommunications and Information Administration.

Settlement Agreement. Under the terms of the settlement agreement KUTE will pay \$ 6,000 to YCC for the dismissal of YCC's application; and KUTE will pay NACV \$ 23,500 for which NACV will amend its application for the purpose of eliminating the mutual exclusivity with the KUTE application herein and NACV will grant KUTE the exclusive right and option to acquire the Flora Vista construction permit and all personal and tangible property related thereto.

We have examined the Joint Request and the declarations included therein. Based on this examination, we find that approval of the agreement would serve the public interest by expediting the inauguration of a new FM broadcast service at Flora Vista, New Mexico and Pagosa Springs, Colorado and conserving the resources of the Commission and the applicants, that neither application was filed for the purpose of reaching or carrying out the agreement; and that no consideration has been directly or indirectly paid or promised apart from that disclosed in the agreement.⁴ We find that the applicants have complied with the requirements of Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended. Additionally, while the applicants propose to serve different communities, no Section 307(b) questions have been presented and no publication is required under Section 73.3525(b).⁵

¹ File No. BPED-19991013AAF

² File No. BPED-20000512AAK

³ File No. BPED-20000413ABA

⁴ The Commission has temporarily waived the reimbursement limitations contained in Section 73.3525(a)(3) of the Commission's rules. See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074 (2001); waiver extended to settlement agreements filed by July 19, 2001, *Deadline for NCE Settlements and Supplements, Public Notice*, Released May 24, 2001. The instant settlement agreement was, as noted, filed on July 19, 2001.

⁵ In a supplement to the Joint Request for Approval of Settlement Agreement, submitted on December 6, 2002 at the request of the staff, NACV states that Flora Vista, New Mexico is not presently served by a local radio service and that approval of the NACV application will provide Flora Vista with its first noncommercial educational FM service and its first aural broadcast service. NACV also states that Pagosa Springs is presently served by two licensed, full service commercial broadcast stations and that approval of the KUTE application will provide Pagosa Springs with its first noncommercial educational FM service. NACV submits that Farmington is well served with local broadcast stations, including 4 commercial FM stations, 2 noncommercial educational FM stations and 2 AM stations. Accordingly, under the standards applied to mutually exclusive NCE applications, both NACV and KUTE would be awarded a preference under 47 U.S.C. § 307(b). See *Report and Order* in MM Docket No. 95-31, 15 FCC

Main Studio Waiver. KUTE proposes to operate the new station at Pagosa Springs, Colorado as a "satellite" of co-owned noncommercial educational FM station KUTE(FM), Ignacio, Colorado, located at the tribal headquarters of the Southern Ute Tribe, approximately 40 miles from Pagosa Springs.⁶ KUTE submits that "economic realities" preclude the provision of a full schedule of programming tailored to an individual community, and that "given the low population density of the proposed service area," it is unlikely that resources will ever be available to do so. KUTE asserts that even without a main studio in the service area of the proposed station, KUTE(FM) will determine local needs by a variety of methods and respond to them in its programming. For the reasons set forth below, we shall grant KUTE's request for waiver.

Pursuant to Section 73.1125(a), a main studio must be located either (1) within a station's principal community contour, (2) within the contour of any other broadcast station licensed to its community, or (3) within 25 miles of the center of its community.⁷ However, under Section 73.1125(b)(2), the Commission will waive this requirement where "good cause" exists to do so and where the proposed studio location "would be consistent with the operation of the station in the public interest." Each waiver request by a NCE station seeking to operate as the satellite of another NCE station is considered on a case-by-case basis. The Commission has recognized the benefits of centralized operations for NCE stations, given their limited funding, and thus found "good cause" exists to waive the main studio location requirement where satellite operations are proposed.⁸ A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 "public interest" standard.⁹

KUTE's request is based on the economies of scale that would be realized by grant of its waiver request. We agree and conclude that there is "good cause" to waive 47 C.F.R. Section 73.1125(a)(4) in these circumstances. The Commission expects the licensee of a satellite station

Rcd 7386, 7397-98 (2000); *Public Notice*, "Deadline for NCE Settlements and Supplements Extended to July 19, 2001; Date for Calculating Comparative Qualifications Remains June 4, 2001/Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria," DA 01-1245 (M.M. Bur., released May 24, 2001). Therefore, the elimination of YCC's Farmington proposal will not "unduly impede achievement of a fair, efficient, and equitable distribution of radio service" under 47 C.F.R. §73.3525(b). *See, e.g., National Communications Affiliates of West Virginia*, 2 FCC Rcd 4515 (1987) (dismissal of only application for a community will not unduly impede realization of Section 307(b) mandate where neither applicant would receive a decisive preference); *Suburbanaire, Inc.*, 2 FCC Rcd 1478 (1987).

⁶ A "satellite" station meets all of the Commission's technical rules. However, it originates no programming and instead rebroadcasts the parent station's programming. *See Amendment Of Multiple Ownership Rules*, 3 RR 2d 1554, 1562 (1964).

⁷ *See Report and Order ("Main Studio R&O")*, *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15,691 (1998), *recon. granted in part*, 14 FCC Rcd 11,113 (1999) ("Reconsideration Order").

⁸ *Id.*

⁹ *Id.*

to take adequate measures to maintain its awareness of the satellite community's needs and interests. Where there is a considerable distance between parent and satellite stations, we are particularly concerned that the licensee take adequate measures to maintain its awareness of the satellite community's needs and interests and respond to them in its programming. To that end, KUTE has pledged to: (1) establish a toll-free telephone number to permit the public to reach the KUTE(FM) studios; and (2) conduct ascertainments of community needs in the proposed service area on a regular basis. KUTE submits its staff will maintain contact with Pagosa Springs through personal visits, telephone communications and e-mail. Information obtained from members of the community and community leaders will be taken into account in formulating programming. Applicant will subscribe to local newspapers and publications relating to Pagosa Springs in order to keep abreast of happenings in the community, and to the extent feasible, representatives of KUTE will attend or monitor public meetings of local interest to Pagosa Springs and surrounding areas.

In these circumstances, we are persuaded that KUTE will meet its local service obligations and thus, that grant of the requested waiver is consistent with the public interest. We remind KUTE, however, of the requirement that it maintain a public file for the proposed station at the main studio of the "parent" station KUTE(FM), Ignacio, Colorado, and make reasonable accommodation for listeners wishing to view the contents of the file.¹⁰ We further remind KUTE that notwithstanding the grant of the waiver requested here, the public file for the proposed station must contain the quarterly issues and programs list required by 47 C.F.R. Section 73.3527(e)(8). With these *caveats* underscoring KUTE's obligations to the residents of Pagosa Springs, its request for waiver of 47 C.F.R. Section 73.1125 will be granted.

KUTE Financial Qualifications. All applicants for new broadcast facilities must be, *inter alia*, financially qualified to receive a construction permit.¹¹ NCE applicants such as those in this proceeding may certify that their financial qualifications are contingent upon later receipt of a grant from the NTIA.¹² The certification of reliance on NTIA funding and filing of an application for funds establishes reasonable assurance, and the Commission's focus is directed to whether the grants relied on actually have been made. Accordingly, the grant of an NTIA-dependent application is contingent upon the showing that grant funds are in fact available.¹³ KUTE has not informed the Commission that the requested funds have been committed or appropriated. Accordingly, we cannot find KUTE financially qualified and will retain its application in pending status pending notification that the applicant has been awarded funding for its Pagosa Springs proposal.

¹⁰ See *Reconsideration Order*, 14 FCC Rcd at 11,129, para. 45.

¹¹ See 47 U.S.C. § 308(b); *Public Notice*, "Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits," FCC 87-97, 62 RR 2d 638, 639 (Released Mar. 19, 1987).

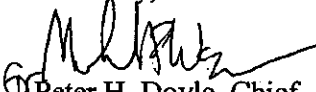
¹² See FCC Form 340, Section III - Financial Qualifications, Item 1. See also *KQED, Inc.*, 5 FCC Rcd 1784, 1785 (1990).

¹³ *Id.*

Conclusion/Actions. In light of the above discussion, we find that Native American Christian Voice, Inc. is fully qualified to be a licensee of the proposed facility and that a grant of its application would serve the public interest by expediting a new FM service to Flora Vista, New Mexico. We also find that KUTE, Inc. is fully qualified to be a licensee of the proposed facility and that a grant of its application would serve the public interest by expediting a new FM service to Pagosa Springs, Colorado.

Accordingly, pursuant to the above discussion and the listed representations of the involved parties, the Joint Request for Approval of Settlement Agreement IS GRANTED; the application of Your Christian Companion, Inc. (File No. BPED-19991013AAF) IS DISMISSED; the applications of Native American Christian Voice, Inc. (File No. BPED-20000512AAK), as amended, IS GRANTED;¹⁴ the KUTE request for waiver of 47 C.F.R. Section 73.1125 IS GRANTED; and the application of KUTE, Inc. (File No. BPED-20000413ABA) IS HELD IN ABEYANCE pending submission of information regarding the applicant's receipt of funding from the NTIA.

Sincerely,


Peter H. Doyle, Chief
Audio Division
Media Bureau

¹⁴ The Authorization is enclosed.