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**FEDERAL COMMUNICATIONS COMMISSION
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In re: **NEW(NCE-FM), Bend, OR**
Facility ID No. 89855
File No. BPED-19980126MB
Lane Community College

NEW(NCE-FM), Bend, OR
Facility ID No. 90124
File No. BPED-19980218MD
CSN International

NEW(NCE-FM), Bend, OR
Facility ID No. 91039
File No. BPED-19980626MA
American Family Association

NEW(NCE-FM), Lebanon, OR
Facility ID No. 91560
File No. BPED-19980826MI
Educational Media Foundation

MX Group 980206

Joint Request for Approval of
Settlement Agreements

Dear Counsel/Applicant:

This letter concerns: (1) the captioned applications of Lane Community College ("Lane"), CSN International ("CSN"), and American Family Association ("AFA"), and for a new noncommercial educational FM station ("NCE") at Bend, Oregon (File Nos. BPED-19980126MB, BPED-19980218MD, and BPED-19980826MI, respectively); (2) the captioned application of Educational Media Foundation ("EMF") for a new noncommercial educational FM station at Lebanon, Oregon (File No.); (3) Lane's request for a waiver of the main studio location rule; (4) EMF's request for a waiver of the main studio location rule; and (5) the July 19, 2001 "Joint Request for Approval of Settlement Agreements" ("Joint Request") filed by Lane, EMF, CSN and AFA. For the reasons set forth below, we approve the joint request, dismiss the CSN and AFA applications, grant Lane's waiver request and its application as amended, and grant EMF's waiver request and its application as amended.

Settlement agreements. The applications are mutually exclusive and comprise NCE MX Group 980206. Attached to the Joint Request are copies of three bilateral settlement agreements which, considered together, constitute a universal settlement of Group 980206. Specifically, they request that we approve the Joint Request and agreements, accept the engineering amendments to EMF and Lane's applications, dismiss the CSN and AFA applications, and grant the Lane application and the EMF application as amended. Also attached are declarations under penalty of perjury by each party. Therein each asserts that its application was not filed for the purpose of reaching or carrying out a settlement, that neither they nor their principals has or will receive consideration other than as set forth in the settlement agreements, and that effectuation of the settlements will promote the public interest by conserving Commission and applicant resources and by hastening the introduction of new NCE services at Bend and Lebanon.

The first agreement is between EMF and CSN.¹ Therein CSN agrees: to amend its NCE application for Coos Bay, Oregon,² to protect another NCE application for Roseburg, Oregon;³ to dismiss its instant Bend application as well as another NCE application for Bend;⁴ to amend its NCE application for Redmond, Oregon⁵ to eliminate mutual exclusivity with and facilitate the grant of EMF's application for Sisters, Oregon in NCE-MX Group 970939;⁶ and to sell/assign to the State Board of Higher Education-Southern Oregon University the licenses, tower lease

¹ The agreement is undated. However, inasmuch as it was ratified by CSN on July 16 and by EMF on July 17, 2001, we consider it dated July 17, 2001.

² File No. BPED-19980320ML.

³ William Patrick Donnelly Ministries, Inc., File No. BPED-19980318MI.

⁴ File No. BPED-19980417MF.

⁵ File No. BPED-19981203MO.

⁶ File No. BPED-19970925MF.

agreement and equipment for translator Station K249BS, Grants Pass, Oregon. EMF agrees to sell/assign to CSN the licenses, tower lease agreement and equipment for translator Station K203AZ, Fairmount, Tennessee.

The second agreement is between EMF and AFA.⁷ Therein AFA agrees to dismiss its instant Bend application as well as its NCE application for Wasco, California.⁸ AFA also agrees to settle with other parties in other MX groups. EMF agrees to facilitate settlements with the other parties to MX Group 971018 in order to provide for grant of AFA's NCE application for Bend, Oregon on Channel 213⁹ and to pay AFA \$25,000.00 when settlements in MX Groups 980206 and 970625 become final.¹⁰

The third agreement, dated July 18, 2001, is between EMF and Lane. Therein Lane agrees that upon notification that EMF has entered a universal settlement agreement in MX Group 970939, it will seek dismissal of its own NCE application at Sisters, Oregon.¹¹ EMF agrees that it will amend its instant Lebanon application to remove the conflict with Lane's Bend proposal. EMF further agrees that it will secure the dismissals of the instant AFA and CSN applications, thereby allowing for grant of Lane's instant Bend proposal.

After careful consideration of the proposed settlement agreements and attached declarations, we determine that the agreements comply with Commission policy. Approval of the agreements and the grant of Lane and EMF's applications, as amended, would conserve Commission and applicant resources and enable the expeditious implementation of new NCE services at Bend and Lebanon, respectively. Further, it appears that no party to the Joint Request filed its application in order to reach or carry out a settlement.¹² Additionally, because each of the communities specified in this proceeding will receive a new NCE broadcast service, no 47 U.S.C. Section 307(b) issues are presented and no publication is required under Section 73.3525(b). Thus, the proposed settlement conforms to 47 C.F.R. Section 73.3525.

Application amendments. An NCE applicant may submit a minor engineering amendment to achieve the grant of its proposal by removing itself from an MX group, provided the amendment would not affect the viability of other applicants to compete for a second station.¹³ EMF submitted an amendment to its application on July 19, 2001 for the purpose of detaching its

⁷ The agreement is undated. However, since it was ratified by the parties on July 17, 2001, we consider it dated July 17, 2001.

⁸ File No. BPED-19970915ME.

⁹ File No. BPED-19980327MB.

¹⁰ The agreement provides that AFA recognizes that the instant agreement is conditioned on EMF's entry into settlement agreements in other MX groups.

¹¹ File No. BPED-19981203MF.

¹² See 47 C.F.R. § 73.3525(a).

¹³ See *Public Notice*, "Supplements and Settlements to Pending Closed Groups of Noncommercial Educational Broadcast Applications Due by June 4, 2001," 16 FCC Rcd 6893 (2001) ("*NCE Settlement Public Notice*").

proposal from the other Group 98206 applications.¹⁴ We find good cause to accept EMF's amendment.¹⁵

Pursuant to the referenced EMF/Lane agreement, Lane may amend its Bend application to specify facilities comparable to those specified by AFA in order to address the "Fair Distribution of Service" issue. Lane submitted a minor engineering amendment on July 19, 2001,¹⁶ therein proposing service to a "comparable" area and population as proposed by the dismissing applicants, CSN and AFA. We also find good cause to accept Lane's amendment.

Main studio waivers. 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.¹⁷ 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.¹⁸ A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 "public interest" standard.¹⁹

EMF requests a main studio waiver to operate the proposed Lebanon station as a satellite of co-owned NCE Station KLRD(FM), Yucaipa, California. EMF asserts that the Lebanon station will be part of its Air 1 Radio Network ("Air 1") and will broadcast KLRD(FM) programming. The applicant says it hopes to realize economies of scale "needed to maintain the high quality of Air 1's NCE programming. According to EMF, as a listener-supported station, the proposed Lebanon facility will face "severe" financial constraints, and maintaining and staffing separate studios would be a "serious" financial burden and would divert limited resources from Air 1 programming.

¹⁴ EMF seeks a directional antenna change.

¹⁵ See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074 (2001); see also *NCE Settlement Public Notice*, *supra*, and *Public Notice*, "Deadline for NCE Settlements and Supplements Extended to July 19, 2001," 16 FCC Rcd 10,892 (2001). According to EMF, it will not receive any consideration for amending its application.

¹⁶ Lane seeks to change effective radiated power and "minor" corrections to radiation center AGL, AMSL, and HAAT.

¹⁷ 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").

¹⁸ *Id.*

¹⁹ *Id.*

EMF pledges to fulfill its local service obligations by maintaining an auxiliary studio with local programming origination capability responsive to local community needs within the proposed city grade contour. In a June 23, 2002 submission, EMF asserts that a local public affairs representative will work with its Regional Managers²⁰ and, at least quarterly, survey local community leaders and residents to determine Lebanon's concerns, problems, and needs, which will be addressed by news and public affairs programming. According to EMF, the representative will serve as a liaison between Lebanon residents and its programming personnel. Further, EMF pledges to maintain a toll-free telephone number as well as a local public inspection file.

Lane proposes to co-locate the main studio of the proposed Bend station with that of its campus Station KLCC(FM), Eugene, Oregon, and to operate it as a satellite of KLCC(FM). According to Lane, "economic realities" preclude a local full programming schedule tailored to Bend. Lane pledges to maintain a toll-free telephone number to allow local residents to contact the Eugene studio. In a May 24, 2002 submission, Lane pledges to ascertain community needs quarterly by surveying local leaders and making the results available to the public. It also commits to staff reviews of a local newspaper "on a regular basis." According to Lane, it will use the survey results and newspaper monitoring to develop programs addressing identified local issues. Further, Lane commits to assigning a reporter to cover important issues in its proposed service area and states it regularly broadcast news, public affairs, and other non-entertainment programming concerning issues affecting the Bend service area.

Both waiver requests are premised on potential economies of scale. We agree, that given the circumstances, EMF and Lane will meet their local service obligations to Lebanon and Bend, respectively, and that there is good cause to waive Section 73.1125 for both. Where, as here, there is a significant distance between parent and proposed satellite stations,²¹ and where, as in the case of EMF, they are situated in different states, we are particularly concerned that the proposed 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 survey community leaders and residents quarterly and to address the ascertained broadcast needs and interests of Lebanon. We also credit its pledge to maintain a Lebanon 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 Lebanon listeners wishing to examine the file's contents.²² We do not, however, credit its toll-free telephone commitment, inasmuch as it is otherwise mandated by Section 73.1125(e). We also credit Lane's pledges to undertake quarterly ascertainment surveys, to monitor the local newspaper, and to air programming addressing items identified in the surveys. In addition, we credit Lane's pledge to assign a reporter to the Bend service area and to regularly broadcast non-entertainment programs encompassing significant local issues. We remind EMF and Lane that, notwithstanding grant of their waiver requests, the public inspection files for their proposed

²⁰ EMF states that its Regional Managers oversee stations within defined geographical areas which have been granted main studio location waivers.

²¹ EMF indicates that KLRD(FM)'s studio is situated approximately 773.8 miles outside the proposed Lebanon principal community contour. Bend is approximately 115 miles from Eugene.

²² See 47 C.F.R. § 73.3527(c); *Reconsideration Order*, 14 FCC Rcd at 11,129, ¶ 45.

facilities must contain the quarterly issues and programs list for Lebanon and Bend, respectively, as required by 47 C.F.R. Section 73.3527(e)(8).

Conclusion/orders. Examination of their respective applications reveal that Lane and EMF are qualified to be Commission licensees. The examinations further reveal 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 Agreements" filed by Lane Community College, Educational Media Foundation, CSN International and American Family Association IS APPROVED; the applications of CSN International (File No. BPED-19980218MD) and American Family Association (File No. BPED-19980626MA) ARE DISMISSED; the July 19, 2001 amendment to the application of Lane Community College IS ACCEPTED, its request for a waiver of 47 C.F.R. Section 73.1125 IS GRANTED, and its application (File No. BPED-19980126MB) IS GRANTED; and the July 19, 2001 amendment to the application of Educational Media Foundation IS ACCEPTED, its request for a waiver of 47 C.F.R. Section 73.1125 IS GRANTED, and its application (File No. BPED-19980826MI) IS GRANTED. The authorizations will follow under separate cover.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", with a long horizontal flourish extending to the right.

Peter H. Doyle, Chief
Audio Division
Media Bureau