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FEDERAL COMMUNICATIONS COMMISSION

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IN REPLY REFER TO:
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John B. Kenkel, Esq.
Kenkel & Associates
1220 19th Street, N.W.
Washington, D. C. 20036

In re: WVID(FM), Anasco, Puerto Rico
Central Colegial Cristiano, Inc.

NEW(FM), Cabo Rojo, Puerto Rico
Family Aid Broadcast Center
File No. BPED-920820MC

Dear Mr. Kenkel:

The Commission, by the Chief, Audio Services Division, pursuant to authority delegated under 47 C.F.R. § 0.283, has before it a petition entitled "Request for Declaratory Ruling and Order to Show Cause" ("Request"), filed May 14, 1992 by Family Broadcast Aid Center ("Family") and (ii) an application for a new FM station on Channel 215B in Cabo Rojo, Puerto Rico filed by Family on August 20, 1992 (BPED-920820MC). This proposal is in conflict with the authorized facilities of noncommercial, educational FM station WVID(FM), Anasco, Puerto Rico, licensed to Central Colegial Cristiano ("Central Colegial"). Family's May 14, 1992 pleading requests that the Commission issue an order to modify the license of station WVID(FM) to specify operation on Channel 211B rather than its currently authorized frequency of Channel 212B. Family argues that grant of its Request will result in a fair and equitable distribution of frequencies pursuant to Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b). Family also claims that if its Request is granted, Cabo Rojo, Puerto Rico will receive its first local non-commercial educational FM service.

BACKGROUND. On December 18, 1986, Central Colegial filed an application (BPED-861218MA) for a construction permit to modify the licensed facilities of WVID(FM), Anasco, Puerto Rico. The CP was granted on July 27, 1989. As a result of discussions with Family, Central Colegial filed an application on October 15, 1990 (BMPED-901015IA) to modify its construction permit by specifying operation on Channel 211B in lieu of its authorized frequency of Channel 212B. The Commission dismissed this amendment on July 18, 1991 because Central Colegial failed to respond to a Commission request for additional information. On March 11, 1991, Central Colegial filed an application (BLED-910311KC) for a license to cover construction permit BPED-861218MA. The license was granted on April 15, 1993.

DISCUSSION. Family claims that it had planned to wait until Central Colegial's modified construction permit was granted before filing its own application. However, in light of Central

construction permit was granted before filing its own application. However, in light of Central Collegial's failure to prosecute its application to operate on Channel 211, Family now seeks a Commission Order to specify Central Collegial's operation on Channel 211B.

According to Section 316(a) of the Communications Act of 1934, as amended 47 U.S.C. § 316(a), the Commission may modify any station license only if (i) such action will promote the public interest, or further compliance with the Communications Act or any treaty ratified by the United States; and (ii) the holder of the license has been notified in writing of the proposed action and the grounds therefor and given reasonable opportunity (of at least 30 days) to respond and protest such proposed modification, by demonstrating that there exists a substantial and material question of fact which warrants a hearing. Under Section 1.87(e) of the Commission's Rules (47 C.F.R. § 1.87(e)), where the right to a hearing has been waived¹ and no written statement has been filed within the time specified in the order to show cause, the licensee will be deemed to consent to the modification as proposed in the order to show cause and a final decision will be issued by the Commission accordingly. The burden of proving that the license modification would meet the criteria listed in 47 U.S.C. § 316(a) is on the party initiating the order. See Eastern Michigan University 29 RR2d 1120, 1123 (1974).

At the outset, we emphasize that the Commission has historically been reluctant to issue a show cause order which modifies a station license. An applicant seeking an order to show cause must demonstrate a compelling public interest for the action sought. For example, in the Order To Show Cause in re application of Santa Fe Community College (BPED-850514MA), released May 12, 1987 (copy attached), the petitioner, Santa Fe Community College ("SFCC"), clearly demonstrated that, absent intervening Commission action modifying the license of KUNM-FM, Albuquerque, New Mexico, it would be unable to submit an acceptable application for construction permit for the city of Santa Fe. Petitioner further represented: (i) there were no noncommercial, educational FM stations operating in Santa Fe, the state capital of New Mexico; (ii) the signal of KUNM-FM underserved the population of Santa Fe; and (iii) there were no other frequencies which could be utilized in Santa Fe without causing objectionable interference. Lastly, SFCC was able to assist the Commission by securing an agreement from the Albuquerque station consenting to the frequency modification of its license. Thus, the Commission's action in the Santa Fe proceeding modifying the license of KUNM-FM, enabled the city of Santa Fe, the state capital, to have its first, local noncommercial, educational FM station.

In applying the precedent set in Santa Fe, we find that Cabo Rojo also has no local noncommercial, educational FM radio station and that no frequency is available for use in Cabo Rojo that would not cause objectionable interference in violation of 47 C.F.R. § 73.507. However, in contrast to Santa Fe, Cabo Rojo is not a state capital and has significantly less population than Santa Fe. According to the 1990 U.S. Census, Santa Fe has a population of 55,859 and Cabo Rojo 10,131. Additionally, only a small portion of Santa Fe

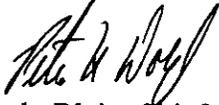
¹The right to a hearing will be deemed waived if the licensee fails: (1) to timely file a written statement that it requests and will attend such hearing; or (ii) to appear at the scheduled hearing.

received service from a noncommercial, educational radio station from another community, whereas Cabo Rojo currently lies within the protected service contours (1 mV/m) of WVID(FM), Anasco, Puerto Rico, WEUC-FM, Ponce, Puerto Rico and WZGX, San German, Puerto Rico. Finally, in Santa Fe, the party seeking the order to show cause had secured an agreement from the station required to change frequency stating that it would not oppose the modification of its license. In the instant proceeding, the Request is predicated upon the parties' inability to resolve their differences without Commission intervention. Therefore, we find that the public interest showing set forth by Family is insufficient to warrant the issuance of an order to show cause and, accordingly, Family's Request will be denied.

Nonetheless, engineering analysis of Family's proposal for WVID's operation on Channel 211B reveals it to be technically acceptable. Accordingly, the parties may wish to continue their efforts to negotiate an agreement under which WVID(FM) would change frequency to Channel 211B. Pursuant to this arrangement, Central Colegial would file an application to change frequency to Channel 211B and would be placed on an "A" cut-off list in accordance with 47 C.F.R. § 73.3573(3). Subsequently, if the Commission granted Central Colegial's application, Family could file an application for its proposed new station in Cabo Rojo after WVID(FM) commences operation on Channel 211B.²

CONCLUSION. In view of the above, the instant "Request for Declaratory Ruling and Order to Show Cause" for WVID(FM), Anasco, Puerto Rico filed by Family Aid Broadcast Center IS HEREBY DENIED and its application for a new FM station on Channel 215B in Cabo Rojo IS HEREBY RETURNED for violation of 47 C.F.R. § 73.509.

Sincerely,


for Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: WVID(FM)

²Any application by Family for a Channel 215B new station in Cabo Rojo, filed prior to the grant of WVID(FM) Channel 211 B covering license application would conflict with WVID's authorized facilities, and would be subject to dismissal as a contingent application. See 47 C.F.R. § 73.3517.