



Federal Communications Commission  
Washington, D.C. 20554

October 3, 2007

**DA 07-4136**

In Reply Refer To:

1800B3-IB

Released: October 3, 2007

State of Oregon Acting by and through  
the State Board of Higher Education for  
the Benefit of Southern Oregon University  
c/o The Sanchez Law Firm  
2300 M Street, N.W., Suite 800  
Washington, D.C. 20037

Re: KFPR(FM), Redding, CA  
Facility ID No. 66567  
BPED-19880610ML  
MX Group No. 880611  
**Petition to Deny**  
**Petition for Reconsideration**

Dear Counsel:

We have before us a Petition to Deny (“Petition”)<sup>1</sup> by State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (“Oregon”) and related pleadings. Oregon contests the Commission’s tentative decision to grant a permit to construct a new noncommercial educational (“NCE”) FM station to the Research Foundation, California State University at Chico (“Research Foundation”), as proposed in the Commission’s *Omnibus Order*.<sup>2</sup> For the reasons set forth below, we deny the Petition and grant the referenced Research Foundation application (the “Application”).<sup>3</sup>

**Background.** The *Omnibus Order* applied the Commission’s NCE comparative selection criteria<sup>4</sup> to seventy-six groups of mutually exclusive NCE FM applications. Group 880611 consisted of

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<sup>1</sup> Petition to Deny (May 1, 2007).

<sup>2</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) (“*Omnibus Order*”).

<sup>3</sup> Oregon also sought reconsideration of the *Omnibus Order*. See Petition for Reconsideration (Apr. 26, 2007) (“*April Submission*”). However, Section 1.106(a)(1) of the Commission’s Rules (the “Rules”) specifically prohibits petitions for reconsideration of interlocutory actions. See 47 C.F.R. § 1.106(a)(1). Confirming the interlocutory nature of the *Omnibus Order*, the Commission emphasized that its selections were ‘tentative’ and took no final action with regard to any of the tentatively selected applications. See *Omnibus Order*, 22 FCC Rcd at 6102; See also *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). The *April Submission* is therefore dismissed. Moreover, as discussed *infra* n.34, the arguments therein would not have changed the outcome of this proceeding.

<sup>4</sup> See 47 C.F.R. §§ 73.7000 – 05.

Oregon's and Research Foundation's conflicting applications for new NCE FM stations at Redding, California. Because Oregon and the Research Foundation proposed to serve the same community, the Commission did not perform a fair distribution analysis<sup>5</sup> and proceeded directly to a point system analysis. The Commission found the applications to be equal under the point system, and tentatively selected the Research Foundation's Application for grant based on a tie-breaker that favors the applicant with the fewer authorizations.<sup>6</sup>

The Application was filed in 1988 by the University Foundation, California State University, Chico ("University Foundation"), organized in 1940,<sup>7</sup> which has held several broadcast licenses. The Bureau granted the Application in 1992 conditioned on the outcome of Oregon's Application for Review which challenged the dismissal of Oregon's mutually exclusive application.<sup>8</sup> The University Foundation constructed at its own risk, filed a license application in 1993, and began operating pursuant to automatic program test authority with call sign KFPR(FM).<sup>9</sup> In 1996, the Bureau granted the University Foundation's KFPR(FM) license application<sup>10</sup> following the denial of Oregon's Application for Review.<sup>11</sup> Shortly thereafter, however, the Bureau rescinded the grant and returned the University Foundation's license application to pending status upon discovering that Oregon had appealed the Commission's decision to the U.S. Court of Appeals for the District of Columbia Circuit.<sup>12</sup> Several weeks later, the Research Foundation was formed.<sup>13</sup> The University Foundation and the Research Foundation (collectively, the "Foundations") are non-profit corporations that supplement the educational mission of the California State University at Chico ("CSUC").<sup>14</sup> The Foundations have separate corporate identification numbers and distinct areas of responsibility.<sup>15</sup>

The Court reversed the dismissal of Oregon's application and remanded the proceeding to the Commission.<sup>16</sup> The Commission reinstated Oregon's application and returned the University Foundation's Application to pending status for comparative consideration with the reinstated application. At that time, the Commission had initiated a rulemaking proceeding to adopt new NCE comparative licensing rules and procedures, and had ceased conducting comparative hearings to award construction permits.

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<sup>5</sup> See 47 U.S.C. § 307(b); 47 C.F.R. § 73.7002.

<sup>6</sup> See *Omnibus Order*, 22 FCC Rcd at 6102; 47 C.F.R. § 73.7003(c)(1).

<sup>7</sup> See California Secretary of State Record for the University Foundation (Petition, Ex. 3).

<sup>8</sup> See File No. BPED-19880610ML (granted September 29, 1992).

<sup>9</sup> See *Letter from Dennis Williams, FCC to University Foundation, Re: KFPR(FM)* (Nov. 5, 1993) (Opposition, Ex. B).

<sup>10</sup> See File. No. BLED-19931123KD (granted Mar. 28, 1996).

<sup>11</sup> See *State of Oregon*, Memorandum Opinion and Order, 11 FCC Rcd 1843 (1996).

<sup>12</sup> See *Letter from Dennis Williams, FCC to University Foundation* (Apr. 15, 1996) (Opposition, Ex. C).

<sup>13</sup> The Research Foundation was incorporated on May 31, 1996. See California Secretary of State Record for the Research Foundation (Petition, Ex. 5); Articles of Incorporation of the CSUC Research Foundation (Petition, Ex. 7).

<sup>14</sup> See Petition, Exs. 2, 7-8.

<sup>15</sup> *Id.* at 9, Exs. 3-6, 8. The Research Foundation's Articles of Incorporation do not mention or describe a relationship with the University Foundation. *Id.* at 9, Ex. 7.

<sup>16</sup> See *State of Oregon v. FCC*, 102 F.3d 583 (D.C. Cir. 1996) ("*Remand Order*"). The Court found that the Commission had erroneously dismissed Oregon's application as untimely based on inadequate notice of the filing deadline.

On August 27, 1997, the University Foundation filed a Form 316 application (the “Short Form Application”) to assign its various radio interests to the Research Foundation.<sup>17</sup> The applicants, in a cover letter accompanying the application, characterized the assignment as *pro forma*. In an exhibit to the Short Form Application, the parties reported that CSUC had restructured the University Foundation into an organization dedicated solely to “philanthropic fundraising activities” with all of other activities transferred to the Research Foundation.<sup>18</sup> The Research Foundation assumed all broadcast functions previously controlled by the University Foundation without any other change in the stations’ operations or relationship to CSUC.<sup>19</sup> The Short Form Application disclosed that the University Foundation and Research Foundation each had eight-member governing boards, with four members common to each.<sup>20</sup> No objections were filed, and the Bureau granted the Short Form Application.

Several years later, the Commission adopted the NCE point system.<sup>21</sup> The Commission gave mutually exclusive applicants an opportunity to negotiate settlements.<sup>22</sup> Those applicants not entering into settlement agreements were required to file timely point supplements to prevent their applications from being dismissed.<sup>23</sup> The Commission identified Oregon and “The Univ. Found. CA State Univ, Chico” as being subject to this requirement in Group 880611.<sup>24</sup> The Research Foundation and Oregon filed timely point supplements. Therein, the Research Foundation stated that it was “formerly known as ‘The University Foundation’” and referenced various University Foundation activities undertaken prior to formation of the Research Foundation.<sup>25</sup>

Following the resolution of several court challenges to the new NCE comparative licensing rules,<sup>26</sup> the Commission applied the point system to pending applications. In Group 880611, the Commission found that neither Oregon nor the Research Foundation was “local” and therefore rejected each applicant’s claim for three points as “established local applicants.”<sup>27</sup> Both applicants received two points for other factors, and the Commission tentatively selected the Research Foundation through a tie-

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<sup>17</sup> The consolidated application covered the Redding station as well as KCHO(FM), Chico, California and nine FM translator stations. See File No. BALED-19970827FB (granted Nov. 25, 1997). The circumstances in which an assignment or transfer can be accomplished via a short form application are described at 47 C.F.R. § 73.3540(f).

<sup>18</sup> See Opposition, Ex. D.

<sup>19</sup> See Letter from Wayne Coy, Jr., Esq., to William F. Caton, FCC (Aug. 27, 1997) (Opposition, Ex. F).

<sup>20</sup> The overlapping board members were all officers of CSUC. See Opposition, Ex. G.

<sup>21</sup> See *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000) (“NCE R&O”), *affirmed and clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074, 5106 (2001) (“NCE MO&O”), *Erratum*, 16 FCC Rcd 10549, *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002) (subsequent history omitted).

<sup>22</sup> See NCE MO&O, 16 FCC Rcd at 5107.

<sup>23</sup> See NCE MO&O, 16 FCC Rcd at 5108; *Deadline for NCE Settlements and Supplements Extended to July 19, 2001*, Public Notice, 16 FCC Rcd 10892 (MB 2001).

<sup>24</sup> See NCE MO&O, Appendix D.

<sup>25</sup> See Foundation Point Supplement at Ex. IV(1). It also referred to “the University Foundation, now the CSU, Chico Research Foundation.” *Id.*

<sup>26</sup> See *National Public Radio v. FCC*, 254 F.3d 226 (D.C. Cir. 2001); *American Family Ass’n v. FCC*, 365 F.3d 1156 (D.C. Cir.), *cert. denied*, 125 S.Ct. 634 (2004).

<sup>27</sup> See *Omnibus Order*, 22 FCC Rcd at 6115-17.

breaker favoring applicants with fewer existing radio interests.<sup>28</sup> The Research Foundation’s attributable interests in 4 radio authorizations was preferred in the tiebreaker to Oregon’s attributable interests in 42 such authorizations. The Bureau’s computer-generated Public Notice soliciting petitions to deny identified the tentative selectee by the name still associated with the Application, *i.e.*, the University Foundation.<sup>29</sup>

Although the Commission did not discuss any corporate changes in this group, it observed with respect to other proceedings addressed in the *Omnibus Order* that applicants had undergone routine, gradual changes in ownership during the very long pendency of these applications, such that the original parties to the application no longer retained more than a fifty percent interest in the application as originally filed. In order to avoid the harsh and inequitable dismissal of applications that had undergone such gradual but “major” ownership changes, the Commission waived Section 73.3573 for all but one such applicant.<sup>30</sup> The Commission determined that it would be unreasonable to penalize applicants for routine and inevitable ownership changes over a substantial period during which the Commission was unable to act on NCE applications, provided the changes were not outgrowths of a party’s desire to gain control over the application.<sup>31</sup> The Commission directed the staff to grant waivers for similarly situated applicants.<sup>32</sup>

The basic facts of this proceeding are not in dispute. Oregon argues that the Research Foundation improperly substituted itself for the University Foundation.<sup>33</sup> Oregon maintains that the current case

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<sup>28</sup> *Id.* at 6129, and Appendix.

<sup>29</sup> *See Broadcast Applications*, Report No. 26455, Public Notice, (Apr. 2, 2007).

<sup>30</sup> *See* 47 C.F.R. § 73.3573(b)(3).

<sup>31</sup> *See Omnibus Order*, 22 FCC Rcd at 6125.

<sup>32</sup> *Id.* The one proceeding in which the Commission did not waive the major ownership change provision involved an applicant in McCloud, California (the “McCloud Proceeding”). The Commission determined that a waiver was not appropriate in that proceeding because the applicant either (1) had abandoned its application, resulting in the application being “hijacked” by an unrelated entity; or (2) had undergone a sudden majority change in its governing board caused by a struggle between two separate entities for control of the applicant entity. *Id.* at 6128.

<sup>33</sup> Oregon, in footnotes, briefly cross-referenced arguments from the dismissed *April Submission* regarding the tentative selection of the Research Foundation’s application. We find those arguments to be without merit. First, Oregon claimed that it should have received a fair distribution preference. The Commission’s rules, however, are clear that a fair distribution analysis for NCE applications is appropriate only when applicants will serve different communities; both applicants in this proceeding would serve Redding. *See* 47 C.F.R. § 73.7002(a); *see also* 47 U.S.C. § 307(b) (“[T]he Commission shall make such distribution of licenses, frequencies, hours of operation, and of power *among the several States and communities* as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”) (emphasis added). Second, Oregon argued that it should have received points as an “established local applicant.” The Commission, however, explained in the *Omnibus Order* that Oregon did not qualify for points under this criterion based on the Redding, California offices of Jefferson Public Radio. *See Omnibus Order*, 22 FCC Rcd at 6116-17.

Finally, Oregon maintained that the Commission’s use of the point system was retroactive and inconsistent with the *Remand Order*. The *Remand Order* required “further proceedings consistent with the foregoing opinion,” 102 F.3d at 587, but the court did not specify a traditional, evidentiary hearing before an administrative law judge or preclude the Commission from selecting the licensee through a more simplified comparative “paper hearing” process like the point system. The Commission established that “*all* mutually exclusive NCE proposals, including any previously filed and/or designated for hearing will be evaluated by the point system” and specifically included remanded applications. *See NCE R&O*, 15 FCC Rcd at 7423 (emphasis added); *NCE MO&O*, 16 FCC Rcd at 5106 (remanded applications of Real Life Educational Foundation and Jimmy Swaggart Ministries). The Commission specifically

(footnote continued...)

involves a sudden change between two separate corporations, both of which continue to exist, rather than a gradual change in the governing board of a single corporation, a simple name change, a corporate reorganization, or a successor relationship making it ineligible for a waiver.<sup>34</sup> Oregon also alleges that the Foundations concealed the fatal substitution of a new applicant by filing the Short Form Application instead of amending the Application, by attempting to hide the fact that there was no assignable authorization through the use of call sign KFPR(FM) in the Short Form Application, and by manipulating the composition of their governing boards to avoid the greater scrutiny associated with a long-form assignment application.<sup>35</sup> Oregon contends that the grant of the Short Form Application was in error and that this action resulted from the Research Foundation's lack of candor.<sup>36</sup>

In contrast, the Research Foundation argues that it fully disclosed the changes at issue in the Short Form Application, which the Commission granted. The Research Foundation acknowledges its failure to amend the instant Application but considers that omission insignificant based on disclosures in the Short Form Application.<sup>37</sup> The Research Foundation characterizes the change at issue as "an in-house friendly reorganization" in which both organizations are associated with CSUC, with the University Foundation retaining a fifty percent interest in the Research Foundation at the time of assignment.<sup>38</sup>

**Discussion.** Group 880611 – with a history of almost twenty years – is the oldest of those analyzed in the *Omnibus Order*. It is also the only proceeding involving a station that was constructed and operated prior to court remand of a conflicting application. In the eight years between application and remand, the role of the University Foundation *vis a vis* CSUC narrowed to a philanthropic and fundraising focus. The Research Foundation, which was established to assume responsibility for the broader CSUC-support functions previously performed by the University Foundation, including all of the broadcast functions, was created approximately six months prior to the remand, and after the station had been constructed and had commenced operation pursuant to program test authority. Given that history, and the subsequent, now-final approval of an application to assign all broadcast interests from the University Foundation to the Research Foundation, we find that a waiver of Section 73.3573 to substitute the Research Foundation for the University Foundation as the applicant entity is particularly warranted. Oregon, whose application was reinstated for comparative consideration with Foundations' after the court's 1996 *Remand Order*, failed to challenge the staff's subsequent grant of the 1997 Short Form Application. The staff's grant of that application on November 25, 1997, including its consideration of the assignee's governing board as then comprised, is now final.<sup>39</sup> Oregon's arguments regarding the Short Form Application are therefore untimely. In any event, Oregon has not made a *prima facie* case that grant of the Short Form Application resulted from misrepresentation or was otherwise improper. For example, in view of the Commission's designation of call sign KFPR(FM) to identify the Redding facility

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acknowledged the remand posture of Oregon's application when it established the point system and applied it to Oregon. *See Omnibus Order*, 22 FCC Rcd at 6115, n.84; *NCE MO&O*, 16 FCC Rcd at 5128, App. D(3).

<sup>34</sup> *See* Petition at 8-11; Reply to Opposition at 4-5.

<sup>35</sup> *See* Petition at 14 - 20.

<sup>36</sup> *See* Reply to Opposition at 3 (citing 47 C.F.R. §§ 73.3522 and 73.3573).

<sup>37</sup> *See* Opposition at 7. 47 C.F.R. § 1.65.

<sup>38</sup> *See* Opposition at 9. The Research Foundation argues that the University Foundation currently has a forty percent ownership interest in the Research Foundation through shared board members. *Id.*, n.2.

<sup>39</sup> For this reason, we need not address the Research Foundation's request for any necessary waiver to reflect the University Foundation's retention of *exactly* fifty percent control rather than *more than* fifty percent control of the Research Foundation. Opposition at 9-10.



effective December 17, 1992, we find nothing deceptive about the Foundations' use of that call sign in the 1997 Short Form Application.

We reject Oregon's related contention that the role of CSUC in the Foundations raises questions of whether CSUC is an undisclosed real party in interest to the application.<sup>40</sup> Neither Foundation has ever tried to hide its relationship with CSUC, and such relationship is especially evident from inclusion of CSUC's name in each Foundation's name and the large number of CSUC officials on the Foundations' governing boards. Assuming *arguendo* that CSUC would be considered to have an attributable interest in the application under NCE attribution standards established in the *NCE R&O*, no such interest would have been reportable at the time of application or assignment because the Commission did not have any NCE attribution standards at that time.<sup>41</sup>

We also reject Oregon's claims that the University Foundation abandoned its application and that no points can be awarded to the Research Foundation because it was not the original applicant.<sup>42</sup> We recognize that the Foundations did not timely amend the Application<sup>43</sup> to reflect the 1997 assignment of various radio interests to the Research Foundation and that the name of the University Foundation remained in the Commission's database, but find that these are ministerial matters of no decisional consequence. Despite any inaccuracy in the Commission's database, the Research Foundation's role in KFPR(FM) had been approved since 1997, well before point supplements were due in 2001. The Research Foundation, by virtue of the grant of the Short Form Application, properly supplemented the application and, *inter alia*, disclosed that the name of the applicant was no longer the University Foundation.<sup>44</sup> Any points awardable would be those for which the Research Foundation qualified.

Oregon does not otherwise call into question the points that the Commission tentatively awarded to the Research Foundation, nor does it contest the results of the tiebreaker. Rather, Oregon objects that the Research Foundation misrepresented that it was "formerly known as the University Foundation" as part of its unsuccessful claim for points as an "established local applicant." Oregon's allegation of misrepresentation is based on a contention that the Research Foundation had a motive to attempt to qualify for more points than Oregon and thereby to protect officials who built KFPR(FM) at their own risk.<sup>45</sup> Given that a false statement on a Commission application is a Rule violation,<sup>46</sup> and that intentional deceit, *i.e.*, misrepresentation, can be disqualifying,<sup>47</sup> Oregon asserts that the Research Foundation should be penalized for wrongfully claiming "established local applicant" status.

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<sup>40</sup> See Reply to Opposition at 6-7.

<sup>41</sup> See *NCE R&O*, 15 FCC Rcd at 7418-19.

<sup>42</sup> See Petition at 23, 30.

<sup>43</sup> See Petition at 13 (citing 47 C.F.R. §§ 1.65 and 73.3522).

<sup>44</sup> See Point Supplement, Ex. IV(1). We observe further that the assignment to the Research Foundation could not have been an attempt to enhance its comparative advantage under a point system established several years after the assignment was completed.

<sup>45</sup> See Petition at 23-25, n.8 (citing *FCC v. WOKO, Inc.*, 329 U.S. 223, 227 (1946); *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478 (1995); *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6065; *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983)).

<sup>46</sup> See 47 C.F.R. § 1.17.

<sup>47</sup> See *Contemporary Media, Inc.*, Decision, 13 FCC Rcd 14437, 14458-59 (1998), *aff'd*, *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000). Intention can be inferred from motive. See, e.g., *RKO General, Inc.*, Decision, 4 FCC Rcd 4679, 4684 (Rev. Bd. 1989).

In response, the Research Foundation concedes to “some inadvertent misstatement of minor facts” but argues that there was no misrepresentation.<sup>48</sup> The Research Foundation maintains that it accurately reported in its point supplement that it was “formerly known as” the University Foundation, but concedes that it inadvertently commingled its attributes with those of the University Foundation in addressing its eligibility for points as an “established local applicant.” The parties dispute whether this was attributable to an intent to deceive.<sup>49</sup>

We find that Oregon’s argument lacks merit. First, we find that the error at issue here – concerning whether the Research Foundation was established in 1996 or 1940 – had no potential to alter the Commission’s point determination because an applicant established on either date (and, in fact, as late as June 1999)<sup>50</sup> could potentially meet the definition of “established.” Thus, the Research Foundation would have no reason to misrepresent this fact. Moreover, the Research Foundation presents a plausible rebuttal, under penalty of perjury, that any error was inadvertent.<sup>51</sup> Finally, the error was of no moment in any event; the Commission declined to qualify the Research Foundation as an “established local applicant,” and hence did not award any points on this basis, because it determined that the organization was not “local.”<sup>52</sup>

Finally, we consider governing board changes after grant of the Short Form Application. The Research Foundation provides the names of its current governing board members as part of its Opposition.<sup>53</sup> The Research Foundation’s board expanded from eight members to twelve (ten of which are voting members) during the period 1997 to 2007.<sup>54</sup> Only three members of the current board were parties to the application at the time the Short Form Application was filed and, thus, over fifty percent of the parties to the application have changed.

We find that the governing board changes at the Research Foundation were routine. For example, the President of CSUC has always been a member of the Research Foundation’s board, but the individual holding that position has changed.<sup>55</sup> Similarly, CSUC’s Vice President for University Advancement and Student Affairs sat on the Research Foundation’s board in 1997, but by 2007, that individual had been replaced by two individuals, one holding the title Vice President for University Advancement and the other Vice President for Student Affairs.<sup>56</sup> Moreover, we find that expansion of the board by four members was not based on a non-party’s attempt to gain control of the application. Rather, this action

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<sup>48</sup> Opposition at 7.

<sup>49</sup> See Declaration of Richard Jackson, Executive Director, Research Foundation at 2 (May 15, 2007) (Opposition, Ex. A) (“Jackson Declaration”); Opposition at 7 (citing *Scott & Davis Enterprises, Inc.*, Decision, 88 FCC 2d 1090 (Rev. Bd. 1982), *settlement approved and rev. dismissed*, FCC 83I-129 (1983) (no deception inferred from alleged errors, omissions, or inconsistencies accompanied by speculation and surmise)).

<sup>50</sup> Specifically applicants had to be established no later than June 1999, *i.e.*, two years before a June 2001 snap shot date.

<sup>51</sup> See Jackson Declaration at 2.

<sup>52</sup> See *Omnibus Order*, 22 FCC Rcd at 6116.

<sup>53</sup> See Opposition, Ex. I.

<sup>54</sup> The Research Foundation also provides information about the University Foundation. The Research Foundation and University Foundation continue to have four common members, all of which are officials at CSUC. See Opposition at n.2, Ex. I.

<sup>55</sup> See Opposition, Ex. G.

<sup>56</sup> *Id.*

was taken to expand the number of CSUC officials and community representatives on the Research Foundation's board.<sup>57</sup> We conclude that these circumstances reflect gradual board changes of a routine nature as contemplated by the Commission when it delegated authority to the staff to process such waiver requests. Although the Research Foundation should have reported these board changes and requested a waiver of Section 73.3573 contemporaneously, its failure to do so is not a basis to deny a waiver at the present time.<sup>58</sup>

**Ordering Clauses.** Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed on April 26, 2007, by State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University IS DISMISSED.

IT IS FURTHER ORDERED, That the Petition to Deny filed on May 1, 2007, by State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University IS DENIED.

IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in Research Foundation, California State University at Chico.

IT IS FURTHER ORDERED, That the Commission's data base is corrected to reflect that the name of the applicant in File Nos. BPED-19880610ML and BLED-19931123KD is Research Foundation, California State University at Chico, and that the applications ARE GRANTED CONDITIONED UPON its compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point systemIT IS FURTHER ORDERED, That the mutually exclusive application of State of Oregon Acting by and through the State Board of Higher Education for the Benefit of Southern Oregon University (File No. BPED-19900129MH) IS DISMISSED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Research Foundation, California State University, Chico

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<sup>57</sup> The Research Foundation's governing board consists entirely of CSUC officials, faculty, students, and community members. *Id.*, Ex. I. Of the four new positions, three are held by CSUC officials and one by a representative of the community. *Id.* at Exs. G, I; Petition, Ex. 4.

<sup>58</sup> See *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991) (citing *Valley Broadcasting Co.*, Decision, 4 FCC Rcd. 2611, 2618 (Rev. Bd. 1989) (A violation of the reporting requirements of 47 C.F.R. § 1.65 is disqualifying only if evidence indicates that the applicant intended to conceal information from the Commission, or if the reporting violations are so numerous and serious as to undermine the applicant's responsibility to be a licensee).