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**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

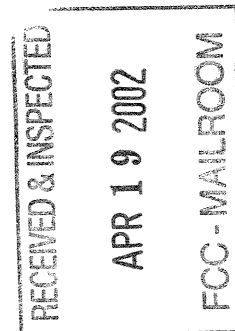
IN REPLY REFER TO: 1800B3-JR

APR 18 2002

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In re: **NEW(FM)**, Booneville, AR
Facility ID No. 92814
File No. BPED-19990223MB
Vision Ministries, Inc.

NEW(FM), Van Buren, AR
Facility ID No. 93775
File No. BPED-19990628MD
Educational Media Foundation

NEW(FM), Fort Smith, AR
Facility ID No. 93705
File No. BPED-19990618MB
Broadcasting for the Challenged, Inc.

MX Group 990201
"Joint Request for Approval of
Settlement"

Dear Counsel:

This letter concerns: (1) the captioned application of Vision Ministries, Inc. ("Vision") for a new noncommercial educational ("NCE") station at Booneville, Arkansas (File No. BPED-19990223MB); (2) the captioned application of Educational Media Foundation ("EMF") for a new NCE station at Van Buren, Arkansas (File No. BPED-19990628MD); (3) the captioned application of Broadcasting for the Challenged, Inc. ("BFTC") for a new NCE station at Fort Smith, Arkansas (File No. BPED-19990618MB); (4) the July 19, 2001 "Joint Request for

Approval of Settlement” (“Joint Request”) filed by EMF and by BFTC as supplemented by EMF on November 9, 2001; and (5) EMF’s main studio location waiver request. For the reasons set forth below, we approve the Joint Request, dismiss the BFTC application; grant the Vision application, and grant EMF’s waiver request and its amended application.

Background. EMF and BFTC contemplate a universal settlement in MX Group 990201. Group 990201 previously consisted of four competing applications.¹ The Vision, EMF, and BFTC applications, as initially submitted, were mutually exclusive with each other and with the application of Educational Opportunities, Inc. (“EOI”) for a new NCE station at Russellville, Arkansas.² On July 19, 2001, EMF and BFTC filed the instant settlement agreement requesting dismissal of the BFTC application and grant of the EMF application, as amended.³ Concurrently with the filing of the Joint Request, EMF submitted a minor engineering amendment to its application⁴ purporting to remove the mutual exclusivity with the Vision and EOI applications.⁵ Also on July 19, 2001, and pursuant to the *Supplement/Settlement Public Notice*, Vision filed a supplement to its application setting forth the points to which it is entitled. Subsequently, on February 20, 2002, we dismissed EOI’s application pursuant to its request,⁶ leaving only the Vision, EMF, and BFTC applications pending.

*EMF/BFTC settlement.*⁷ EMF and BFTC seek approval of a July 17, 2001 settlement agreement.⁸ Pursuant to this agreement, in consideration of \$12,000.00 from EMF to BFTC, the parties request dismissal of BFTC’s Fort Smith proposal and grant of EMF’s Van Buren

¹ The staff urged the four applicants to work towards removing the conflicts between their proposals. See *Letter to Shan Esterling, et al. from the Assistant Chief, Audio Services Division, Mass Media Bureau*, November 9, 1999 (reference 1800B3).

² File No. BPED-19990211MA.

³ The settlement agreement was filed pursuant to the *Public Notice, Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Broadcast Applications Due by June 4, 2001*, 16 FCC Rcd 6893 (2001), as modified by *Public Notice, Deadline for NCE Settlements and Supplements Extended to July 19, 2001*, 16 FCC Rcd 10,892 (M.M.Bur. 2001) (“*Supplement/Settlement Public Notice*”).

⁴ Pursuant to the amendment, EMF would change the frequency and channel class of its proposed station as well as reduce effective radiated power, relocate its transmitter, and add a directional antenna.

⁵ An NCE applicant may remove itself from an MX group in order to achieve grant of its proposal by submitting a minor engineering change amendment which does not affect the viability of other applicants to compete for a second station. See *Supplement/Settlement Public Notice, supra*.

⁶ *Letter to Educational Opportunities, Inc. from the Chief, Audio Services Division, Mass Media Bureau* (reference 1800B3-JR).

⁷ Vision is not a party to the EMF/BFTC settlement agreement.

⁸ The copy of the settlement agreement attached to the Joint Request is undated. However, an examination of an amendment to the settlement agreement reveals that the amendment was executed by BFTC on July 16 and by EMF on July 17, 2001, respectively. The amendment was tendered with the original, undated settlement agreement submitted with the Joint Request on July 19, 2001. Accordingly, we consider the subject settlement agreement to be dated July 17, 2001 and, thus, filed within five days of ratification as required by 47 C.F.R. Section 73.3525(a).

proposal. EMF and BFTC argue that approval of their settlement proposal would benefit the public interest by expediting the introduction of first NCE service at Van Buren and by conserving applicant and Commission resources. Both declare that they did not file their respective applications with the intent of reaching or carrying out a settlement and that there is no consideration involved other than as specified.

After careful consideration of the settlement request, we determine that it complies with Commission policy. Approval of the proposed settlement and grant of the EMF application would conserve Commission and applicant resources and expedite the provision of new NCE service to Van Buren. It appears that neither EMF nor BFTC filed its application for the purpose of reaching or carrying out a settlement. *See* 47 C.F.R. § 73.3525(a). In light of the Commission's temporary suspension of the reimbursement limitations of 47 C.F.R. § 73.3525(a), neither party nor its principals has or will receive consideration beyond that allowed. *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5107-08, ¶ 99 (2001).

Section 73.3525(b) analysis. Pursuant to 47 C.F.R. § 73.3525(b), if a settlement involves the dismissal of an application for a different community than that proposed by the prevailing applicant, we must examine the proposals to determine whether or not grant of the settlement would unduly impede the achievement of a fair, efficient, and equitable distribution of radio service. To do so, we essentially undertake an analysis under 47 U.S.C. § 307(b). An NCE applicant is eligible for a dispositive preference pursuant to Section 307(b) if it would provide a first or second service (in the aggregate) to 10 percent of the people within its proposed 60 dBμ contour, provided the number of people is at least 2,000. If two or more competing NCE applicants meet this standard, the one providing the greatest number of persons with the highest level of service is preferred, provided it will provide such service to at least ten percent of the people within its proposed 60 dBμ contour and to at least 5,000 more people than the next best applicant. *See* 47 C.F.R. § 73.7002(b); *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386, 7397-98 (2000). *See also Public Notice, Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, 16 FCC Rcd 10,972, 10,983 (M.M. Bur. 2001).

On November 9, 2001, EMF submitted a "Supplement to Joint Petition For Approval of Agreement."⁹ Specifically, EMF notes that EIO would provide service to 79,291 persons and a first local NCE service to 34,501 persons at Russellville and that Vision would provide service to 87,722 persons and a first NCE service to 27,875 persons at Booneville, whereas although BFTC would provide service to 205,392 persons at Fort Smith, all but 7503 already receive NCE service. Thus, EMF demonstrates that both EIO's Russellville application and Vision's Booneville application would be preferred over BFTC's Fort Smith application. Since the dismissing applicant is not entitled to a dispositive preference, withdrawal of the BFTC application would not unduly impede achievement of the statutory mandate of Section 307(b) for a "fair, efficient, and equitable distribution of radio services." *See National Communications Affiliates of West Virginia*, 2 FCC Rcd 4515 (1987) (dismissal of only application for a

⁹ EMF submitted a corrective version on November 16, 2001. On July 19, 2001, Vision submitted a Form 340 Supplement.

community will not unduly impede realization of Section 307(b) mandate where neither applicant would receive decisive preference); *Suburbanaire, Inc.*, 2 FCC Rcd 1478 (1987). Accordingly, we will not require republication under Section 73.3525(b) of the Rules. See *Mobile Broadcasting Service, Inc.*, 91 FCC 2d 1209 (1982).

EMF main studio waiver request. Pursuant to 47 C.F.R. Section 73.1125(a), a main studio must be located either: (1) within a station's principal community contour; (2) within the principal community contour of any other station licensed to its community; or (3) within 25 miles of the reference coordinates for the center of its community. See Report and Order, 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"). Pursuant to subsection (b)(2) of the rule, however, an FM main studio may be located beyond these limits "when good cause exists . . . and when doing so would be consistent with the operation of the station in the public interest." Waiver requests by licensees seeking to operate stations as satellites of other NCE facilities are considered on a case-by-case basis. 47 C.F.R. § 73.1125(d)(2). The Commission recognizes that NCE stations have limited funding and, thus, has found "good cause" to waive its main studio location requirements where satellite operations are proposed. See *Amendment of Sections 73.1125 and 73.1130*, 3 FCC Rcd 5024, 5027 (1998). An applicant proposing a satellite operation must, however, demonstrate that it will meet its local service obligation in order to satisfy the "public interest" standard of the rule. *Id.*

EMF initially requested a main studio waiver to operate the proposed Van Buren station as a "satellite" of its existing NCE facility, Station KLRD(FM), Yucaipa, California.¹⁰ Pursuant to a January 18, 2002 amendment to its application, EMF now proposes to co-locate the proposed main studio with that of co-owned Station KLVR-FM, Santa Rosa, California.¹¹ EMF asserts that the proposed station will be a part of its Air-1 Radio Network ("Air-1"). It maintains that co-location will enable it to realize "valuable economies of scale and cost savings" and maintain Air-1's "high quality" NCE programming. According to EMF, requiring a separate staff and studio at Van Buren would be a "serious financial burden" and would divert limited Air-1 programming resources.

EMF pledges to fulfill its local service obligations by maintaining an auxiliary studio with local programming origination capability within the proposed station's city grade contour. It also pledges to engage a local public affairs representative who, working with EMF Regional Managers,¹² will, at least quarterly, survey local community leaders and residents to ascertain the concerns, problems, and needs of Van Buren listeners and to serve as a liaison between local residents and its programming personnel. According to EMF, it will address recurrent issues, problems, and needs in the context of news and public affairs programming. In addition, EMF pledges to maintain a toll-free telephone number and to maintain a local public inspection file.

¹⁰ Application Exhibit E-2.

¹¹ The amendment also updated the list of EMF broadcast interests.

¹² EMF states that its Regional Managers typically oversee a number of stations within a defined geographical area which have been granted main studio waivers.

EMF's waiver request is premised on potential economies of scale. We agree that, given the circumstances, EMF will meet its local service obligations to Van Buren and that there is good cause to waive Section 73.1125. Where, as here, there is a significant distance between parent and proposed satellite stations, and where they are situated in different states, we are particularly concerned that the licensee adequately act to maintain its awareness of the needs and interests of the satellite community. To that end, we credit EMF's pledges to utilize a local public affairs representative to, at least quarterly, conduct community leader and resident surveys and to address the ascertained broadcast needs and interests of Van Buren. We also credit its pledge to maintain a Van Buren studio with local programming capability. Further, we determine that EMF's pledge to maintain a local public inspection file will satisfy its obligation to reasonably accommodate Van Buren listeners wishing to examine the file's contents. *See 47 C.F.R. § 73.3527(c); Reconsideration Order*, 14 FCC Rcd at 11,129, ¶ 45. We do not, however, credit its toll-free telephone commitment, inasmuch as it is otherwise mandated by Section 73.1125(e). We remind EMF that, notwithstanding grant of its main studio location waiver request, the public inspection file for its proposed facility must contain the quarterly issues and programs list for Van Buren as required by 47 C.F.R. Section 73.3527(e)(8).

Conclusions/orders. An examination of EMF's July 19, 2001 amendment indicates that it successfully eliminates any mutual exclusivity with the Vision application. Additionally, our evaluation of the Vision and EMF applications reveals that both applicants are qualified to be Commission NCE licensees and that that grants thereof would benefit the public interest, convenience, and necessity.

In light of the above, and pursuant to 47 C.F.R. Section 0.283: the July 19, 2001 "Joint Request for Approval of Settlement" filed by Educational Media Foundation and by Broadcasting for the Challenged, Inc. IS APPROVED; the application of Broadcasting for the Challenged, Inc. for a new noncommercial educational station at Fort Smith, Arkansas (File No. BPED-19990618MB) IS DISMISSED; the application of Vision Ministries, Inc. for a new noncommercial educational station at Booneville, Arkansas (File No. BPED-19990223MB) IS GRANTED; the July 19, 2001 amendment to the application of Educational Media Foundation for a new noncommercial educational station at Van Buren, Arkansas IS ACCEPTED; and the Educational Media Foundation request for a waiver of 47 C.F.R. Section 73.1125 and its application (File No. BPED-19990628MD) ARE GRANTED. The authorizations will follow under separate cover.

Sincerely,



Peter H. Doyle, Chief
Audio Division
Office of Broadcast License Policy
Media Bureau

cc: Educational Opportunities, Inc.