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ORIGINAL

August 27, 2007

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Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FILED/ACCEPTED

AUG 27 2007

Federal Communications Commission
Office of the Secretary

Re: **Petition for Declaratory Ruling**
MB Docket No. 07-170

Dear Ms. Dortch:

Attached is a date-stamped copy of a Response to Petition for Declaratory Ruling (the "*Response*") filed with the Commission on May 25, 2007 in response to the Petition for Declaratory Ruling (the "*Petition*") in the above-captioned docket on behalf of Educational Broadcasting Corporation ("*EBC*").

The Commission subsequently released a Public Notice in response to the Petition on August 8, 2007. EBC hereby resubmits its Response so that it can be filed in MB Docket No. 07-170. EBC also anticipates filing Comments in response to the Public Notice.

If there are any questions regarding this matter, please contact the undersigned counsel.

Respectfully yours,

John W. Bagwell

Enclosure

cc: Eloise Gore

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)
)
Classification of V-Me Media, Inc.)
As a Qualified Programmer for Purposes)
Of Carriage Obligation Under Section 335)

FILED/ACCEPTED
MAY 25 2007
Federal Communications Commission
Office of the Secretary

To: The Commission
Attn: Chief, Media Bureau

RESPONSE TO PETITION FOR DECLARATORY RULING

Educational Broadcasting Corporation ("EBC"), licensee of WNET(TV), Newark, New Jersey (Facility ID No. 18795), by its attorneys, hereby responds to the Petition for Declaratory Ruling (the "Petition") filed by the Hispanic Information and Telecommunications Network, Inc. ("HITN") on May 18, 2007 asking the Federal Communications Commission (the "Commission") to determine that V-Me Media, Inc. ("V-Me") does not qualify as a national educational programming supplier under Section 25.701 of the Commission's rules. HITN appears to have made several incorrect assumptions, including the assumptions that V-Me is the programmer of a reserved channel on the EchoStar Dish Network system and that V-Me is in negotiations with DirecTV, Inc. to program a reserved channel on its direct broadcast satellite ("DBS") system. EBC is filing this response to clarify that EBC is the programmer of a reserved channel on EchoStar's Dish Network and EBC is negotiating with DirecTV to program one of its reserved channels. To EBC's knowledge, V-Me does not program a reserved DBS channel, nor is it seeking to do so.

The Commission's rules require DBS providers to reserve four percent of their channel capacity for use by "qualified programmers" to program "noncommercial programming of an educational or informational nature." 47 CFR § 25.701(f). The Commission's rules also set forth several categories of entities that constitute qualified programmers for reserved channels. 47 CFR § 25.701(f)(2).

Among the categories of qualified programmers are noncommercial educational broadcast stations as defined in Section 397(6) of the Communications Act of 1934, as amended. 47 CFR § 25.701(f)(2)(i). WNET(TV) is such a noncommercial educational broadcast station, and thus qualifies as a "qualified programmer" permitted to program a DBS reserved channel.

Another category establishes that noncommercial entities with an educational mission are qualified programmers. 47 CFR § 25.701(f)(2)(v). The Commission uses the tax code's definition of "non-profit" to determine whether an entity is an eligible national educational programming supplier.¹ EBC is a New York educational, noncommercial corporation that has received non-profit, 501(c)(3) status. Therefore, EBC is a "qualified programmer" permitted to program a DBS reserved channel.

WNET(TV), along with numerous other public television stations nationwide, broadcasts programming obtained from V-Me on a digital multicast channel. This programming consists of high-quality, Spanish-language content addressing a variety of issues of importance to Latinos and society as a whole. Included in the programming are Spanish-language versions of several EBC/WNET(TV) award winning public television

¹ See *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 13 FCC Rcd 23254, 23290 (1998) ("Cable Act").

programs, including *Nature*, *Great Performances*, *Religion & Ethics Newsweekly*, *A.I.R.*, *Wide Angle*, *Cyberchase*, and *Franny's Feet*.

Earlier this year, EBC entered an agreement with EchoStar to program a reserved channel on its Dish Network with noncommercial programming of an educational or informational nature. The Commission has not defined noncommercial programming of an educational or informational nature, but instead has given qualified programmers discretion in choosing such programming.² EBC/WNET(TV) concluded that the V-Me programming it broadcasts on its digital multicast channel constitutes noncommercial programming of an educational or information nature, and programs that content on the Dish Network reserved channel for which it is a qualified programmer. In addition, EBC is in the process of negotiating to program a reserved channel with DirecTV.

Given the public interest benefits that flow from the satellite broadcast of high-quality, Spanish-language educational and informational programming, it is important that the misunderstanding contained in the Petition not impair EBC/WNET(TV)'s ability to negotiate for a reserved channel on DirecTV or other providers. Because the Petition is predicated on incorrect assumptions, the Commission should expeditiously dismiss it.

² See *Cable Act*, 13 FCC Rcd at 23293.

EBC has responded to the Petition to correct the factual errors on which it is based. For the foregoing reasons, EBC respectfully requests that the Petition be dismissed.

Respectfully submitted,

**EDUCATIONAL BROADCASTING
CORPORATION**

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May 25, 2007

Its Attorneys

CERTIFICATE OF SERVICE

I, John W. Bagwell, hereby certify that copies of the foregoing *Response to Petition for Declaratory Ruling* of V-Me Media, Inc. were served this 25th day of May 2007, on the following parties via Electronic Mail, unless otherwise noted, at the following addresses:

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*Via United States Postal Service