



**Federal Communications Commission
Washington, D.C. 20554**

October 19, 2011

In Reply Refer To:
1800B3-VMM

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In re: New NCE(FM), Spanish Springs, Nevada
Facility ID No. 175238
Iglesia Christiana el Verbo de Dios, Inc.
File No. BNPED-20071019AHQ

Petition to Deny

New NCE (FM), Sun Valley, Nevada
Facility ID No. 172600
Progressive Leadership Alliance of Nevada
File No. BNPED-20071017AJD

Dear Counsel:

We have before us: (1) the above-referenced application, filed by Iglesia Christiana el Verbo de Dios, Inc. ("ICVD") for a new, noncommercial educational ("NCE") FM station in Spanish Spring, Nevada; (2) the above-referenced application, filed by Progressive Leadership Alliance of Nevada ("PLAN") for a new NCE FM station in Sun Valley, Nevada; and (3) a Petition to Deny ICVD's application ("Petition"), filed by PLAN on November 25, 2010. ICVD and PLAN were two of seven applicants in NCE MX Group 391.¹ In its Petition, PLAN contests the Commission's tentative decision to grant ICVD's application, as proposed in the Commission's October 28, 2010, *Fair Distribution Order*.² For the reasons set forth below, we grant the Petition in part, dismiss ICVD's application, and accept for filing PLAN's application.

¹ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the October 2007 Filing Window for Noncommercial Educational FM Stations*, Public Notice, 23 FCC Rcd 9508 (MB 2008).

² *See Threshold Fair Distribution Analysis of 9 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 15134, 15137 (MB 2010) ("*Fair Distribution Order*").

Background. Pursuant to established procedures,³ the *Fair Distribution Order* tentatively selected ICVD's application for grant because it was the only applicant which claimed a fair distribution preference.⁴ PLAN timely filed its Petition on November 25, 2010. It asserts that ICVD lacked reasonable assurance of the availability of its proposed site.⁵ PLAN therefore argues that ICVD's application must be dismissed, that the Commission should reanalyze this group and announce a new tentative selectee.⁶ ICVD did not file a response.

Discussion. Section 309(d) of the Communications Act of 1934, as amended ("Act") states that a petition to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(a) of the Act.⁷ We find that PLAN presents specific factual allegations sufficient to meet this standard.

Site Assurance. An applicant seeking a new broadcast facility must, in good faith, possess "reasonable assurance" of a transmitter site at the time it files its application.⁸ It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.⁹ While some latitude is afforded such reasonable assurance, there must be, at a minimum, a "meeting of the minds resulting in some firm understanding as to the site's availability."¹⁰

Here, ICVD proposed a site located on an "existing 439.5 meter tower" with antenna structure registration ("ASR") number 1255448.¹¹ The ASR lists Shamrock Communications, Inc., as the tower

³ See 47 C.F.R. § 73.7002 (procedures for selecting among mutually exclusive applicants for stations proposing to serve different communities); see also *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386 (2000); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001), *partially reversed on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

⁴ See *Fair Distribution Order*, 25 FCC Rcd at 15137.

⁵ Petition at 1-2.

⁶ *Id.* at 4. We note that the remaining applicants have been dismissed and their dismissals are final. Accordingly, PLAN is the sole remaining applicant.

⁷ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁸ See, e.g., *Port Huron Family Radio, Inc.*, Decision, 66 RR 2d 545 (1989); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 67 RR 2d 358 (1989).

⁹ See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974); *South Florida Broadcasting Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842 ¶ 3 (1984).

¹⁰ *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The reasonable assurance standard is satisfied by "[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated...". *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

owner, and Mr. Kevin Fitzgerald as its contact representative. However, Commission records show that the corresponding tower was never constructed, and the registration was cancelled on July 14, 2008.¹² PLAN argues that ICVD never had assurance of site availability because the tower was not constructed,¹³ ICVD never contacted the tower owner regarding its availability,¹⁴ and because construction of the tower at that location was deemed “not possible.”¹⁵ In support of these allegations, PLAN includes the declaration of its own consulting engineer, Todd Urick,¹⁶ and copies of an email exchange between Mr. Urick and Mr. Fitzgerald.¹⁷ In one e-mail, Mr. Fitzgerald states that ICVD never contacted Shamrock regarding tower leasing.¹⁸ The “reasonable assurance” standard is a liberal one.¹⁹ However, ICVD has failed to meet it. Thus, in the absence of evidence to rebut the Petition’s claims, we find that ICVD lacked reasonable site assurance and dismiss its application.

PLAN Application. With the dismissal of ICVD’s application, PLAN is the sole remaining applicant. We therefore accept PLAN’s application for filing. If, after a 30-day petition to deny period has run, there is no substantial and material question concerning its grantability, we intend, by public notice, to grant PLAN’s application.

Conclusion. Accordingly, IT IS ORDERED, that the Petition to Deny filed on November 25, 2010, by Progressive Leadership Alliance of Nevada IS GRANTED.

IT IS FURTHER ORDERED, that the application of Iglesia Christiana el Verbo de Dios, Inc. (File No. BNPED-20071019AHQ) IS DISMISSED.

¹¹ ICVD Application, Exhibit 24; Petition at 1.

¹² Petition at 2, Attachment B.

¹³ *Id.*

¹⁴ Petition at 2, Attachment A.

¹⁵ Petition at 3, quoting Shamrock’s application for modification of construction permit for Lovelock, Nevada, File No. 20080716AHS. Commission records verify that Shamrock characterized the construction at the site specified for the tower listed in ASR 1255448 as “not possible.” *See* File No. BMPH-20080716AHS, Exhibit 1.

¹⁶ Petition, Attachment A at 1.

¹⁷ Petition, Attachment A at 2.

¹⁸ *Id.*

¹⁹ *Elijah Broadcasting Corporation*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990); *Anderson Radio Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 578 n.46 (2008).

IT IS FURTHER ORDERED, that the application of Progressive Leadership Alliance of Nevada
(File No. BNPED-20071017AJD) IS ACCEPTED FOR FILING.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle". The signature is written in a cursive style with a stylized "P" and "D".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Iglesia Christiana el Verbo de Dios, Inc.
Progressive Leadership Alliance of Nevada