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November 29, 2007

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

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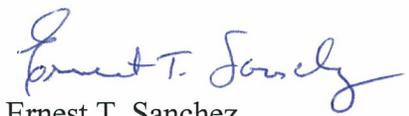
Re: In the Matter of Comparative Consideration of 76 Groups, NCE MX Group  
880611, File No. BPED-19900129MH, Redding, CA

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 Reply in connection with the above referenced matter.

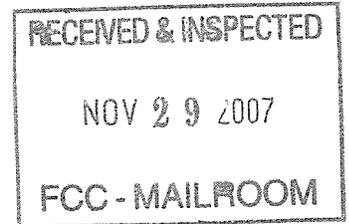
Please let me know if you have any questions about this filing.

Sincerely,



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

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



**In the Matter of**

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

**REPLY**

The State of Oregon, Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (“State of Oregon”), by its attorneys, respectfully submits this Reply in connection with the above captioned matter. In particular, this Reply responds to The Research Foundation, California State University at Chico (CSU, Chico) Motion to Dismiss, or in the Alternative, Opposition to Petition for Reconsideration filed on November 21, 2007.

- I. The State of Oregon’s Petition for Reconsideration was not Untimely and Should Not be Dismissed**
  - A. The Petition for Reconsideration was Delivered to the FCC in a timely manner on November 8, 2007**

The Research Foundation claims that the State of Oregon’s Petition for Reconsideration

was untimely filed on October 9, 2007 rather than October 8, 2007 as reflected on the face of the Petition and Cover Letter.

Here are the facts as related to this matter, as supported by the attached Statement Under Penalty of Perjury from Ernest T. Sanchez, Counsel to the State of Oregon:

“1) I supervised the preparation of the State of Oregon Petition for Reconsideration in connection with NCE MX Group 880611, File No. BPED-19900129MH.

2) On November 7, 2007 I personally took the above described package of pleadings to the United States Postal Service, Airport Mail Facility, in Albuquerque, NM.. I arranged for the package to be sent by Express Mail with guaranteed delivery by 12 Noon November 8, 2007 in Washington DC. I was given the attached receipt which confirms the package tracking number which was EO940430714US.

3) On November 9, 2007, I used the USPS web site to track the package, in connection with the preparation of the Reply pleading, to which this statement is attached. I printed the attached Track & Confirm Search Results statement which confirms the progress of the package from Acceptance on November 7, 2007 at 5:32 PM to the physical arrival of the package at the FCC at 10:18 AM on November 8, 2007, more than eight hours before the filing deadline for the pleadings.”

In summary, the pleadings were prepared in a timely manner. They were delivered in a timely manner to the U.S. Postal Service, about twenty four hours before the filing deadline, and were sent by the highest class of service available, which is Express Mail. The package was guaranteed

for delivery at the FCC Office in Washington DC by 12 Noon on November 8<sup>th</sup> and arrived at the FCC before the guaranteed deadline. The U.S. Postal Service confirms that the package arrived at the FCC on November 8, 2007 at 10:18 AM , more than seven hours before the FCC filing deadline.

The State of Oregon was diligent in the preparation of the Petition for Reconsideration, in the tendering of the Express Mail package to the U.S. Postal Service, almost 24 hours in advance of the filing deadline. It is also uncontroverted that the U.S. Postal Service confirms that the package arrived at the FCC on November 8, 2007. The State of Oregon request that the Commission take official notice of the United States Postal Service receipt dated November 7, 2007 and the United States Postal Service Track & Confirm results generated November 9, 2007 which confirm the arrival of the package at the FCC the morning of November 8<sup>th</sup>.

While the State of Oregon has no first hand knowledge of what occurred at the FCC mail room, after the package arrived in a timely manner at the FCC on November 8, 2007, the State of Oregon cannot be held responsible or punished for any internal FCC mishap or internal FCC problem which resulted in the date stamping of the pleading being delayed to the next morning. This is certainly not a case of State of Oregon lack of diligence, carelessness or failure to arrange arrival of the tracked package by the November 8<sup>th</sup> deadline. In addition, there was no delay to the decision making process and no prejudice to the Research Foundation which received its service copy which was routinely sent on November 8<sup>th</sup>.

As the U.S. Court of Appeals has stated: “It appears that the seemingly mandatory language of section 405 does not prevent the entertainment of rehearing petitions beyond the statutory period where extraordinary circumstances indicate that justice would thus be served..” See *Gardner v. FCC*, 530 F2d 1086, (1976)

**B. The November 8, 2007 Filing Deadline Comports Fully with 47 U.S.C. Section 405**

The Research Foundation further claims that the proper filing date for the Petition for Reconsideration under Section 1.4(b) of the Rules was November 2, 2007. In response The State of Oregon replies, that in accordance with 47 U.S.C. Section 405(a), the proper reply date was November 8, 2007 because the statutorily required Public Notice was given on October 9, 2007 in FCC Broadcast Action Report No. 46587. See *Gardner v. FCC, Id.*

**II. The State of Oregon Petition for Reconsideration Does Not Violate the 25 Page Filing Limit for Petitions for Reconsideration**

The Research Foundation claims that the State of Oregon has violated the 25 page rule for Petitions for Reconsideration by including 25 pages from the Dismissed Petition for Reconsideration filed on April 26, 2007 as an attachment to its Petition for Reconsideration of November 8, 2007.

The State of Oregon responds that its November 8, 2007 Petition for Reconsideration was seeking reconsideration of the Commission Action on October 3, 2007 which denied the State of Oregon’s Petition to Deny of May 1, 2007. By contrast, the April 26, 2007 Petition for

Reconsideration related to the Commission Omnibus Action in March, 2007, which the Commission deemed to be an interlocutory action by the Commission. Since the State of Oregon's April 26, 2007 Petition for Reconsideration of the Omnibus Order was dismissed without full and proper consideration, it was recently resubmitted in a timely manner when the original interlocutory ruling ripened into a final decision.

The State of Oregon believes that since the two Petitions for Reconsideration were related to different, (although related), Commission decisions, it was in no way improper for them to be submitted, with the previously dismissed Petition, as an exhibit to the new Petition. Since the two Petitions relate to different reconsiderations, the State of Oregon believes that each Petition is entitled to the full measure of 25 pages each. The Petitions have been submitted in good faith based on that belief. The Commission's rules on Reconsideration do not explicitly address the proper procedure when a large generalized Omnibus Order, which the Commission considers interlocutory, is followed more than six months later by a more specific and detailed final action. The particular problem posed for the State of Oregon is how to preserve due process appeal rights related to the policy issues in the Omnibus Order while also preserving appeal rights related to the more specific factual issues, and determinations, made in the final decision.

The State of Oregon does not seek to engage in gamesmanship or to receive any unfair advantage in connection with the ambiguity of the Commission's rules on this issue.

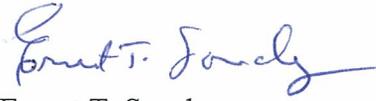
If the Commission believes that the State of Oregon has inadvertently violated, either the letter or spirit of the 25 page limit rules, the State of Oregon is prepared to reform the two reconsiderations

into a single 25 page document, as suggested by the Research Foundation. If such document reformation is requested by the Commission, the State of Oregon is prepared to promptly comply with any such request.

**Conclusion.**

For the reasons set forth in the *Petition to Deny*, the original *Petition for Reconsideration (April Submission)*, and the *Petition for Reconsideration*, and in the supporting documentation that provides clear supports for allegations of deception, lack of candor, and abuse of FCC process brought forward, the State of Oregon urges the Commission, pursuant to the standards of section 309(d) of the Communications Act, 47 U.S.C. Section 309(d), to dismiss the application for Channel 205 at Redding, CA filed by the University Foundation in 1988. The State of Oregon urges the Commission to reconsider the stated basis and rationale for its tentative selection of Foundation's application and the Audio Division's *Letter Decision* which erroneously granted that application. The State of Oregon also urges the Commission to reconsider its impermissible retroactive application of the new Point System rules in the context of a specific remand of this case by the D.C. Circuit. Furthermore, even if, *arguendo*, the retroactive application of the point system rules were not impermissible, the Commission should nevertheless grant reconsideration of its determination in Group 889611 because its application of the point system rules in a manner that disqualifies state government entities from receiving credit as a local applicant outside their areas of jurisdiction is likewise arbitrary and capricious, unduly discriminatory, and an abuse of discretion.

Respectfully submitted,



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*

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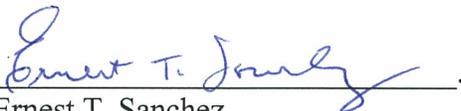
Wendy Robinson  
Assistant Attorney General  
Oregon Department of Justice  
General Counsel Division  
Government Services and Education Section  
1162 Court Street, NE  
Salem, OR 97301-4096  
(503) 947-4520

Dated: November 29, 2007

STATEMENT UNDER PENALTY OF PERJURY

- 1) My name is Ernest T. Sanchez. I am a member in good standing of the District of Columbia Bar and serve as communication counsel to the State of Oregon, Acting by and through the State Board of Higher Education for the benefit of Southern Oregon University.
- 2) I supervised the preparation of the State of Oregon Petition for Reconsideration in connection with NCE MX Group 880611, File No. BPED-19900129MH.
- 2) On November 7, 2007 I personally took the required copies of the above FCC pleadings to the United States Postal Service, Airport Mail Facility, in Albuquerque, NM.. I arranged for the package to be sent by Express Mail with guaranteed delivery to the FCC by 12 Noon November 8, 2007 in Washington DC. I was given the attached receipt which confirms the package tracking number which was EO940430714US..
- 3) On November 9, 2007, I used the USPS web site to track the package. I printed the attached Track & Confirm Search Results statement which confirms the progress of the package from Acceptance on November 7, 2007 at 5:32 PM to the physical arrival of the package at the FCC at 10:18 AM on November 8, 2007, more than eight hours before the filing deadline for the pleadings.
- 4) I have no personal knowledge as to what happened at the FCC when the package arrived at the FCC the morning of November 8, 2007 but I believe the State of Oregon was absolutely diligent and careful in arranging to have the U.S. Postal Service assume custody of this package on November 7<sup>th</sup>. Further, to best of my knowledge, the U.S. Postal Service Track & Confirm report information which states that the package arrived at the FCC on November 8, 2007 at 10:10AM is accurate.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct.

  
Ernest T. Sanchez

November 28, 2007

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AIRPORT MAIL FACILITY  
ALBUQUERQUE, New Mexico  
871199998  
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11/07/2007 (800)275-8777 05:33:00 PM

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===== Sales Receipt =====

Product Description	Sale Unit Qty Price	Final Price
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WASHINGTON DC 20554		\$30.70
Zone-7 Express Mail		
PO-Add		
4 lb. 12.30 oz.		
Label #: E0940430714US		
Next Day Noon /		
Normal Delivery		
Customer Postage		-\$16.25

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Issue PVI: \$14.45

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Total: \$14.45

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Transaction #: 130  
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Detailed Results:

- Delivered, November 09, 2007, 7:42 am, WASHINGTON, DC 20554
- Notice Left, November 08, 2007, 10:18 am, WASHINGTON, DC 20554
- Arrival at Unit, November 08, 2007, 9:45 am, WASHINGTON, DC 20022
- Processed, November 08, 2007, 7:07 am, LINTHICUM HEIGHTS, MD 21090
- Electronic Shipping Info Received, November 07, 2007
- Processed, November 07, 2007, 5:46 pm, ALBUQUERQUE, NM 87106
- Processed, November 07, 2007, 5:38 pm, ALBUQUERQUE, NM 87101
- Acceptance, November 07, 2007, 5:32 pm, ALBUQUERQUE, NM 87119

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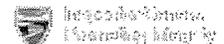
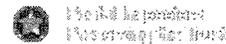
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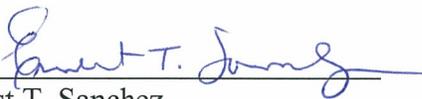
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### Certificate of Service

I, the undersigned Susan M. Jenkins, certify that on this day of November 29, 2007, I caused a copy of the foregoing Reply, filed by the State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University, to be served upon the following persons, by mailing a copy, via the United States Postal Service, first-class mail, to the following person or persons at the indicated last known address for said person.

Jerold Jacobs, Esq.  
Cohn and Marks  
1920 N Street, N.W.  
Suite 300  
Washington, D.C. 20036

  
\_\_\_\_\_  
Ernest T. Sanchez