

FCC MAIL SECTION

FILE ORIGINAL

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

FCC 97M-72

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In re the Applications of)	MM DOCKET NO. 94-71
)	
SANTA MONICA)	
COMMUNITY COLLEGE)	File No. BPED-920305ME
DISTRICT)	
)	
For Construction Permit for a)	
New Noncommercial FM Station on)	
Channel 201B in Mojave, California)	

MEMORANDUM OPINION AND ORDER

Issued: April 30, 1997 ; Released: May 2, 1997

1. Under consideration are the "Motion to Grant Pending Application" filed by Santa Monica Community College District (SMCCD) on April 16, 1997; the "Mass Media Bureau's Comments on Motion to Grant Pending Application" filed April 24, 1997; and the "Mass Media Bureau's Supplement to Comments on Motion to Grant Pending Application" filed April 29, 1997.

2. This proceeding has a long and involved history. As originally filed, SMCCD's application, which specified operation on Channel 204B, was mutually exclusive with an application filed by Living Way Ministries (Living Way) for a new educational FM station in Lancaster, California (File No. BPED-920511MC). On June 27, 1994, the SMCCD and the Living Way applications were designated for hearing in MM Docket 94-71. On July 1, 1994, the applicants entered into a settlement agreement under which SMCCD would amend its application to specify operation on Channel 201B instead of 204B. The Presiding Administrative Law Judge approved the agreement and accepted the amendment to the SMCCD

application by Order issued on July 21, 1994, and released July 25, 1994, (FCC 94M-453). However, on July 13, 1994, eight days before the Administrative Law Judge issued his Order accepting the amendment to SMCCD's application, California State University, Long Beach Foundation (CSU) filed an application to modify the facilities of noncommercial, educational station KLON(FM), Long Beach, California.¹ Because Station KLON(FM) operates on Channel 201B, the CSU application appeared to be mutually exclusive with SMCCD's amended application.

3. Subsequently, the Commission issued an Order directing the Mass Media Bureau (Bureau) to process the pending application of CSU for modification of the facilities of Station KLON(FM), Long Beach, California. The Commission further ordered the Bureau to prepare an Order consolidating the CSU application with the SMCCD application in the instant proceeding, if the Bureau determined that the applications were indeed mutually exclusive. Santa Monica Community College District, 11 FCC Rcd 1123 (1996). However, before the Bureau prepared an Order consolidating the applications for hearing, CSU and SMCCD reached a settlement agreement and submitted such agreement to the Commission for approval. Pursuant to that agreement, CSU amended its application to eliminate the mutual exclusivity with the amended SMCCD application. By letter dated April 23, 1997, the Commission, *inter alia*, approved the settlement agreement between CSU and SMCCD. Additionally, the Commission accepted the amendment to the CSU application and granted the amended application of CSU to modify the facilities of KLON(FM), Long Beach, California.

4. The SMCCD application in this proceeding may now be granted. The mutual exclusivity with the application of CSU has been eliminated by virtue of the acceptance of the amendment to the CSU application. The Bureau supports a grant of SMCCD's application subject to a condition which it has specified in paragraph 1 of its Supplement.

¹ The Presiding Judge was not advised of the filing of the CSU application prior to the issuance of the Order accepting SMCCD's amendment.

Accordingly, **IT IS ORDERED**, that the "Motion to Grant Pending Application" filed by Santa Monica Community College District on April 16, 1997, **IS GRANTED**, and its amended application for construction permit for a new noncommercial FM station in Mojave, California, **IS GRANTED**, subject to the following condition²:

This application is being granted prior to the completion of the United States/Mexican notification procedures. Therefore, any construction of and operation with the facilities specified in the instant grant is at the applicant's own risk and subject to modification, suspension or termination, following an opportunity to be heard by the Audio Services Division but without right to an oral hearing on the record before an Administrative Law Judge, if found by the Commission to be necessary to conform to the provisions of any agreement between the United States and other countries.

IT IS FURTHER ORDERED that this proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION



Joseph Stirmer
Chief Administrative Law Judge

² The Bureau represents that counsel for SMCCD has reviewed the language of the specified condition and found it acceptable.