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FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

DEC 07 2001

In Reply Refer To:
1800B3-ACS

Robert E. Hemenway
University of Kansas
Broadcasting Hall
Lawrence, Kansas 66045

Lowell L. Davey, President
Bible Broadcasting Network, Inc.
8030 Arrowridge Boulevard
Charlotte, North Carolina 28273

In re: **NEW(FM), Emporia, Kansas**

University of Kansas
File No. BPED-19980406MB
Facility ID No. 90457

NEW(FM), Emporia, Kansas

Bible Broadcasting Network, Inc.
File No. BPED-19980601MB
Facility ID No. 90290

Joint Request for Settlement Agreement
MX Group 980406

Dear Applicants:

This is in reference to the above-captioned mutually exclusive construction permit applications for a new noncommercial FM station in Emporia, Kansas and the Joint Request for Approval of Settlement Agreement and Dismissal of Application ("Joint Request") filed July 16, 2001 by University of Kansas ("Kansas") and Bible Broadcasting Network, Inc. ("BBN").

We have examined the Joint Request and the Settlement Agreement ("Agreement") attached thereto. Based on this examination, we find that approval of the Joint Request would serve the public interest and the BBN application was not filed for the purpose of reaching or carrying out the Agreement. Accordingly, the applicants have complied with the provisions of 47 U.S.C. § 311(c)(3) and 47 C.F.R. § 73.3525. Since both of the applicants propose to serve the same community, no Section 307(b) questions have been presented and no republication is required under 47 C.F.R. § 73.3525(b). Furthermore, we find that Kansas is fully qualified and that a grant of the application would serve the public interest by expediting a new FM service to Emporia, Kansas.

Main Studio Waiver. Kansas has requested a waiver of the main studio requirement, 47 C.F.R. § 73.1125, in order to operate the Emporia, Kansas station as a satellite¹ of its commonly-owned NCE station KANU(FM), Lawrence, Kansas. For the reasons set forth below, we will waive Section 73.1125.

Pursuant to Section 73.1125(a), a main studio must be located either (1) within a station's community of license; (2) within the principal community contour of any other broadcast station licensed to its community; or (3) within 25 miles of the center of the community of license. *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 15691 (1998); *recon. granted in part*, 14 FCC Rcd 11113 (1999) ("*Reconsideration Order*"). 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. *Id.* A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 public interest standard. *Id.*

Kansas' request is based on the economies of scale which would be realized by a grant of its waiver. We agree and conclude that there is good cause to waive 47 C.F.R. § 73.1125(a) in these circumstances. Kansas proposes to operate the Emporia, Kansas station as a satellite of KANU(FM), Lawrence, Kansas, approximately 61 miles from Emporia. Where there is great distance between parent and satellite station, as here, we are particularly concerned that the licensee takes adequate measures to maintain its awareness of the satellite community's needs and interests. To that end, Kansas has pledged to: (1) have on its Advisory Board, one or more persons from Emporia to represent the needs and interests of the Emporia community and the surrounding area, (2) provide programming to address issues of importance to residents of Emporia and the surrounding area, (3) maintain a toll-free telephone number, as required by Section 73.1125(d) of the rules, and maintain a public inspection file for the station within the Emporia community.

Under these circumstances, we are persuaded that Kansas will meet its local service obligation and thus, grant of the requested waiver is consistent with the public interest. We remind Kansas, however, of the requirement that it maintain a public file for the station at the main studio of the station at which its programming is originated, and it must provide the accommodation to listeners or residents as required under the amended rules. *See Reconsideration Order*, 14 FCC Rcd at 11129, ¶45. Thus, in the instant case, Kansas must maintain the public file for the Emporia facility at the main studio of parent station KANU(FM), Lawrence, Kansas.

Accordingly, pursuant to 47 C.F.R. § 0.283, the Joint Request for Approval of Settlement and Settlement Agreement and its request for waiver of 47 C.F.R. § 73.1125 ARE GRANTED. The application filed by Bible Broadcasting Network, Inc. (File No. BPED-19980601MB) IS

¹ 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, Memorandum Opinion and Order*, 3 RR 2d 1554, 1562 (1964).

HEREBY DISMISSED and the application filed by University of Kansas (File No. BPED-19980406MB) IS HEREBY GRANTED. The construction permit authorization will follow under separate cover.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter H. Doyle".

Peter H. Doyle, Chief
Audio Services Division
Mass Media Bureau

A small handwritten word "for" in cursive script.

cc: Gary S. Smithwick
Howard M. Liberman