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November 21, 2007

**VIA HAND DELIVERY**

**FILED/ACCEPTED**

**NOV 21 2007**

Federal Communications Commission  
Office of the Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Portals II, Filing Center, TW-A325  
Washington, D.C. 20554

**Re: NCE MX Group 880611  
Application of the State of Oregon  
(New) FM, Redding CA  
File No. BPED-19900129MH**

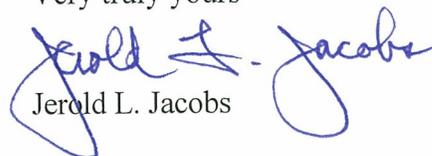
**Application of The Research Foundation  
Station KFPR(FM), Redding CA  
File No. BPED-19880610ML**

Dear Ms. Dortch

Enclosed for filing, on behalf of our client, The Research Foundation, California State University at Chico, are an original and four (4) copies of its "**MOTION TO DISMISS OR, IN THE ALTERNATIVE, OPPOSITION TO PETITION FOR RECONSIDERATION**" concerning a November 9, 2007 Petition for Reconsideration filed by the State of Oregon against a Media Bureau Letter decision, DA 07-4136, 22 FCC Rcd 17643, released October 3, 2007, in the above-captioned matter.

Please direct any communications or correspondence concerning this matter to the undersigned.

Very truly yours

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (w/enc.)

FILED/ACCEPTED

NOV 21 2007

Federal Communications Commission  
Office of the Secretary

BEFORE THE

# Federal Communications Commission

In the Matter of	)	
	)	NCE MX Group 880611
Application of the State of Oregon for a Permit to	)	File No. BPED-19900129MH
Construct a New NCE FM Station at Redding CA	)	
	)	
Application of The Research Foundation,	)	File No. BPED-19880610ML
California State University at Chico	)	
For a Permit to Construct a New NCE FM Station	)	
at Redding CA (Station KFPR(FM))	)	

To: Secretary, Federal Communications Commission  
 ATT: Chief, Media Bureau

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
 OPPOSITION TO PETITION FOR RECONSIDERATION**

THE RESEARCH FOUNDATION  
 CALIFORNIA STATE UNIVERSITY AT CHICO

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 Washington, D.C. 20036  
 (202) 293-3860

Its Attorneys

Dated: November 21, 2007

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**SUMMARY**

The subject “Motion to Dismiss or, in the Alternative, Opposition to Petition for Reconsideration” is filed by The Research Foundation to fully rebut the continuing efforts of the State of Oregon – this time via a Petition for Reconsideration (“Petition”) -- to terminate The Research Foundation’s 14-year operation of Station KFPR(FM) at Redding, California, and to substitute a new FM station licensed to the State of Oregon.

In the accompanying pleading, The Research Foundation moves the Commission to dismiss as untimely the State of Oregon’s Petition. In the alternative, it opposes the Petition on the merits. As is demonstrated therein, The Research Foundation was properly awarded a construction permit and license for Station KFPR by a Letter decision signed by Peter H. Doyle, Chief of the Media Bureau’s Audio Division (“*Bureau Letter*”), DA 07-4136, 22 FCC Rcd 17643, released October 3, 2007, and the State of Oregon’s Petition is untimely, exceeds the permissible page limit for petitions for reconsideration, and has no substantive merit. Therefore, the Petition should be dismissed as untimely, returned to the State of Oregon to be reformed into a permissible 25-page pleading, or summarily denied on the merits.

BEFORE THE  
**Federal Communications Commission**

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Application of the State of Oregon for a Permit to	)	File No. BPED-19900129MH
Construct a New NCE FM Station at Redding CA	)	
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Application of The Research Foundation,	)	File No. BPED-19880610ML
California State University at Chico	)	
For a Permit to Construct a New NCE FM Station	)	
at Redding CA (Station KFPR(FM))	)	

To: Secretary, Federal Communications Commission  
ATT: Chief, Media Bureau

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
OPPOSITION TO PETITION FOR RECONSIDERATION**

The Research Foundation, California State University at Chico (CSU, Chico), licensee of Station KFPR(FM), Redding, California,, by its attorneys, pursuant to §§1.106(f) and (g) and 1.4(b) of the Commission’s Rules, hereby moves to dismiss as untimely the above-captioned Petition for Reconsideration (“Petition”) filed by the State of Oregon in this proceeding on November 9, 2007. In the alternative, it opposes the Petition on the merits. As will be demonstrated herein, The Research Foundation was properly awarded a construction permit and license for Station KFPR by a Letter decision signed by Peter H. Doyle, Chief of the Media Bureau’s Audio Division (“*Bureau Letter*”), DA 07-4136, 22 FCC Rcd 17643, released October 3, 2007, and the State of Oregon’s Petition is untimely, exceeds the permissible page limit for petitions for reconsideration, and has no substantive merit. Therefore, the Petition should be dismissed as untimely, returned to the State of

Oregon to be reformed into a permissible 25-page pleading, or summarily denied on the merits. In support whereof, The Research Foundation shows the following:

**A. The State of Oregon's Untimely Petition for Reconsideration Should Be Dismissed**

1. The *Bureau Letter* granting The Research Foundation's construction permit and license for Station KFPR was released on October 3, 2007; however, the Commission released a Public Notice (Broadcast Actions, Report No. 46587, p. 8) on October 9, 2007, further announcing the Commission's actions. Under §§1.4(b) and 1.106(f) of the Rules, and Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. §405, the 30-day deadline for filing a petition for reconsideration challenging the Commission's action was either November 2, 2007 (measured from the October 3 release date of the text of the Bureau Letter) or November 8, 2007 (measured from the October 9 Public Notice).

2. Although the State of Oregon claims on the face of its Petition for Reconsideration and accompanying cover letter that the Petition was filed on November 8, 2007, it was actually filed on November 9, 2007. See attached copies of the cover letter and the first page of the Petition, both of which bear Commission date-stamps of November 9, 2007. Indeed, a second stamp on the cover letter reads "Nov. 9 P 2:48," presumably meaning 2:48 p.m. on November 9. Moreover, on November 16, 2007, the Commission released a Public Notice (Broadcast Applications, Report No. 26614, p. 13), copy attached, which states that the State of Oregon's Petition was filed on November 9, 2007. In footnote 2 of the Petition, the State of Oregon asserts that its filing was timely, measured from the Commission's October 9, 2007 Public Notice. However, using the State of Oregon's own reckoning, that would only be true if the Petition had actually been filed on November 8. But, in fact, the Petition was filed on November 9 – one day late. Moreover, and most importantly, The Research Foundation maintains that the proper filing deadline for the Petition under §1.4(b) of the

Rules was actually November 2, 2007, 30 days after the text of the *Bureau Letter* was released. That would make the Petition *seven* days late, not just one day late.

3. Either way, under established Commission and court precedent, the Commission lacks authority to extend or waive the statutory 30-day filing period for petitions for reconsideration., and The Research Foundation urges that the State of Oregon’s Petition must be dismissed as untimely without any consideration of the merits. *See Public Radio Broadcasting Service*, 6 FCC Rcd 1416 (1991), citing *Reuters Limited v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986); *Richardson Independent School District*, 5 FCC Rcd 3135, 3136 ¶6 (1990).

**B. If Considered on the Merits, the Petition for Reconsideration Must Be Reformed to Conform with the 25-Page Filing Limit**

4. Section 1.104(f) of the Rules puts a 25-page limit on petitions for reconsideration. Superficially, the State of Oregon’s Petition is only 17 pages long, but, on pages 3 and 4 thereof, the State of Oregon specifically “consolidates” and “adopts in its entirety” 25 identified pages from a previously-filed April 26,2007 Petition for Reconsideration (“April Submission”) and attaches a copy of that Petition for Reconsideration in order to set forth its arguments. This consolidation/adoption impermissibly allows the State of Oregon to compress its 25 pages of previous arguments into two pages in its new Petition and requires The Research Foundation to respond to those pages as if they were part-and-parcel of the current Petition.

5. This is a patent violation of the page limitation requirement of §1.104(f). The State of Oregon has submitted 42 pages of argument, instead of the allowable 25, and its consolidation/adoption cannot be construed as a mere supporting exhibit or report; it is fully intended to be read into the Petition *verbatim* as substantive arguments. Under these circumstances, The Research Foundation urges that if the State of Oregon’s Petition is to be considered on the merits, the

State of Oregon should be required to reform the Petition's arguments into a single 25-page text. Thus, the Petition should be dismissed as procedurally improper with leave to refile.

**C. The *Bureau Letter* and the *Omnibus Order* Should Be Affirmed in All Respects**

6. While The Research Foundation strongly believes that the Petition should be dismissed because of one or both of the two significant procedural defects discussed above, out of abundance of caution The Research Foundation will now address the Petition's arguments on the merits. As The Research Foundation will now show, the *Bureau Letter* and the *Memorandum Opinion and Order* ("*Omnibus Order*"), 22 FCC Rcd 6101 (2007), which laid the foundation for the *Bureau Letter* should be affirmed in all respects.

**(1) The *Omnibus Order* Did Not Improperly Apply New Rules and Policies Retroactively**

7. The State of Oregon erroneously urges in Section I of its Petition that the Commission erred in the *Omnibus Order* by applying Subpart K of Part 73 of the Commission's Rules, specifically §§ 73.7000 through 73.7003, to the State of Oregon's losing competing application for a new FM station at Redding.

8. The State of Oregon's view that the *Omnibus Order* improperly imposes new comparative selection criteria retroactively is incorrect. The State of Oregon maintains that the Commission's new paper hearing rules fail because there is no "statutory provision which would permit [the Commission] to apply these new point-system standards retroactively to a mutually-exclusive NCE group that was subject to a pending federal appellate court remand order premised upon the former rules" (April Submission at 10). This objection is defeated by Commission case precedent, a fair reading of the 1996 Remand Order in this proceeding (*State of Oregon v. FCC*, 102 F.3d 583 (D.C. Cir. 1996)), and the actual legislative and judicial history of this proceeding.

9. In *Policy Regarding Character Qualifications in Broadcast Licensing*, 1 FCC Rcd 421 ¶5 (1986) (“*Character Qualifications*”), the Commission specifically addressed the question of applying a new policy statement retroactively to pending proceedings and held that doing so “comports with the traditional judicial practice of deciding cases in accordance with principles in effect at the time of decision. This approach necessarily results in a limited retrospective application of the criteria....However, this is permissible and does not violate due process. As the Court of Appeals...has stated [citing *Washington Assoc. for Television and Children v. FCC*, 665 F.2d 1264, 1268 (D.C. Cir. 1981)], “an agency cannot be required to apply a policy it has rejected. Such a requirement would amount to a command to the agency to disregard its statutory mandate; it would have to employ a policy that, by its own determination, did not serve the public interest”.

10. Moreover, the Commission pointed out in *Character Qualifications, supra*, 10 FCC Rcd at 421 ¶6, that in adopting the *Policy Statement on Comparative Broadcast Hearings* in 1965, 1 FCC 2d 393, 399-400, it decided to apply those new policies to pending cases, including cases under review on its effective date. Finally, in eliminating the suburban community policy, the *Berwick* doctrine, and the *de facto* reallocation policy, the Commission applied the new standards to pending cases and specifically found that application of these new policies to pending cases did not violate any hearing rights of applicants. 10 FCC Rcd at 421 ¶6.

11. In sum, the State of Oregon had no vested right in, or reasonable expectation of, a particular type of comparative hearing proceeding as a result of its 1990 application or the 1996 Remand Order. The *Omnibus Order* properly decided this case using the new comparative criteria and paper hearing policy procedures adopted by the Commission and affirmed by the Court of Appeals in *American Family Ass’n v. FCC*, 365 F.3d 1156 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 634 (2004). To require the Commission to apply comparative standards to the State of Oregon that it

rejected 13 years ago in a policy rulemaking proceeding would make a travesty of the rulemaking process.

12. The Commission should conclude that when it conducted further rulemaking proceedings in 2001-02 on how to select noncommercial broadcast licensees where competing applications are filed, as a result of a remand in *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001), and was faced with a new 1997 Congressional requirement in Section 309(j) of the Communications Act of 1934, as amended (“the Act”), that commercial broadcast licenses must be awarded by competitive bidding but noncommercial licenses are exempt from such bidding, it was acting consistent with the Supreme Court’s ruling in *Bowen v. Georgetown University Hospital*, 499 U.S. 204, 209 (1988), heavily relied upon by the State of Oregon, that “congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result”. It is clear that the amendments to Section 309 of the Act by the Balanced Budget Act of 1997 (P.L. 105-33, Aug. 5, 1997), were intended to give the Commission plenary authority to revise its procedures for granting commercial and noncommercial broadcast licenses and to make those procedures retroactively applicable to pending cases.

13. Finally, the State of Oregon urges (April Submission at 12-13) that the Commission erred in not performing a classic Section 307(b) analysis of the applications in MX Group 880611 before the *Omnibus Order* turned to the parties’ Point Supplements. However, the Commission policy that a classic Section 307(b) analysis will be conducted only where competing applicants specify different communities of license has existed for more than 30 years – long before the State of Oregon’s application was filed -- and it was carried forward in §73.7002(a) of the current Point Supplement rules. The Instructions for Section III of the Point Supplement Form (March 2001 edition) make it clear that Section III and a classic Section 307(b) analysis are applicable only “in the

event of mutually exclusive FM applications that would serve different communities”. Thus, it is irrelevant that the State of Oregon “certified that it was eligible for such consideration” in its Point Supplement (April Submission at 13). It clearly was not so eligible, because both applicants in MX Group 880611 specified the same community of Redding, California. The *Omnibus Order* correctly ignored the State of Oregon’s Section 307(b) showing.

**(2) The State of Oregon is Not Entitled to Credit as an Established Local Applicant, But If It Is, So Is The Research Foundation**

14. In its April Submission (at 15-25) and Section II of its current Petition, the State of Oregon alternatively maintains that if it was proper to apply the new point system retroactively to MX Group 880611, the *Omnibus Order* erred in failing to award three points to it as an “established local applicant”. This matter is treated in Paras. 35-36 of the *Omnibus Order*. There, the Commission refused to credit the State of Oregon’s argument that its local headquarters are situated at the offices of Jefferson Public Radio in Redding, California. According to the Commission, “[a]n applicant is generally considered to have only one headquarters,” the State of Oregon’s headquarters are its capital, Salem, Oregon, and “a facility that Oregon operates in California would be comparable to a branch office...[which is] insufficient to establish local applicant credentials”. *Id.* at Para. 36.

15. The Commission’s interpretation of local headquarters, as quoted in Paragraph 14 above is a very narrow and strict one, relying on the language in Paragraph 54 of the *Report and Order in MM Docket No. 95-31*, 15 FCC Rcd 7386, 7409-10 (2000) (“2000 *Report and Order*”), and an attack on the Commission’s “established local applicant” criterion was rejected in *American Family Ass’n v. FCC*, *supra*, 365 F.3d at 1163-64. Paragraph 34 of the *Omnibus Order* also rejected The Research Foundation’s showing that it had a local headquarters in Redding. There, the Commission held that The Research Foundation’s “headquarters” was in Chico, well beyond 25

miles from Redding, and that “The Foundation’s facilities in Redding are functionally similar to a branch office and are insufficient to confer established local applicant status”. *Id.*

16. In this reconsideration proceeding, The Research Foundation is prepared to fully support the Commission’s strict interpretation of local headquarters, if it applies the same strictness to both the State of Oregon and The Research Foundation. However, if the Commission grants reconsideration to the State of Oregon on this issue, and awards it three points for being established locally through the Jefferson Public Radio office in Redding, then The Research Foundation urges, for the reasons which follow, that the Commission should also award three points to The Research Foundation on analogous grounds.

17. As stated in its July 19, 2001 Point Supplement, since 1993, when Station KFPR began FM broadcast operations in Redding, KFPR has maintained a fully-functioning business office, broadcast and production studios, and a music library in the City of Redding. Co-located with PBS affiliate, KIXE-TV, KFPR’s offices have been staffed by a station manager, an administrative assistant, and two grant-funded production staff. KFPR’s offices and studios are open during regular business hours and originate a range of programming specifically focused on issues in the Redding area. Additionally, KFPR operates its subcarrier service to provide four weekly hours of programming in the Mien language to serve 120 Mien households in the Redding area.

18. The relevance of KFPR’s activities is that since November 5, 1993, KFPR has been broadcasting on Channel 205 in Redding. It is only because of the State of Oregon’s previous legal challenges to The Research Foundation’s grant of a construction permit for this frequency that the KFPR grant was returned to pending status as File No. BPED-19880610ML in 1996. While KFPR is treated as a mere applicant, and now the permittee and licensee, in this proceeding, the Commission cannot ignore the reality that it has been a fully functioning FM broadcast station in

Redding for the last 14 years. Under these circumstances, demeaning KFPR's business office and broadcast studio as a "branch office" of The Research Foundation's main headquarters in Chico, and refusing to award it established local applicant credit, is unjust and should be overturned, if the State of Oregon is awarded similar local credit.

19. In denying the Foundation's request for established local applicant credit, the Commission relied on the language in Para. 54 of the *2000 Report and Order*, which states (emphasis added) that "a local headquarters or residence must be a primary place of business or primary residence and not, for example, a post office box, lawyer's office, **branch office**, or vacation home, **which would not provide sufficient contact between the station's decision and policy makers and the area to be served**". It is clear from this excerpt that the Commission was equating "branch office" with something trivial like a post office box or vacation home – not a broadcast station's business office and main studio. Moreover, the quoted excerpt does not rule out the possibility that, as argued by the State of Oregon in its April Submission (at 19), an entity might have more than one headquarters or primary place of business for different purposes. In The Research Foundation's case, its KFPR broadcast activity and related policymaking are clearly headquartered in Redding, and KFPR's employees interact with the City of Redding as established local personnel. The fact that The Research Foundation's non-broadcast activities are headquartered in Chico should not detract from the established local credit that the KFPR Redding operations deserve.

20. The Research Foundation recognizes that it might have filed its own "protective" petition for reconsideration on this issue in this proceeding, urging that it was entitled to three points in its comparison with the State of Oregon as an established local applicant. However, the courts and the Commission frown upon appeals being filed by the winning party, and The Research Foundation did not expect the losing State of Oregon applicant to file a petition for reconsideration. So The

Research Foundation did not file. If the Commission grants the State of Oregon's request for established local applicant credit based on the broadcast studio of Jefferson Public Radio in Redding, the fact that The Research Foundation did not file its own petition for reconsideration on the same point should not prevent the Commission from reconsidering on its own motion its earlier refusal to award established local applicant credit to The Research Foundation. Indeed, *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965), would appear to require the Commission to treat the State of Oregon and The Research Foundation equally on the question of established local applicant credit for existing Redding facilities. And that same *Melody Music* case estops the State of Oregon from arguing that The Research Foundation should not be able to benefit from an equally applicable argument that the State of Oregon is making for itself.

**(3) The Bureau Letter Correctly Held That No Prohibited Substitution of Parties Occurred in KFPR's Application**

21. With an air of intentional obtuseness and over-simplification, Section III (pp. 4-16) of the State of Oregon's Petition is a repetition of the arguments it made in its Petition to Deny against The Research Foundation. The Petition maintains that The Research Foundation is a different corporate legal entity from the University Foundation, which was the original applicant in BPED-19880610ML; that this raises "questions" regarding which entity is the real party in interest in the application, whether the University Foundation abandoned its application by failing to file a Point Supplement in July 2001, and whether the University Foundation should be credited with any points in MX Group 880611; and that The Research Foundation and the University Foundation are guilty of lack of candor, misrepresentations, false certifications, and abuse of the Commission's processes in this proceeding. Hence, according to the State of Oregon, the Commission should deny or dismiss The Research Foundation's application or designate it for hearing. The Petition is mistaken on all counts and should be summarily denied.

22. The centerpiece of The Research Foundation's rebuttal to the State of Oregon's false accusations was a Declaration (attached to its May 16, 2007 Opposition to Petition to Deny) by The Research Foundation's Executive Director, Mr. Richard Jackson, who has functioned in that capacity since The Research Foundation was incorporated. Mr. Jackson's description of the emergence of The Research Foundation as an involuntary spin-off from the University Foundation in 1997 fully rebutted the State of Oregon's contention that the change of applicant in this proceeding from the University Foundation to The Research Foundation was "unapproved and improper" (Petition to Deny at 2). The University Foundation filed the original application for a new FM station on Channel 205 at Redding, California on June 10, 1988. That application was granted by the Commission on September 29, 1992, and KFPR was constructed by the University Foundation. Automatic program test authority was granted to the University Foundation for KFPR by the Commission by letter dated November 5, 1993, the station began on-air operations, and the University Foundation filed KFPR's license application on November 23, 1993. The license application was granted by the Commission on March 28, 1996, but that grant was rescinded by letter dated April 15, 1996, upon the Commission's realization that the State of Oregon had filed a Notice of Appeal with the Federal courts. KFPR's automatic program test authority remained in effect until the October 3, 2007 grant of its construction permit application and license application in the *Bureau Letter*.

23. Mr. Jackson explained that in June 1997, CSU, Chico decided to reorganize the University Foundation into two entities: the reorganized University Foundation would handle CSU, Chico's fundraising and philanthropic endeavors, and a new Research Foundation would take over grants and contracts, along with entrepreneurial activities, including the operation of KFPR. CSU, Chico consulted with its communications counsel, and was informed that it was necessary to file an

FCC Form 316 application to obtain Commission approval for this involuntary reorganization of the ownership of CSU, Chico's broadcast holdings -- Station KCHO(FM), Chico, KFPR, and various FM translator and broadcast auxiliary stations. A composite Form 316 application was filed on August 27, 1997, and was granted by the Commission on November 25, 1997.

24. The Research Foundation's Opposition to Petition to Deny also explained how the University Foundation and The Research Foundation provided full disclosure to the Commission of the nature of the 1997 reorganization at the time of filing. The August 27, 1997 cover letter to the Form 316 application was captioned:

**Application for the Pro Forma Assignment of License  
KCHO-FM and KFPR-FM (C.P.)  
Chico and Redding, CA**

In addition, the cover letter stated: "[T]he University has split the former Foundation into two parts and assigned the licensed activity to the indicated Research Foundation. There is no actual change in the operation of the stations or in their relationship to The University". Exhibit 1 of the application amplified that CSU, Chico had determined that the University Foundation should be restructured into an organization dedicated exclusively to philanthropic fundraising activities, effective July 1, 1997, and that the other activities of the University Foundation would be transferred to a new 501(c)(3) public benefit corporation (The Research Foundation), effective July 1, 1997.

25. As set forth in The Research Foundation's Opposition to Petition to Deny, at the time of the reorganization on June 4, 1997, the reorganized University Foundation had 8 members, the new Research Foundation had 8 members, and four of the 8 members of both Foundations were the same persons: Manuel Esteban (CSU, Chico President), Scott McNall (CSU, Chico Provost), Paul Moore (CSU, Chico Vice President for Advancement), and Ed Masterson (CSU, Chico Vice President for Business and Finance). Thus, under established Commission assignment principles,

the spin-off of The Research Foundation from the University Foundation did not require a “long-form” Form 314 assignment application because only 50% of the directors changed, i.e., 50% of the University Foundation’s 8 directors remained as directors of the spun-off Research Foundation. Since 50% of the ownership of The Research Foundation had already been passed upon by the Commission, because the University Foundation and the spun-off Research Foundation are both auxiliary organizations of CSU, Chico, and because this spin-off was an involuntary ownership reorganization forced upon KFPR by CSU, Chico, the Commission approved the transaction on a “short-form” Form 316 application as a *pro forma* transaction. Thus, the fact that The Research Foundation is technically a “separate legal entity” (Petition at 5) from the University Foundation is a hypertechnical fact that has no decisional significance in the instant case.

26. Moreover, and most importantly, as noted in The Research Foundation’s Opposition to Petition to Deny, a copy of the Form 316 application was served upon Arter & Hadden in August 1997, which was then the State of Oregon’s counsel, and the Commission put the application on public notice when it was accepted for filing on October 29, 1997 and after it was granted on November 25, 1997. No objections were filed at any of these times. Given the above facts, which were in The Research Foundation’s Opposition to Petition to Deny, the State of Oregon’s continued claim in its current Petition for Reconsideration that the Commission’s grant of The Research Foundation’s Form 316 application was “a 100 percent change in ownership” or “a 100 percent substitution of parties” (Petition at 8 and 12) wildly distorts the established record in order to reach an erroneous conclusion. The State of Oregon’s knowing silence during the past 10 years should also estop it, under the equitable principle of laches, from objecting at this late date.

27. Thus, the *Bureau Letter* correctly concluded (22 FCC Rcd at 17647-648) that it is too late for the State of Oregon to challenge the 1997 Form 316 grant to The Research Foundation or the

facts underlying that transaction, and that, in any event, the State of Oregon failed to make a *prima facie* case that grant of the Form 316 resulted from misrepresentation or was otherwise improper. Moreover, the *Bureau Letter* properly held (22 FCC Rcd at 17648) that grant of the Form 316 application in 1997 “properly supplemented” The Research Foundation’s pending Form 340 application, so that it should not be faulted for not filing a repetitive supplement to the same effect in 2001. In other words, the Media Bureau wisely refused to elevate form over substance and to ignore the ownership modification information that was already in the Commission’s records (and had been passed upon by the Commission). For the State of Oregon to continue to cry foul in the face of these abundant facts and findings of adequate Commission notice of the genesis and existence of The Research Foundation as an outgrowth of the University Foundation and, indeed, as “the old Foundation reorganized and renamed” (Petition at 7), is ludicrous.

28. Next, the *Bureau Letter* (22 FCC Rcd at 17649-650) reviewed The Research Foundation’s 2001 Point Supplement responses and Mr. Jackson’s subsequent apology in the Opposition to Petition to Deny for having “unintentionally combined some of the history of the University Foundation and The Research Foundation” In his Declaration, *supra*, Mr. Jackson expressed sincere regret for any genuine confusion as to these matters, but he also stated that he was surprised that there would be any, because everything recited in The Research Foundation’s pleadings about the 1997 reorganization and Form 316 filing were matters of documented Commission public record well known to the State of Oregon. The *Bureau Letter* correctly concluded that The Research Foundation had no reason to misrepresent the minor facts being contested and that Mr. Jackson had presented a plausible rebuttal that any factual error was inadvertent. *See Scott & Davis Enterprises, Inc.*, 88 FCC 2d 1090, 1099 (Rev. Bd. 1982) (Commission will not infer actual or attempted deceptions or improper motives from an enumeration

of alleged application errors, omissions, or inconsistencies, accompanied by speculation and surmise but lacking factual support), *settlement approved and rev. dismissed*, FCC 83I-129 (Comm'n 1983); *Garrett, Andrews & Letizia, Inc.*, 86 FCC 2d 1172, 1180 (Rev. Bd.) (*prima facie* demonstration of deception and of a desire, motive, or logical reason to mislead required for a misrepresentation issue to be added), *modified on other grounds*, 88 FCC 2d 620 (1981).

29. Finally, the *Bureau Letter* properly concluded (22 FCC Rcd at 17650) that although The Research Foundation's board membership has changed gradually since June 1997 and The Research Foundation did not request a waiver of §73.3573 of the Rules to account for those changes, the failure to do so should not be a basis to deny waiver of that rule at the present time, citing *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991), and *Valley Broadcasting Co.*, 4 FCC Rcd 2611, 2618 (Rev. Bd. 1989). The Commission recognized in Paragraph 60 of the *Omnibus Order* that noncommercial educational applicants generally experience gradual ownership changes over long periods of time and not as an outgrowth of a party's desire to gain control over an application, and directed the Commission's staff to waive §73.3573 for such applicants.

30. The Research Foundation clearly qualifies for such a waiver. The Research Foundation's current Board of Directors has 10 voting members, and four of them are members of the current Board of Directors of the University Foundation – Paul Zingg (CSU, Chico President), Dennis Graham (Vice President for Business & Finance), Drew Calandrella (Vice President for Student Affairs), and Richard Ellison (Vice President for Advancement). Thus, ten years later, the University Foundation still has a “40%” ownership interest in The Research Foundation. This is very different from the facts involving Fatima Response, Inc., cited by the State of Oregon, and the way that applicant was treated in the *Omnibus Order*. In that case, the Commission properly concluded that waiver of §73.3573 was not warranted because Fatima had undergone at least two

major and sudden changes of ownership, an ownership control struggle, and the emergence of a new ownership group entirely different from the original one. The Research Foundation facts are very different and fully warrant a waiver of §73.3573 of the Rules.

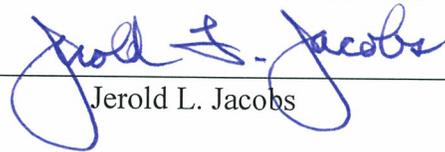
**D. Conclusion**

WHEREFORE, in light of the foregoing, The Research Foundation respectfully requests that the State of Oregon's Petition for Reconsideration should be dismissed as untimely, returned to the State of Oregon to be reformed into a permissible 25-page pleading, or summarily denied on the merits, and grant of The Research Foundation's construction permit and license for Station KFPR(FM) should be affirmed.

Respectfully submitted

THE RESEARCH FOUNDATION  
CALIFORNIA STATE UNIVERSITY AT CHICO

By: \_\_\_\_\_



Jerold L. Jacobs

COHN AND MARKS LLP  
1920 N Street, N.W. Suite 300  
Washington, D.C. 20036  
(202) 293-3860

Its Attorneys

Dated: November 21, 2007

Attachments (3)

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED & INSPECTED  
NOV 9 2007  
FCC - MAILROOM

In the Matter of

Application of the State of Oregon, Acting by )	
through the State Board of Higher Education )	
for the Benefit of Southern Oregon University, )	NCE MX Group: 880611
for a Permit to Construct a New NCE FM )	File No. BPED-19900129MH
Station at Redding, CA )	Petition for Reconsideration
)	
)	
and )	
)	
KFPR(FM) Redding, CA )	DA 07-4136
Facility ID NO. 66567 )	1800B3-1B
BPED-19880610ML )	
MX Group No. 880611 )	Petition to Deny
_____ )	

**Petition for Reconsideration**

State of Oregon, Acting by and Through the State  
Board of Higher Education for the Benefit of  
Southern Oregon University  
By Its Attorneys:

Ernest T. Sanchez  
Susan M. Jenkins  
Special Assistant Attorneys General

*Counsel for the State of Oregon Acting by and  
through the State Board of Higher Education for the  
Benefit of Southern Oregon University*

THE SANCHEZ LAW FIRM  
2300 M Street, N.W.  
Washington, D.C. 20037  
202-237-2814

Wendy Robinson  
Assistant Attorney General

Filed: November 8, 2007

ORIGINAL

**THE SANCHEZ LAW FIRM**  
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Washington, D.C. 20037

**Ernest T. Sanchez**  
Attorney at Law

Telephone: (202) 237-2814  
Fax: (202) 237-5614  
Email: esanchez@bellatlantic.net

November 8, 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

RECEIVED & INSPECTED  
NOV 9 2007  
FCC - MAILROOM

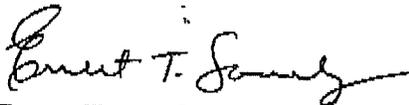
Re: In the Matter of Comparative Consideration of 76 Groups, NCE MX Group  
880611, File No. BPED-19900129MH, Redding, CA

Dear Ms. Dortch:

On behalf of the State of Oregon, Acting by and through the State board of Higher Education for the Benefit of Southern Oregon University ("Oregon"), we hereby file an original and four copies of the attached Petition for Reconsideration of the October 3, 2007 Letter Decision by the Audio Division. Letter from Peter Doyle, FCC Audio Division, to The State of Oregon, FCC 07-4136, \_\_\_ FCC Red \_\_\_ (Released October 3, 2007). The Public Notice of that decision was published on October 9, 2007.

Please let me know if you have any questions about this filing.

Sincerely,



Ernest T. Sanchez  
Special Assistant Attorney General  
The State of Oregon

2007 NOV -9 P 2:48

# PUBLIC NOTICE

Federal Communications Commission  
445 Twelfth Street SW  
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 26614

## Broadcast Applications

11/16/2007

STATE FILE NUMBER      E/P CALL LETTERS      APPLICANT AND LOCATION      N A T U R E   O F   A P P L I C A T I O N

### FM STATION APPLICATIONS FOR ORIGINAL CONSTRUCTION PERMIT PETITION FOR RECONSIDERATION

CA	BPED-19880610ML	KFPR 66567 P 88.9 MHZ	RESEARCH FOUNDATION, CALIFORNIA STATE UNIVERSITY AT CHICO	CP FOR NEW EDUCATIONAL ON: FREQUENCY 88.9 MHZ., ERP: 1.3 KW (H&V); HAAT: 457 METERS (H&V); 40 39 14 122 31 12
		CA , REDDING		DENIED PETITION FOR RECONSIDERATION AND STAY OF GRANT FILED BY THE STATE OF OREGON ACTING BY AND THROUGH THE STATE BOARD OF HIGHER EDUCATION

### SUPPLEMENT FILED 7/19/01

Tentatively selected pursuant to FCC 07-40 from NCE-FM MX group 880611 to be awarded a construction permit. Petitions to deny the tentative selectee must be on file no later than 30 days from the date of this notice.

Opposition to Petition for Deny filed 5/16/2007 (CSU, Chico)

Reply to Opposition to Petition to Deny and Opposition to Petition for Waiver of Rule 73.3573 filed 5/24/07 by ("State of Oregon")

Application granted. Petition for Reconsideration filed April 26, 2007 dismissed. Petition to Deny filed May 1, 2007 denied. See DA 07-4136, released October 3, 2007.

Petition for Reconsideration filed 11/9/07 by ("State of Oregon")

**CERTIFICATE OF SERVICE**

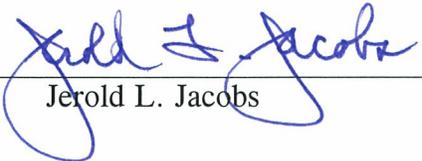
I, Jerold L. Jacobs, hereby certify that I have mailed, postage prepaid, or caused to be hand-delivered, on this 21st day of November 2007, a copy of the attached "Motion to Dismiss or, in the Alternative, Opposition to Petition for Reconsideration" to the following:

Monica Desai, Esq.\*  
Chief, Media Bureau  
Federal Communications Commission  
Washington, DC 20554

Peter H. Doyle, Esq.\*  
Chief, Audio Division  
Media Bureau  
Federal Communications Commission  
Washington, DC 20554

Irene Bleiweiss, Esq.\*  
Audio Division  
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Ernest T. Sanchez  
Susan M. Jenkins  
Special Assistant Attorneys General  
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Washington, DC 20037  
**Counsel for State of Oregon**

  
\_\_\_\_\_  
Jerold L. Jacobs

\*By Hand