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In re: **NEW(FM), Sterling, CO**

Educational Communications of  
Colorado Springs  
Facility ID No. 91471  
File No. BPED-19980813MF

Colorado Christian University  
Facility ID No. 89509  
File No. BPED-19971222MB

Broadcasting for the Challenged  
Facility ID No. 91419  
File No. BPED-19980814MI  
Joint Request for Approval of  
Settlement Agreement

MX Group 971218

Dear Counsel:

We have on file the above-referenced mutually exclusive applications for a new noncommercial educational FM ("NCE-FM") station in Sterling, Colorado filed by

Educational Communications of Colorado Springs ("ECCS"),<sup>1</sup> Colorado Christian University ("CCU"),<sup>2</sup> and Broadcasting for the Challenged ("BFTC").<sup>3</sup> Also on file are a Joint Request for Approval of Settlement Agreements ("Joint Request"), filed by the applicants on July 19, 2001, concurrently tendered amendments to the ECCS and CCU applications, and ECCS's request for waiver of 47 C.F.R. Section 73.1125, the main studio rule. For the reasons set forth below, we will grant the Joint Request and grant the ECCS, CCU and BFTC applications, as amended.

**Settlement Agreement.** Under the terms of the settlement agreements, ECCS will amend its proposal to specify Channel 212 and an effective radiated power of 25 kW at a new site to eliminate mutual exclusivity with the BFTC and CCU applications, and CCU will amend its proposal to specify operation on Channel 217 so as to eliminate mutual exclusivity with the ECCS and BFTC applications. Approval of the settlement agreements<sup>4</sup> and amendments would permit the Commission to grant each of the subject proposals.

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<sup>1</sup> File No. BPED-19980813MF.

<sup>2</sup> File No. BPED-19971222MB.

<sup>3</sup> File No. BPED-19980814MI.

<sup>4</sup> Consideration for the amendments includes requests for dismissal and amendment of applications to resolve multiple NCE-FM mutual exclusivities. For example, CCU agrees to dismiss (1) its application for a new NCE-FM station at Craig, Colorado (BPED-19981215MJ) as part of a settlement of NCE-MX Group 980608; (2) its application for a new NCE-FM station at Olathe, Colorado (BPED-19980706MB) as part of a settlement of NCE-MX Group 980105; (3) amend its proposal for a new NCE-Fm station at Pueblo, Colorado (BPED-19950411MA) to reduce power so as to remove mutual exclusivity with ECCS's application for a new NCE-FM station at Fowler, Colorado (BPED-19950721MB, as amended), thus resolving NCE-MX Group 95049E; and (4) dismiss its proposal for a new NCE-FM translator station at Brush, Colorado (BPED-19990730TB) to resolve NCE-MX Group 009, freeing up for grant ECCS's application for a new FM translator station in Brush (File No. BPFT-19990204TE).

For its part, ECCS agrees to (1) amend its application for a new NCE-FM station at Sidney, Colorado (BPED-19971014MB) to specify operation on channel 219 as part of a universal settlement of NCE-MX Group 971013, which also includes BFTC and CCU; (2) dismiss its proposal for a new NCE-FM station at Centennial, Wyoming (BPED-19980825MC) as part of a universal settlement of NCE-MX Group 971215, which includes CCU, BFTC, and two other applicants; (3) amend its proposal for a new NCE-FM station at Sterling, Colorado (BPED-19980813MF) to specify operation on Channel 212 with 25 kW effective radiated power at a new site so as to eliminate mutual exclusivity with BFTC's and CCU's Sterling, Colorado proposals (BPED-19980814M1 and BPED-19971222MB), as amended as part of the instant settlement agreement; (4) amend its proposal for a new NCE-FM station in Colona, Colorado (BPED-19980107MB) to specify operation on Channel 210 as part of the universal resolution of NCE-MX Group 980105; (5) dismiss its application for a new NCE-FM station at Hayden, Colorado (BPED-19980610MA) as part of the universal resolution of NCE-MX Group 980608; (5) amend its application for a new NCE-FM station at Fowler, Colorado (BPED-19950721MB) to remove mutual exclusivity with CCU's Pueblo,

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 new NCE-FM broadcast service at Sterling, 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.<sup>5</sup> We find that the applicants have complied with the requirements of

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Colorado application (BPED-19950411MA, as amended) and, to the extent appropriate, to justify waiver of the FCC's community of license coverage requirements with respect to such amendment; and (6) amend its application for a new NCE-FM Translator station at New Castle, Colorado (BPFT-19990831TC) to specify operation on Channel 211 so as to avoid mutual exclusivity with CCU's application for a new NCE-FM Translator station at Glenwood Springs, Colorado (BPFT-20000118ABO) in NCE-MX Group 021.

In addition thereto: ECCS agrees to reimburse CCU the amount of fifty percent (50%) of any cash settlement paid by CCU to BFTC in consideration for BFTC's dismissal of its application for a new NCE-FM station at Sidney, Colorado (BPED-19980415MB) in NCE-MX Group 971013, provided, however, that such amount shall not exceed \$6,250. In the event that CCU receives a grant of its application for a new NCE-FM station at Pueblo, Colorado (BPED-19950411MA) in NCE-MX Group 95049E -- a grant which was made by the staff on March 21, 2002 -- then ECCS may notify CCU that it wishes to exchange that permit for its existing translator K216EU. Consideration for that transaction will be one dollar in cash.

BFTC, for its part: (1) agrees to dismiss its application for a new NCE-FM station at Laramie, Wyoming (BPED-19980824MA) in NCE-MX Group 971215; (2) agrees to withdraw its applications for new NCE-FM stations at Billings, Montana (BPED-19980824MG, Channel 207 and BPED-19980824MD, Channel 211), receiving a grant of its application for a new NCE-FM station on Channel 215 in Billings (BPED-19980824MC) in NCE-MX Group 980117, contingent on reaching settlements with two other parties in that proceeding; (3) will receive grant of its application for a new FM station in Sterling, Colorado (BPED-19980814MI), the instant transaction, after CCU amend its proposal (BPED-19971222MB) to Channel 212, contingent on settlement with ECCS; (4) will amend its proposal for a new NCE-FM station at Hayen, Colorado (BPED-19981215MF) to specify Channel 211 or 212 in order to receive a grant, while CCU will withdraw its proposal for Craig, Colorado (BPED-19981215MJ) and receive a grant of its application for Steamboat Springs, Colorado (BPED-19981215MH) in NCE-MX Group 980608, contingent on reaching a settlement with two other parties; (5) will withdraw its application for a new NCE-FM station at Orchard Valley, Wyoming (BPED-19971210MB), and CCU will receive grant of its application for Loveland, Colorado (BPED-19971209M1), contingent on reaching a settlement with three other parties; and (6) will withdraw its application for a new NCE-FM station at Sidney, Colorado (BPED-19980415MB), in return for which CCU will receive grant of its application for Gypsum, Colorado (BPED-19980417MC), contingent on reaching settlement with one other party. CCU is to pay BFTC \$12,000 for dismissing its Laramie, Wyoming proposal within 5 days of the grant of CCU's application in the NCE-MX Group 971215 proceeding, and CCU is to pay BFTC \$12,500 for dismissing its Sidney, Colorado application within 5 days of the grant of CCU's application in NCE-MX Group 971013.

<sup>5</sup> 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*

Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended. Because the applications propose the same community, and because each of the proposals will be granted pursuant to the settlement agreements, no Section 307(b) questions are presented and no publication is required under 47 C.F.R. Section 73.3525(b).

**Main Studio Waiver Request.** ECCS proposes to operate the new station at Sterling, Colorado as a satellite of co-owned noncommercial educational FM station KTLF(FM), Colorado Springs, Colorado, approximately 182 miles from Sterling.<sup>6</sup> ECCS submits that economic benefits that will result from the centralized operation will support additional high quality programming. For the reasons set forth below, we shall grant ECCS' request for waiver.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 "public interest" standard.<sup>10</sup>

ECCS'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 to take adequate measures to maintain its awareness of the

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*Settlements and Supplements, Public Notice*, Released May 24, 2001. The instant settlement agreement was, as noted, filed on July 19, 2001.

<sup>6</sup> 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).

<sup>7</sup> By letter dated September 26, 2002, CCU withdrew its request for waiver of 47 C.F.R. § 73.1125.

<sup>8</sup> *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").

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

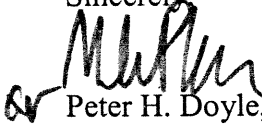
satellite community's needs and interests. Where there is a considerable distance between parent and satellite stations, we are particularly concerned that the licensee take adequate measures to maintain its awareness of the satellite community's needs and interests and respond to them in its programming. To that end, ECCS has pledged to: (1) at least quarterly, conduct interviews with residents and community leaders to assess community needs and the need for responsive programming; (2) ensure that its Community Advisory Board has at least one resident of Sterling, who will be asked to provide recommendations on community needs and programming directly to ECCS' management; (3) develop periodic local programming for Sterling residents, including coverage of significant local news and cultural events; (4) provide for the broadcast of local public service announcements; and (5) maintain its public file within the community of license and maintain a local toll free telephone number and mailing address for the benefit of Sterling residents.

In these circumstances, we are persuaded that ECCS will meet its local service obligations and thus that grant of the requested waiver is consistent with the public interest. We remind ECCS, however, of the requirement that it maintain a public file for the proposed station at the main studio of the "parent" station KTLF(FM), and make reasonable accommodation to the listeners wishing to view the contents of the file.<sup>11</sup> We further remind ECCS 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 ECCS' obligations to the residents of Sterling, its request for waiver of 47 C.F.R. Section 73.1125 will be granted.

**Conclusion/Actions.** In light of the above discussion, we find that Educational Communications of Colorado Springs, Colorado Christian University, and Broadcasting for the Challenged are fully qualified to be a licensees of the proposed facilities and that a grant of their respective applications would serve the public interest by expediting new FM service to Sterling, Colorado.

Accordingly, the Joint Request for Approval of Settlement Agreements IS GRANTED; ECCS' request for waiver of 47 C.F.R. Section 73.1125 IS GRANTED; and the applications of Educational Communications of Colorado Springs (File No. BPED-19980813MF) as amended, Colorado Christian University (File No. BPED-19971222MB), as amended, and Broadcasting for the Challenged (File No. BPED-19980814MI) ARE GRANTED. The authorizations will be sent under separate cover.

Sincerely,

  
Peter H. Doyle, Chief  
Audio Division  
Media Bureau

<sup>11</sup> See *Reconsideration Order*, 14 FCC Rcd at 11,129, para. 45.