

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of) MX Group No. 403
)
BIBLE BROADCASTING) File No. BNPED-20071019APD
NETWORK, INC.) Facility ID No. 175920
Leesport, Pennsylvania)
)
Comparative Consideration of 26 Groups of)
Mutually Exclusive Applications)
For Permits to Construct New or Modified)
Noncommercial Educational FM Stations)
Filed in the October 2007 Filing Window)

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PUBLIC SERVICES DIVISION
FILED/ACCEPTED

DEC 21 2010

Federal Communications Commission
Office of the Secretary

To: The Office of the Secretary
Attn: Peter H. Doyle
Chief, Audio Division
Media Bureau

PETITION FOR RECONSIDERATION

Berks Radio Association ("BRA"), by its attorney, seeks reconsideration of the November 18, 2010 letter ruling of the Chief, Audio Division (copy attached). In support, BRA respectfully submits the following:

The letter ruling denied BRA's September 2, 2010 Petition to Deny. That Petition, *inter alia*, argued that Bible Broadcasting Network, Inc. ("BBN") was not entitled to two points for diversity of ownership because the BBN application exhibit does not bind the current principals of BBN but only binds future directors and officers, and does not address the current directors and officers.

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In this regard, an examination of the BBN Leesport application (BNPED-20071019APD) reveals that it should not have received any points under the diversification criterion. The BBN application states at Exhibit 12 the following:

It is the intention of the Network to file applications before the Federal Communications Commission ("FCC") for a construction permits [*sic*] for a new noncommercial educational FM stations to be licensed to various communities, which applications (hereinafter "Window Applications") will be filed during the FCC filing window closing October 19, 2007. The principal community contour proposed in each such Window Application shall not overlap the principal community contour proposed in any other Window Application the Network files or the principal community contour of any station of which the Network is the licensee. (The "principal community contour" is defined as the 3.16 mV/m for an FM station and as the 5.0 mV/m for an AM station). With respect to each such Window Application that is granted, thereafter neither the Network nor any parent or subsidiary of the Network shall seek, through application or otherwise, to acquire any interest in any radio station whose principal community contour overlaps the principal community contour of such Window Application station.

This language in the Exhibit's first paragraph does not bind the current principals of BBN. For an applicant to claim two points for local diversity of ownership pursuant to Section 73.7003(b)(2) of the Commission's rules, the applicant must have "no attributable interests as defined in Section 73.7000." In Section 73.7000, attributable interest is defined in the first sentence as, "An interest of an applicant, its parent, subsidiaries, their officers, and members of their governing boards that would be cognizable under the standards in the notes to 73.3555." There are five entities or groups of persons explicitly listed in the first sentence of 73.7000. They are (1) applicant, (2) parent, (3) subsidiaries, (4) officers, and (5) members of governing boards. BBN makes no mention of current officers and current members of its governing board.

BBN does not specify any time limitation, such as the 4-year holding period of 73.7005, for maintaining diversity. As written, without reference to time, BBN must adhere to the restrictions of its diversity statement until it modifies its bylaws and is free to do so at any time. Furthermore, the second paragraph of the resolution only binds *future* directors or officers. It did

not address the status of BBN's then-current directors and officers. Instead, it states the following:

Notwithstanding any other provision herein, no person shall become a director or officer of the Network unless that person shall first verify in writing that he or she does not now, and will not during his or her tenure as a director or officer of the Network (a) serve as an officer, director, partner, member or management employee of any entity that is the licensee or permittee of a radio station whose principal community contour (3.16 mV/m for FM and 5 mV/m for AM) overlaps the proposed principal community contour of any Window Application station; (b) hold a five percent or greater ownership interest in any such overlapping station; or (c) supply 15 percent or more of any such station's weekly programming and 33 percent or more of the equity or debt financing of the licensee of any such overlapping station.

Since the statement "no person shall become a director or officer of the Network unless that person shall first verify in writing that he or she does not now, and will not during his or her tenure as a director or officer of the Network..." is applicable to new members of the board yet to join, the current members are exempt from this rule. If this is the case, as it appears to be, BBN's diversity statement does not cover the current members' ownership interests at the time of filing, or in the future, and thus is defective. If BBN intended this language to apply to all board members, standing or new, in order for the current board members to adhere to this bylaw clause, they each would have needed to sign letters in order to comply with the FCC diversity of ownership rules. Because of this added contingency, these individual affidavits would need to be supplied with the FCC application to demonstrate to the FCC that the board members are each additionally complying with the rules. This document is missing from BBN's application. Thus, the FCC has no assurance that the current board members at the time of filing were under any obligation to maintain diversity. The Bureau, in its letter, states as follows:

BBN, as the Comparative Consideration Order dictates, has submitted copies of pertinent governing documents to support its certification. BBN's supporting documentation also includes a provision to maintain diversity in the future. Although BBN may have

inartfully neglected to mention specifically its current members, directors and officers in its supporting exhibits, we note that Section IV, Question 2 of FCC Form 340's "Diversity of Ownership" certification binds "any party to the application [that] has an attributable interest," which Sections 73.7000 and 73.3555 of the Rules define as current "officers and members of this governing board." We believe that: (1) BBN's affirmative certification to Section IV, Question 2 that "the principal contour (city grade) of the proposed station does not overlap the principal community contour of any other authorized station...in which any party to the application has an attributable interest..." and (2) the specific language of BBN's accompanying exhibit which states that once its proposal is granted that "he or she does not now, and will not during his or her tenure as a director or officer...of [BBN], serve as an officer, director, partner, member or management employee...of any such overlapping station neither" demonstrates compliance with our diversity of ownership certification requirements.

The Bureau has attempted to gloss over a salient fact. BBN's "inartful draftsmanship" is fatal. A plain reading of the language drafted by BBN and submitted to the Commission makes it clear that there is no requirement for the current directors, members or officers to maintain diversity. The Bureau should reexamine its position in light of binding precedent. In this regard in Margaret Garza, 1 FCC Rcd 1294 (1986), the Review Board found that the vague statement that "her work at the station will take priority over other time commitments...is not sufficient to...demonstrate a reasonable likelihood that the proposal will be fully effectuated." The Board refused to award the applicant full-time integration credit. See also Blancett Broadcasting Co., 17 FCC 2d 227, 15 RR 2d 1349 (Rev. Bd. 1968); Lewis Broadcasting Corp., 11 FCC 2d 889, 12 RR 2d 627 (Rev. Bd. 1968). The Board has consistently awarded less than full-time credit for applicants which have failed to meet their burden of showing specifically how a proposed full-time position at a station can be effectuated despite other significant commitments elsewhere. See, e.g., Metro Broadcasting, Inc., 99 FCC 2d 688, 701, 57 RR 2d 440, 450 (Rev. Bd. 1984).

The Review Board in Stanly Group Broadcasting, Limited, 65 RR 2d 341 (1988) held that "it is well settled Commission precedent that persons seeking participation credit must make a persuasive showing as to how they will accommodate their outside professional business

activities so as to fulfill their specific commitments to the proposed station.” Citing Leininger-Geddes Partnership, 2 FCC Rcd 3199 (Rev. Bd. 1987). See also Washoe Shoshone Broadcasting, FCC 88 R-30, released June 20, 1988, para. 16.

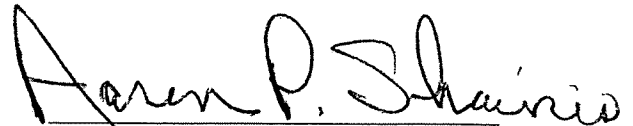
In Ft. Collins Telecasters, 60 RR 2d 1401 (Rev. Bd. 1986), the Review Board refused an award of integration credit predicated on “no objective or substantial showing...” In Jarad Broadcasting Company, Inc., 61 RR 2d 389 (Rev. Bd. 1986), the Review Board held that applicants have the burden of proof to establish how they will effectuate their integration proposal. In Kennelwood Broadcasting Company, Inc., FCC Rcd 6657 (1990), the Administrative Law Judge affirmed the principle that full integration credit would be awarded by the Commission where applicants indicate on the record how they would eliminate current conflicting time commitments. See also Kennebec Valley Television, Inc., 63 RR 2d 877, 2 FCC Rcd 1240 (Rev. Bd. 1987), there the Review Board specifically found that the failure of an applicant to address the effectuation of an integration proposal could be fatal and there is no presumption that other employment commitments would be dropped. Rather, the burden is on the applicant to demonstrate effectuation. See also Cuban-American Limited, 67 RR 2d 1438 (1990), there the Commission found that applicants have the burden of proof to establish how they will effectuate their integration proposals.

The distinction between an integration proposal and a diversification proposal is a distinction without a difference. The Bureau should not ignore the failure of BBN to make the commitment that its current principals would maintain diversity. This action is inconsistent with the afore-cited precedent. Thus, this error warrants reconsideration. Accordingly, BBN’s application should not be preferred. Specifically, BBN should not have received any points.

Rather, BRA, predicated on its preference under the best technical proposal criterion, should be the tentative selectee.

Respectfully submitted,

BERKS RADIO ASSOCIATION

A handwritten signature in black ink, reading "Aaron P. Shainis". The signature is written in a cursive style with a large, stylized "A" and "S".

Aaron P. Shainis
Its Attorney

Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036
202-293-0011

December 21, 2010