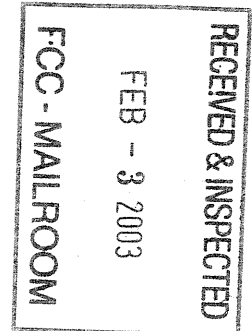


FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re: NEW(FM), Bismarck, North Dakota
Educational Media Foundation
File No. BPED-19990602MD
Facility ID No. 93595

NEW(FM), Lincoln, North Dakota
Educational Media Foundation
File No. BPED-19981019MA
Facility ID No. 91457

NEW(FM), Bismarck, North Dakota
Broadcasting for the Challenged, Inc.
File No. BPED-19990527MD
Facility ID No. 93533

NEW(FM), Lincoln, North Dakota
CSN International
File No. BPED-19990602MT
Facility ID No. 93642

NEW(FM), Lincoln, North Dakota
Broadcasting for the Challenged, Inc.
File No. BPED-19990602MC
Facility ID No. 93596

Joint Request for Settlement Agreement
MX Group 981011

Request for Waiver of 47 C.F.R. §73.1125
(Main Studio Rule)

Dear Counsel:

This is in reference to the above-captioned mutually exclusive construction permit applications for new noncommercial FM stations in Bismarck and Lincoln, North Dakota and the Joint Request for Approval of Settlement Agreements ("Joint Request") filed July 18, 2001 by Broadcasting for the Challenged, Inc. ("BTFC"), Educational Media Foundation ("EMF") and CSN International ("CSN").¹

We have examined the Joint Request and the Settlement Agreements ("Agreements") attached thereto. Under the terms of the Agreements, in order to resolve this proceeding and remove the mutual exclusivity among these several proposals, EMF has reached a settlement with BTFC pursuant to which BTFC will dismiss its Lincoln application in exchange for EMF amending its Bismarck and Lincoln applications. Such dismissal and amendment will permit the grant of BTFC's Bismarck application, CSN's Lincoln application and EMF's Lincoln and Bismarck applications, as amended. As consideration for dismissal, EMF shall pay BTFC \$12,000.00 and EMF and CSN have settled their application conflicts in various other mutually exclusive application groups.² This consideration is authorized pursuant to the temporary waiver of the reimbursement limitations contained in 47 C.F.R. Section 73.3525(a)(3).³ The waiver was extended to settlement agreements filed by July 19, 2001.⁴

After careful consideration of the Agreements, we find that approval of the Joint Request would serve the public interest and the EMF, BTFC and CSN applications were not filed for the purpose of reaching or carrying out the Agreements. Accordingly, the applicants have complied with the provisions of 47 U.S.C. Section 311(c)(3) and 47 C.F.R. Section 73.3525. Since the dismissing applicant proposes to serve the same community as the EMF and CSN applications being granted, no Section 307(b) questions have been presented and no republication is required under 47 C.F.R. Section 73.3525(b). Furthermore, we find that EMF, BTFC and CSN are fully qualified and that grant of their respective applications would serve the public interest by expediting new noncommercial FM service to Bismarck and Lincoln, North Dakota.

Main Studio Waiver Request. EMF has requested a waiver of the main studio requirement, 47 C.F.R. Section 73.1125, in order to operate the Lincoln station as a satellite of its commonly-owned NCE FM station KLVR(FM), Santa Rosa, California⁵. 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 principle community contour of any other broadcast station

¹ CSN submitted a Supplement to Joint Request for Approval of Settlement Agreements on June 4, 2002.

² See Exhibit B to the Joint Request.

³ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5107-08 (2001).

⁴ See *Public Notice*, "Deadline for Noncommercial Educational FM Settlements and Supplements," DA 01-1245 (MM Bur. May 24, 2001).

⁵ 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).

licensed to its community, or (3) within 25 miles of the center of its community of license.⁶ However, under Section 73.1125(b)(2), the Commission will waive these requirements 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 a satellite of another NCE station is considered on a case-by-case basis. The Commission has recognized the benefits of centralized operation 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.⁷ A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 public interest standard.⁸

EMF’s request is based on the economies of scale which would be realized by grant of its waiver, *e.g.*, avoiding the cost of equipping, staffing, and operating a studio in the Lincoln area. We agree and conclude that there is good cause to waive 47 C.F.R. Section 73.1125(a) under these circumstances. As noted above, EMF proposes to operate the Lincoln station as a satellite of KLVR(FM), Santa Rosa, California, approximately 1253 miles from Lincoln, North Dakota. Where there is considerable distance between the parent and the satellite station, 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, EMF has pledged to meet its local service obligations by: (1) maintaining an auxiliary studio at a location that complies with Section 73.1125 and that is capable of originating programming to meet local community needs; (2) employing a local representative, who will work with EMF’s regional managers and will conduct, on a quarterly basis, interviews, surveys and other samplings of public opinion, in order to ascertain the interests and needs of the proposed service area in its news and public affairs programming; (3) maintaining a toll-free number from Lincoln to the KLVR(FM) studio in Santa Rosa; and (4) maintaining a public inspection file for the station within Lincoln.

Under 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, that, notwithstanding its commitment to maintain a public inspection file in Lincoln, it must also maintain a public file for the station at the main studio of the parent station, KLVR(FM), Santa Rosa, California. It must also make reasonable accommodations for listeners wishing to examine the public file’s contents.⁹ We further remind EMF that, notwithstanding the grant of the waiver requested here, the public file for the station must contain the quarterly issues and programs list as required by 47 C.F.R. Section 73.3527(e)(8).

⁶ See *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 11, 113 (1999) (“*Reconsideration Order*”).

⁷ *Id.*

⁸ *Id.*

⁹ See *Reconsideration Order*, 14 FCC Rcd at 11129.

Accordingly, pursuant to 47 C.F.R. Section 0.283, the Joint Request and Settlement Agreements and the request for waiver of 47 C.F.R. Section 73.1125 filed by Educational Media Foundation ARE GRANTED; the application filed by Broadcasting for the Challenged, Inc. at Lincoln, North Dakota (File No. BPED-19990602MC) IS DISMISSED and the applications filed by Broadcasting for the Challenged, Inc. (File No. BPED-19990527MD), Educational Media Foundation (File Nos. BPED-19990602MD and BPED-19981019MA) and CSN International (BPED-19990602MT) ARE HEREBY GRANTED, as amended. The construction permit authorizations will follow under separate cover.

Sincerely,

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

Peter H. Doyle, Chief
Audio Division
Media Bureau