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CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Montecito FM, Inc.
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Educational Media Foundation
5700 West Oaks Boulevard
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In re: KJEE(FM), Montecito, CA
Facility ID No. 43589
Montecito FM, Inc.
File No. BLH-19940209KC
File No. BPH-20131120ADR

KYRA(FM), Thousand Oaks, CA
Facility ID No. 21689
Educational Media Foundation
File No. BPED-20121227AAJ

Dear Licensees:

This letter is in reference to the above-captioned minor change application filed by Educational Media Foundation ("EMF Application")¹ licensee of non-commercial FM station KYRA(FM), Thousand Oaks, CA; the Commission's Order to Show Cause ("OSC") to Montecito FM, Inc. ("Montecito FM"), licensee of commercial FM Station KJEE(FM) at Montecito, CA,² necessitated by the facilities proposed in the EMF Application;³ the Montecito FM Response to the OSC ("Montecito FM Response"); the above-captioned Montecito FM upgrade minor change application⁴ ("Montecito FM Application"); the EMF

¹ File No. BPED-20121227AAJ.

² File No. BLH-19940209KC.

³ See Montecito FM, Inc. Letter (MB October 21, 2013).

⁴ File No. BPH-20131120ADR.

Reply to Response to Order to Show Cause (“EMF Reply”); and the Montecito FM Reply in Support of Response to Order to Show Cause (“Montecito FM Reply”). For the reasons discussed below, we modify the KJEE license to specify Channel 225A at Montecito, CA, grant the EMF Application, and dismiss the Montecito FM Application.

Background. On November 8, 2007, Montecito FM filed a minor change "one step" application (BPH-20070118AES) to upgrade licensed station KJEE (BLH-19940209KC) from Channel 225A to Channel 225B1 pursuant to the *Report and Order* in MM Docket 92-159. On January 27, 2009, KJEE was issued a construction permit with an expiration date of January 27, 2012. On January 27, 2012, the construction permit expired as a matter of law when Montecito FM failed to construct the Channel 225B1 facility and file a license application. The Channel 225B1 assignment in Montecito, CA remained reserved for KJEE.

On December 27, 2012, EMF filed the EMF Application, seeking modification of the KYRA license, by proposing a new transmitter site and specifying a lower effective radiated power and higher antenna height. On April 24, 2013, the Audio Division released a deficiency letter stating that EMF’s proposal was short-spaced to the reserved Channel 225B1 assignment at Montecito, CA. On May 20, 2013, EMF filed an amendment to the EMF Application requesting the modification of the assignment and the KJEE license to specify operation on Channel 225A in lieu of Channel 225B1. On October 21, 2013, pursuant to Section 316(a) of the Communications Act of 1934 as amended (the “Act”),⁵ the Audio Division sent Montecito FM an OSC notifying it of the proposed modification, and allowing Montecito FM thirty days to respond and show why its license should not be modified to specify operation on Channel 225A in lieu of Channel 225B1. On November 20, 2013, Montecito FM filed the Montecito FM Response to the OSC, and the Montecito FM Application requesting an upgrade to channel 225B1 at a different transmitter site. On December 4, 2013, EMF submitted the EMF Reply. On December 17, 2013, Montecito FM submitted the Montecito FM Reply.

Montecito FM Response. In the Montecito FM Response, Montecito FM simply states an application has been filed for KJEE specifying operation on Channel 225B1. Therefore, it concludes that the public interest would not be served by the modification proposed in the OSC.

EMF Reply. In the EMF Reply, EMF states that Montecito FM allowed its previous construction permit for Channel 225B1 to expire without constructing the proposed upgraded facilities. EMF also claims that since its construction permit expired without construction, any rights that it had to the B1 class also expired. Therefore, EMF believes that the Montecito FM application is subject to the first-come/first-served application rules, and since it was filed nearly a year after the EMF application, EMF concludes that the Montecito FM application must be held in queue behind the EMF application.

Montecito FM Reply. In the Montecito FM Reply, Montecito FM states that upon grant of Construction Permit BPH-20070118AES, the KJEE license was modified to specify Channel 225B1 in lieu of Channel 225A. Montecito FM believes that there is no basis to find that the expiration of a construction permit results in the modification of the affiliated license. Thus, Montecito FM concludes that it addressed the Division’s concerns stated in the OSC by filing the Montecito FM Application specifying Channel 225B1.

⁵ 47 U.S.C. § 316(a) (“Section 316(a”).

Discussion. The grant of the KJEE construction permit BPH-20070118AES modified KJEE's license and assignment to specify Channel 225B1. The expiration of the construction permit does not modify the license nor the assignment. Therefore, EMF was required to protect the Channel 225B1 reserved assignment at Montecito, CA. This was specifically stated in the April 24, 2013 Audio Division deficiency letter. However, EMF responded to this letter by requesting that the Montecito, CA assignment and license be modified to specify Channel 225A.

Section 316(a) of the Act,⁶ permits the Division to modify a license or construction permit if such action is in the public interest. The Act requires that the Division notify the affected station of the proposed action, the public interest reasons for the action, and afford the licensee/permittee of the affected station at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's Rules.⁷ The Division found that the EMF Application has sufficient public interest benefits to justify the issuance of the show cause order.

We have reviewed the Montecito FM Response and find that the public interest would be served by the substitution of Channel 225A for Channel 225B1 at Montecito, CA and the modification of the license for Station KJEE to specify operation on Channel 225A at Montecito, CA. This class change will accommodate the grant of EMF's application and promote a more efficient use of the spectrum by an applicant ready and willing to improve its station. Furthermore, Montecito FM has not raised a substantial or material question of fact or demonstrated that Station KJEE would be harmed by modification of its assignment to specify its current licensed Class A facility. Finally, Montecito FM had a three year term to construct its Class B1 facility and another eleven months to file another Class B1 permit application. Since Montecito FM had ample time to construct its Class B1 facility and failed to do so, we will modify the KJEE license and assignment to specify Channel 225A.

Therefore, the matter before us is decided solely by the application of the first come/first served application processing system. Since 1985, processing of commercial band FM minor change applications has been on a first come/first served basis, with earlier filed applications taking precedence. Later filed applications are "held in queue" behind the first-filed or lead application.⁸ If the lead application is granted, the queue is dissolved and the queue applications are dismissed; if the lead application is dismissed, then the first queue application (the application filed closest in time after the lead application) is processed. In the present instance, the EMF Application, as amended on May 20, 2013, was filed ahead of the November 20, 2013 Montecito FM Application. The modification of the Montecito, CA assignment to specify Channel 225A and the subsequent grant of the EMF Application results in the dissolution of the first come/first served queue and the dismissal of the Montecito FM application.

⁶ 47 U.S.C. § 316(a) (the "Act").

⁷ See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

⁸ See the *Report and Order* in MM Docket 84-750, 50 FR 19936 (May 13, 1985). All FM commercial minor change applications filed after the close of the "universal window" (June 13, 1985 to July 12, 1985) are treated on a first come/ first served basis.

Conclusion. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, that effective the date of this letter, the FM assignment IS MODIFIED as follows:

Community
Montecito, CA

Channel No.
Add 225A, Delete 225B1

Pursuant to Section 316(a) of the Communications Act of 1934, as amended, Station KJEE license BLH-19940209KC IS MODIFIED to specify operation on Channel 225A in lieu of Channel 225B1.

IT IS ORDERED that the Educational Media Foundation minor change application BPED-20121227AAJ for Station KYRA IS HEREBY GRANTED. A copy of Construction Permit BPED-20121227AAJ is enclosed.

IT IS FURTHER ORDERED that the Montecito FM, Inc. minor change application BPH-20131120ADR for Station KJEE, as part of a queue with the EMF Application, IS HEREBY DISMISSED.

These actions are taken pursuant to Section 0.283 of the Commission's Rules.⁹

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo F. Bonacci".

Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Marnie K. Sarver, Esq. (via email)
Mary N. O'Connor, Esq. (via email)

⁹ 47 C.F.R. § 0.283.