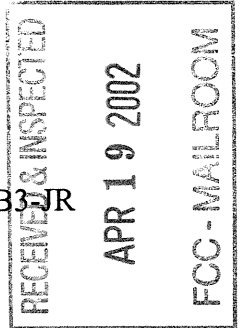


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**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

APR 16 2002

IN REPLY REFER TO: 1800B32R



Lee J. Peltzman, Esquire
Shainis & Peltzman, Chartered
1850 M Street, NW
Suite 240
Washington, DC 20036

Peter Gutmann, Esquire
Pepper & Corazzini, L.L.P.
1776 K Street, NW
Suite 200
Washington, DC 20006

Eric S. Kravetz, Esquire
3511 Porter Street, NW
Washington, DC 20016

In re: **NEW(FM), Colona, CO**
Facility ID No. 89574
File No. BPED-19980107MB
Educational Communications of
Colorado Springs, Inc.
Main Studio Waiver
Informal Objection

NEW(FM), Olathe, CO
Facility ID No. 91094
File No. BPED-19980706MB
Colorado Christian University

NEW(FM), Colona, CO
Facility ID No. 91098
File No. BPED-19980707MD
CSN International

MX Group 980105
"Joint Petition for Approval of
Settlement Agreements"

Dear Counsel:

This letter concerns: (1) the captioned application of Educational Communications of Colorado Springs ("ECCS") for a new noncommercial educational ("NCE") station at Colona, Colorado (File No. BPED-19980107MB); (2) the captioned application of Colorado Christian University ("CCU") for a new NCE station at Olathe, Colorado (File No. BPED-19980706MB); (3) the captioned application of CSN International ("CSN") for a new NCE station at Colona, Colorado; (4) the July 19, 2001 "Joint Petition for Approval of Settlement Agreements" ("Joint Petition") filed by ECCS, by CCU, and by CSN; (5) ECCS' request for a waiver of the main studio location rule; and (6) the September 11, 1998 informal objection filed by James R. McDonald ("McDonald"). For the reasons set forth below, we deny the informal objection, approve the Joint Petition to the extent indicated, dismiss the CCU and CSN applications, and grant ECCS' waiver request and its application.

*Informal objection.*¹ McDonald² objects to both the instant ECCS Colona application as well as ECCS' application for a new NCE station at Placerville, Colorado.³ He alleges that ECCS is "warehousing" frequencies. According to McDonald, ECCS is "filing numerous simultaneous applications which have a relatively small chance of being constructed within the foreseeable future but which assure them more or less exclusive control . . . for several years to come . . . to the detriment of the communities affected" McDonald states that he does not believe that ECCS has the ability or intent to construct and operate all of the stations applied for. He claims that neither the proposed Colona nor Placerville stations would be viable if they could not rebroadcast the signal of an existing ECCS facility. McDonald further asserts that ECCS's Colona and Placerville applications have blocked enhanced local service by NCE Station KOTO(FM), Telluride, Colorado.

An examination of McDonald's objection reveals no evidence that ECCS has failed to construct pursuant to any previous authorizations or that it will not construct the Colona station. Further, as discussed below, the Commission has specifically authorized NCE "satellite" operations in certain circumstances. Inasmuch as McDonald's claim that the Colona station would not be "financially viable" absent satellite operation is irrelevant, his "warehousing" allegation is speculative and unsubstantiated. Thus, the objection lacks adequate and specific factual allegations sufficient to warrant the relief requested. *See Area Christian Television, Inc. and Trinity Broadcasting of Indiana, Inc.*, FCC 86-298, released June 26, 1986, 60 RR 2d 862, 864 (1986). Insofar as McDonald urges the Commission to revisit its "satellite" policy, that issue is not before us. Rather, any such challenge is appropriately the subject of a generic policy or rulemaking proceeding allowing for comment on the record by all interested and affected parties. Finally, because it is not now before us, we make no determination concerning ECCS' Placerville application.⁴

¹ ECCS filed an opposition on September 23 and McDonald a reply on October 5, 1998.

² McDonald describes himself as an "independent broadcast and communications technical consultant."

³ File No. BPED-980107MF.

⁴ Pursuant to 47 C.F.R. § 1.52, a party not represented by counsel is required to "verify" a pleading filed with the Commission. *See Knox Broadcasting, Inc.*, 12 FCC Rcd 3337 (1997) (pursuant to § 1.52, *pro se* petitioner must submit a declaration made before a duly authorized officer, *e.g.*, a notary, stating that the contents of the petition are

Joint Petition. The captioned Colona and Olathe applications comprise MX Group 980105. The applicants ask that we approve their Joint Petition, which provides for grant of ECCS' Colona proposal and for dismissal of CCU's Olathe and CSN's Colona proposals. Submitted with the Joint Petition are separate settlement agreement agreements between CCU and ECCS and between CSN and Educational Media Foundation ("EMF") dated July 19, 2001 and July 3, 2001, respectively. According to the parties to the Joint Petition, implementation of the proposed settlements will benefit the public interest by conserving Commission and applicant resources and by facilitating the introduction of NCE service at Colona. In attached declarations the parties declare that their applications were not filed for the purpose of reaching or carrying out a settlement and that there is no consideration, other than as specified in the settlement agreements, for dismissal of the instant CCU and CSN applications.

The CCU/ECCS agreement is part of a larger overall settlement understanding involving other mutually exclusive NCE groups. The parties recite that, in addition to their instant proposals, CCU and ECCS each have pending NCE applications for various communities⁵ which are mutually exclusive with those of other parties. They further recite that they, along with other parties, wish to reach settlements. CCU and ECCS indicate that, to achieve settlements, each has agreed to either dismiss or amend certain of its applications, including those captioned above. According to CCU and ECCS, consideration for CCU's and ECCS' commitments regarding their various applications is intertwined. In addition, ECCS agrees to reimburse CCU fifty percent of any cash settlement, up to \$6,250, paid by CCU to another applicant for dismissal of that applicant's competing proposal in another proceeding.⁶ ECCS and CCU further, agree that, upon grant of a certain CCU application in another proceeding,⁷ ECCS would be entitled to trade its

true). McDonald is not represented by an attorney and he did not verify his objection. However, the Commission will waive the verification requirement of Section 1.52 for "good cause" pursuant to 47 C.F.R. Section 1.3 or will provide an opportunity to cure the verification defect when warranted by the public interest. *See Lincoln, Osage Beach, Steelville, and Warsaw, Missouri*, FCC 02-35, 2002 Westlaw 448,629 (released March 25, 2002). Additionally, the Commission has held that an unverified petition may be treated as an informal objection rather than dismissed. *Max M. Leon, Inc. (WDAS(AM)/-FM, Philadelphia, PA)*, 56 FCC 2d 387 (1975); *WTWV, Inc. (WTWV-TV, Tupelo, MS)*, 51 FCC 2d 1247 (1975). We therefore will not dismiss McDonald's informal objection without consideration.

⁵ The parties reference CCU full service and translator applications at Gypsum, Colorado (File No. BPED-19980417MC), at Chugwater, Wyoming (File No. BPED-19980825MB), at Sterling, Colorado (File No. BPED-19971222MB), at Steamboat Springs, Colorado (File No. BPED-19981215MH), at Craig, Colorado (File No. BPED-19981215MJ), at Pueblo, Colorado (File No. BPED-19950411MA), at Glenwood Springs, Colorado (File No. BNPFT-20000118ABO), and at Brush, Colorado (File No. BPFT-19990730TB). They reference ECCS full service and translator applications at Sidney, Colorado (File No. BPED-19971014MB), at Centennial, Wyoming (File No. BPED-19980825MC), at Sterling, Colorado (File No. BPED-19980813MF), at Hayden, Colorado (File No. BPED-19980610MA), at Fowler, Colorado (File No. BPED-19950721MB), at New Castle, Colorado (File No. BPFT-19990831TC), and at Brush, Colorado (File No. BPFT-19990204TE).

⁶ Broadcasting for the Challenged at Sidney, Colorado (File No. BPED-19980415MB).

⁷ File No. BPED-19950411MA at Pueblo, Colorado.

existing translator at Colona⁸ for that new CCU facility, with ECCS paying CCU consideration of One Dollar.

CSN proposes to dismiss its Colona application in this proceeding, not by virtue of an agreement with ECCS or CCU, but under the terms of an agreement with EMF. In the CSN/EMF agreement, the parties note that they are involved in various groups of mutually exclusive NCE proceedings and that they intend to enter into universal settlements to resolve their conflicts. As consideration for CSN's consent to seek dismissal of certain applications, including the instant Colona proposal,⁹ EMF will request dismissal of certain of its applications.¹⁰ Conversely, CSN's commitment to seek dismissal of its applications constitutes the consideration for EMF's commitment to seek dismissal of designated applications.¹¹

After careful consideration of the agreements and the attached declarations, we determine that the agreement complies with Commission policy. Approval of the settlement proposal agreement to the extent indicated would conserve Commission and applicant resources and expedite the provision of a new NCE service to Colona. It appears that none of the parties to the Joint Petition filed its application in order to reach or carry out a settlement. *See* 47 C.F.R. § 73.3525(a). In light of the Commission's directive to the Mass Media Bureau to waive the provisions of 47 C.F.R. Section 73.3525(a)(3) and accept universal settlements involving settlement proposals filed by July 19, 2001 involving payments to dismissing applicants in excess of their reasonable and prudent expenses, *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 16 FCC Rcd 5074, 5107-08, ¶ 99 (2001), we need neither quantify nor discuss further the consideration received by CCU and CSN or their

⁸ Station K216EU.

⁹ The specified CSN applications are as follows: MX Group 9802XC, Sutter, California (File No. BPED-19980218MC); MX Group 990508, Lake Hopatcong, New Jersey (File No. BNPED-19991029AAH); MX Group 200101, Quincy, California (File No. BNPED-20000517AFH); MX Group 971022, Kuna, Idaho (File No. BPED-19981006MJ); MX Group 981011, Lincoln, North Dakota (File No. BPED-19990602MT); and MX Group 990304, Mentmore, New Mexico (File No. BPED-19990325MD).

¹⁰ The specified EMF applications are as follows: MX Group 990606, Monticello, Florida (File No. BNPED-20000118AEM); MX Group 980413, Pocatello, Idaho (File No. BPED-19981023ME); MX Group 980702, Ranier, Oregon (File No. BPED-19990104MQ); and MX Group 987004, Lake Havasu City, Arizona (File No. BPED-19990510MD). As further consideration for EMF's amending its Lake Havasu City application, CSN will not oppose such amendment nor will CSN oppose "any subsequent [authorization] upgrade," and CSN agrees to cooperate in "interference negotiations" regarding EMF's ability to effectuate service to Lake Havasu City. The agreement to dismiss any of these applications is conditioned on CSN's notifying EMF, prior to July 16, 2001, that CSN has reached universal settlements in its MX group. Also, EMF agrees to seek dismissal only where CSN has "created" a universal settlement in a group "in a manner making it possible to grant one of [CSN's] applications and sever it from other applications [in that group] . . . "and such severance is only possible through the dismissal of the specified [EMF] application.

¹¹ CSN and EMF further specify that the agreement to dismiss any particular CSN application shall only be effective if EMF notifies CSN prior to July 16, 2001 that CSN has reached a universal settlement in the affected MX group. They further specify that CSN will request dismissal of a specified application if EMF notifies it that EMF has "created a settlement" in an MX group making it possible to grant an EMF applications and sever it from other applications in the group and where severance is only possible through dismissal of the specified CSN application.

principals. Thus, the settlement conforms to 47 U.S.C. Section 311(c)(3) and 47 C.F.R. Section 73.3525.

Section 307(b) analysis. Since the proposed settlement involves conflicting broadcast construction applications and withdrawal of the sole application for Olathe, 47 C.F.R. § 73.3525(b) requires a finding that its implementation will not unduly impede achievement of the mandate of Section 307(b) of the Communications Act of 1934, as amended, for a “fair, efficient, and equitable” distribution of radio services across the nation. *See* 47 C.F.R. § 73.7002(b); *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, 15 FCC Rcd 7386, 7397-98 (2000). Initially, an NCE applicant is eligible for a decisive § 307(b) preference if it proposes a first or second aural service (in the aggregate) to at least ten percent of the population within its proposed station’s principal community (60 dBμ) contour, and provided that such population numbers at least 2000. *See Public Notice, Mass Media Bureau Provides Examples of Application of NCE Section 307(b) Criteria*, 16 FCC Rcd 10,892, 10,893 (MMB 2001). Next, if two or more applicants meet the initial standard, the applicant providing the greatest number of people with the highest level of service to at least ten percent of the people within its proposed 60 dBμ contour and to at least 5,000 more people than the next best applicant is eligible. *Id.*

In a March 7, 2001 submission,¹² CCU asserts that none of the three Group 980105 applicants is entitled to a threshold preference. Specifically, CCU maintains that none would provide a first NCE aural service. According to CCU, although each would provide a second such service within its proposed 60 dBμ contour, none would provide such service to at least ten percent of the population situated within that contour, and none would provide a second NCE service to at least 5,000 more people than the next closest applicant.¹³ In light of this, we determine that approval of the settlement agreement will not impede achievement of the mandate of Section 307(b). *See National Communications Affiliates of West Virginia*, 2 FCC Rcd 4515 (1987) (dismissal of only application for a community would not unduly impede realization of Section 307(b) mandate where neither applicant would receive decisive preference); *Suburbanaire, Inc.*, 2 FCC Rcd 1478 (1987). Accordingly, we will not require republication under Section 73.3525(b) of the Rules. *See Mobile Broadcasting Service, Inc.*, 91 FCC 2d 1209 (1982).

ECCS main studio waiver request. Pursuant to 47 C.F.R. Section 73.1125(a), a main studio must be located within either: (1) a station’s principal community contour; (2) the contour of any other station licensed to its community; or (3) 25 miles of the center of its community. *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 15,691 (1998); *recon. granted in part (“Reconsideration Order”)*, 14 FCC Rcd 11,113 (1999). However, under Section

¹² The staff requested a Section 307(b) showing. In response, CCU initially submitted a supplement to the Joint Petition on January 31, 2001. CCU submitted another showing on March 7, 2001, asking that the latter be considered as an amendment to CCU’s application *in lieu* of the January 31, 2001 submission.

¹³ As set forth by CCU: the population situated within ECCS’ proposed 60 dBμ contour for Colona is 24,498, of which 38 would receive a second NCE service; the population within CCU’s proposed contour for Olathe is 57,363, of which 2,753 would receive a second service; and the population within CSN’s proposed contour for Colona is 34,803, of which 1,374 would receive a second service.

73.1125(b)(2), the Commission will waive these location requirements where “good cause” exists to do so and where the proposed studio location “would be consistent with 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 has thus found “good cause” to waive the main studio location requirements where satellite operations are proposed. *Id.* A satellite station operator must, however, demonstrate that it will meet its local service obligation in order to satisfy the “public interest” standard of Section 73.1125. *Id.*

ECCS seeks to operate its proposed station as a “satellite” of commonly-owned Station KTLF(FM), Colorado Springs, Colorado. According to ECCS, it utilizes KTLF(FM) to create and distribute NCE programming through a regional station network. ECCS asserts that it will meet its service requirements to Colona as follows: by interviewing residents and community leaders at least quarterly to assess local needs and responsive programming; by ensuring that its “Community Advisory Board” has at least one Colona resident who will make recommendations on community needs and programming; by developing periodic local programming, including “significant” coverage of local news and cultural events; by broadcasting local public service announcements; and by maintaining a public file at Colona as well as a local toll-free telephone number and mailing address.


ECCS’ request is based on economies of scale, *e.g.* saving costs of equipping, staffing, and operating a Colona area studio. We agree and conclude that there is good cause to waive the rule in the instant circumstances. Where, as here, there is a great distance between the parent and satellite stations,¹⁴ 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, we credit ECCS’ pledges to assess Colona’s broadcast needs and responsive programming by at least quarterly interviewing local residents and community leaders and by ensuring that at least one Colona resident sits on its “Community Advisory Board.” We also credit ECCS’ pledges to develop local programming, including news and coverage of cultural events, to broadcast local public service announcements. Although it pledges to maintain a public inspection file at Colona, we remind ECCS that it is required to maintain a copy of the file at the main studio of the “parent” station, KTLF(FM). *See* 47 C.F.R. § 73.3527(a). ECCS must also make reasonable accommodation for Colona area listeners wishing to examine the file’s content. *See* 47 C.F.R. § 73.3527(c); *Reconsideration Order*, 14 FCC Rcd at 11,129, ¶ 45. We also remind ECCS that, notwithstanding grant of its waiver request, the public inspection file for its proposed facility must contain the quarterly issues and programs list for Colona as required by 47 C.F.R. Section 73.3527(e)(8). Finally, while we acknowledge ECCS’ toll-free telephone commitment, it is otherwise mandated by 47 C.F.R. Section 73.1125(e).

Conclusions/Orders. An examination of the surviving application reveals that ECCS is qualified to be a Commission licensee. The examination further reveals that a grant thereof would benefit the public interest, convenience, and necessity.

¹⁴ Colona and Colorado Springs are situated over 150 miles apart.

In light of the above, and pursuant to 47 C.F.R. Section 0.283: the September 11, 1998 informal objection filed by James R. McDonald IS DENIED; the July 19, 2001 "Joint Petition for Approval of Settlement Agreements" filed by Educational Communications of Colorado Springs, Inc., by Colorado Christian University, and by CSN International IS APPROVED TO THE EXTENT INDICATED; the applications of Colorado Christian University (File No. BPED-19980706MB) and of CSN International (File No. BPED-19980707MD) for construction permits for new noncommercial FM stations at Olathe and Colona, Colorado, respectively, ARE DISMISSED; and the request of Educational Communications of Colorado Springs, Inc. for a waiver of the main studio location requirements and its application for a construction permit for a noncommercial educational FM station at Colona, Colorado (File No. BPED-19980107MB) ARE GRANTED. The authorization will follow under separate cover.

Sincerely,


to Peter H. Doyle, Chief
Audio Division
Office of Broadcast License Policy
Mass Media Bureau

cc: David Oxenford, Esquire
James R. McDonald