

Chm 2-A320

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

AUG 26 2002

**IN REPLY REFER TO:
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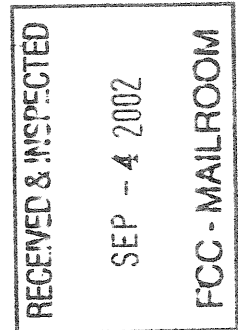
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In re: **NEW(NCE-FM), CHEYENNE, WY**
American Family Association, Inc.
Facility ID No. 87378
File No. BPED-19970703ME

NEW(NCE-FM), FORT COLLINS, CO
Public Radio for the Front Range
Facility ID No. 89177
File No. BPED-19971117MK

NEW(NCE-FM), ORCHARD VALLEY, WY
Broadcasting for the Challenged
Facility ID No. 90488
File No. BPED-19971210MB

NEW(NCE-FM), LOVELAND, CO

Colorado Christian University

Facility ID No. 89401

File No. BPED-19971209M1

NEW(NCE-FM), ORCHARD VALLEY, WY

Educational Media Foundation

Facility ID No. 87267

File No. BPED-19970620MD

**Joint Request for Approval of Settlement
Agreement**

MX Group 970623

Dear Counsel:

We have on file the above-referenced mutually exclusive construction permit applications for new noncommercial educational FM stations in filed by American Family Association, Inc. ("AFA") for Cheyenne, Wyoming;¹ Public Radio for the Front Range ("PRFR") for Fort Collins, Colorado;² Broadcasting for the Challenged ("BFC") for Orchard Valley, Wyoming;³ Colorado Christian University ("CCU") for Loveland, Colorado;⁴ and Educational Media Foundation ("EMF"), also for Orchard Valley, Wyoming.⁵ We also have before us (1) CCU's May 12, 1998 objections to the BFC and EMF applications;⁶ (2) related responsive pleadings;⁷ and (3) a Joint Request for Approval of Settlement Agreement, filed by the parties on July 19, 2001. For the reasons set forth below, we will grant the Joint Request, dismiss the AFA, PRFR and BFC applications, dismiss CCU's objections, and grant the CCU and EMF applications.

Settlement Agreement. Preliminarily, we note that the parties specify that the consideration for the commitments herein are integrally related to undertakings of various parties to effect settlements of other specified mutually exclusive groups of noncommercial educational FM station applications, and that the obligations of the parties are expressly conditioned upon the Commission approving each provision and each agreement in its entirety.

¹ File No. BPED-19970703ME.

² File No. BPED-19971117MK.

³ File No. BPED-19971210MB.

⁴ File No. BPED-19971209M1.

⁵ File No. BPED-19970620MD.

⁶ CCU styled its pleading opposing the BFC application as a "Petition to Deny."

⁷ EMF filed an opposition to the informal objection on June 11, 1998, to which CCU replied on June 24, 1998; EMF thereafter filed a "Supplement" to its opposition on August 25, 1998. Against BFC filed its opposition on May 28, 1998, to which CCU replied on June 9, 1998.

Under the terms of the settlement agreement as it pertains to NCE-MX group 970623, the PRFR, AFA, and BFC applications will be dismissed and the CCU and EMF applications will be granted, in return for which EMF and PRFR stipulate the amendment and dismissal of certain applications and EMF will pay \$19,002 to PRFR;⁸ CCU and AFA stipulate the amendment and dismissal of certain applications in facilitation of the grant of AFA's application for construction permit, File No. BPED-19971113ME;⁹ and CCU will pay BFC \$ 24,500.¹⁰ 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 Loveland, Colorado and Orchard Valley, Wyoming 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

⁸ Additionally, pursuant to this agreement, (a) PRFR shall file an amendment to its application for Channel 205 in Fort Collins (BPED-19960731MA) to reduce power to 3,000 watts at the transmitter site proposed in that application; (b) PRFR shall request that the FCC dismiss its application (BPED-19971117MK) for Channel 205 at Fort Collins with prejudice (c) Way-FM Media Group, Inc. shall file an amendment to its proposal (BPED-19961112ME) for Channel 205 at Fort Collins to specify operation on Channel 202 at a transmitter site selected so as to remove all mutual exclusivity with BPED-19960731MA (as amended by the PRFR amendment) and with BPED-19961112MF (as amended by the EMF amendment, *see below*) (d) EMF shall file an amendment to its proposal (BPED-19961112MF) for Channel 205 at Eaton, Colorado, to specify operation from a transmitter site near Cheyenne, Wyoming selected so as to remove all mutual exclusivity with BPED-19960731MA (as amended by the PRFR amendment) and with BPED-19961112ME (as amended by the WAY amendment), and, to the extent appropriate, to request waiver of the FCC's community of license coverage requirements with respect to such amendment; and (e) CCU shall request that the dismissal of its application for Channel 205 at Loveland, Colorado (BPED-19961112MD). The parties have upheld their commitments to the extent that, on June 7, 2002, the staff granted both Way-FM's application on Channel 202 in Fort Collins and EMF's application for Channel 205 in for Eaton, Colorado.

⁹ Additionally, AFA shall (a) request the dismissal of its application (BPED-19970703MB) for Channel 209 at Cheyenne, Wyoming; (b) file an amendment to its pending application (BPED-19971113MB) for Channel 207 at Pescadero, California to specify operation on Channel 211 at the power level and transmitter site currently specified therein; and (c) take all steps appropriate to prosecute the dismissal request and the AFA amendment proposed herein. CCU agreed to (a) dismiss its application (BPED-19961112MD) on Channel 205 for Loveland, Colorado; and (b) amend BPED-19960926MD.

¹⁰ Under the terms of this agreement, (a) BFC will receive \$12,000 for requesting dismissal of its application (BPED-19980824MA) for Laramie, Wyoming, and, having requested dismissal of its application (BPED-19971210MB) for Orchard Valley in the instant NCE-MX Group 971013, will receive an additional \$12,500 upon grant of CCU's application in that proceeding; (b) in NCE-MX Group 971218, BFC will withdraw its applications for Channel 207 and Channel 211 in Billings, Montana (BPED-19980824MG and 19980824MD, respectively), receiving grant of its application on Channel 215 for Billings (BPED-19980824MC), while CCU will amend its application on Channel 209 at Park City, Montana (BPED-19980825MF) to reduce power; (c) in NCE MX Group 971218, and contingent on reaching settlement with one other party, BFC will receive grant of its application for Sterling, Colorado (BPED-19980814MI), and CCU will amend its application at Sterling (BPED-19971222MB) to specify Channel 212; (d) In NCE MX Group 980608, and contingent on reaching settlement with two other parties, (d) BFC will amend its application for Hayden, Colorado (BPED-19981215MF) to specify Channel 211 or 212 to receive grant, CCU will withdraw its application for Craig, Colorado (BPED-19981215MJ) and receive grant of its application for Steamboat Springs, Colorado (BPED-19981215MH); (e) in the instant group, NCE-MX Group 970623, and contingent on reaching settlement with AFA and PRFR, BFC will withdraw its application for Orchard Valley (BPED-19971210MB) and CCU will receive grant of its application for Loveland (BPED-19971210M1); and (f) in NCE MX Group 971013, contingent on reaching settlement with three other parties, BFC will withdraw its application for Sidney, Colorado (BPED-19980415MB), and CCU will receive grant of its proposal for Gypsum, Colorado (BPED-19980417MC.)

indirectly paid or promised apart from that disclosed in the agreement.¹¹ 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. While the applicants propose to serve different communities, no § 307(b) questions have been presented and no publication is required.¹² Finally, we find that Colorado Christian University 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 Loveland, Colorado. We also find that Educational Media Foundation 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 Orchard Valley, Wyoming.

CCU petition to deny/informal objection. In light of our decision approving the Joint Request and dismissing the BFC application pursuant to the settlement agreement, we need not consider CCU's petition to deny that application. We will therefore dismiss the CCU petition to deny without consideration. Additionally, on August 16, 2002, CCU filed a request to withdraw its informal objection to the EMF application and all related pleadings in light of the universal settlement agreements in this case. The agreements indicate that CCU has received no consideration for the dismissal of the informal objection, and thus the withdrawal request complies with 47 C.F.R. § 73.3588. We have nevertheless considered the merits of CCU's objection¹³ and determined that the pleading presents no substantial and material question of fact sufficient to warrant further inquiry. Accordingly, we will dismiss the informal objection in accordance with CCU's request.

Main Studio Waiver. EMF proposes to operate the new station at Orchard Valley, Wyoming as a satellite of co-owned noncommercial educational FM station KLVR(FM), Santa

¹¹ 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 18, 2001.

¹² CCU submits that none of the applicants will provide a first noncommercial educational aural service to 10 per cent of the people within their 60 dbu contour. CCU states that its Loveland application is entitled to a decisional Section 307(b) threshold preference insofar as it will provide a second noncommercial educational aural service to 10 per cent of the people within its proposed 60 dbu contour and that the amount of such service is at least 5,000 more people than the next best applicant. CCU states that the other application proposed to be granted, for Orchard Valley, Wyoming, is currently served by only a single AM station; that, in contrast, two of the three applications proposed to be dismissed, Fort Collins and Cheyenne, are well served with numerous local full-power stations (four and nine, respectively) and that the third application proposed to be dismissed also proposed service to Orchard Valley. Accordingly, under the standards applied to mutually exclusive NCE applications, the applicant for Loveland would be awarded a preference under 47 U.S.C. § 307(b). *See Report and Order in MM Docket No. 95-31*, 15 FCC 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 the proposals of American Family Association, Inc. for Cheyenne, Wyoming; Public Radio for the Front Range for Fort Collins, Colorado; and Broadcasting for the Challenged for Orchard Valley, Wyoming will not "unduly impede achievement of a fair, efficient, and equitable distribution of radio service" under 47 C.F.R. § 73.3525(b).

¹³ *See Viacom, Inc.*, 9 FCC Rcd 1577 (1994); *Booth American Co.*, 58 FCC 2d 553 (1976).

Rosa, California, approximately 973 miles from Orchard Valley.¹⁴ EMF submits that by collocating the proposed station and KLVR(FM)'s main studios, EMF will realize valuable economies of scale and cost savings necessary to maintain high quality programming. EMF asserts that as a listener-supported station the proposed station "will face severe financial constraints" and that the obligation to maintain separate staffing and studio locations for the proposed station and KLVR(FM) "will place a serious financial burden" on EMF and divert limited resources away from programming efforts. For the reasons set forth below, we shall grant EMF's request for waiver.

Pursuant to § 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.¹⁵ 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 an 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.¹⁶ A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 "public interest" standard.¹⁷

EMF'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. § 73.1125(a)(4) in these circumstances. The Commission expects the licensee of a satellite station 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, EMF has pledged to: (1) maintain an auxiliary studio within the proposed station's city grade contour which will have the capability to originate local programming responsive to the needs of the local community; (2) engage the services of a local Orchard Valley public affairs representative to conduct regular ascertainment surveys of local community leaders and other residents to determine the concerns, problems and needs of Orchard Valley listeners, which will be covered in news and public affairs programming; and that EMF's local representative will serve as a liaison between the residents of Orchard Valley and EMF's programming personnel;

¹⁴ 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).

¹⁵ *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").

¹⁶ *Id.*

¹⁷ *Id.*

and (3) maintain a toll-free telephone number and a public inspection file in Orchard Valley in compliance with the Commission's Rules.

In these circumstances, we are persuaded that EMF will meet its local service obligations and thus, that grant of the requested waiver is consistent with the public interest. We remind EMF, however, of the requirement that it maintain a public file for the proposed station at the main studio of the "parent" station KLVR(FM) and make reasonable accommodation to the listeners wishing to view the contents of the file. *See Reconsideration Order*, 14 FCC Rcd at 11,129, para. 45. We further remind EMF 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. § 73.3527(e)(8). With these *caveats* underscoring EMF's obligations to the residents of Orchard Valley, its request for waiver of 47 C.F.R. § 73.1125 will be granted.

Actions. Accordingly, the Joint Request for Approval of Settlement Agreement IS GRANTED; the applications of American Family Association, Inc. (File No. BPED-19970703ME), Public Radio for the Front Range (File No. BPED-19971117MK) and Broadcasting for the Challenged (File No. BPED-19971210MB) ARE DISMISSED; the May 12, 1998 Petition to Deny and Informal Objection filed by Colorado Christian University ARE DISMISSED; and the applications of Colorado Christian University (File No. BPED-19971209M1) and Educational Media Foundation (File No. BPED-19970620MD), as amended, ARE GRANTED. The authorizations will follow under separate cover.

Sincerely,


for Peter H. Doyle, Chief
Audio Division
Media Bureau