



**Federal Communications Commission
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Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

Russell C. Powell, Esq.
Taylor & Powell, LLC
King Street Station I, Suite 600
1800 Diagonal Rd.
Alexandria, VA 22314

In re: **NCE October 2007 Window
MX Group Number 97**

New NCE(FM), Bridgeport, Kansas
Facility ID No. 174930
Templo Apostoles y Profetas Bethel
File No. BNPED-20071018BBK

New NCE(FM), Hutchinson, Kansas
Facility ID No. 174370
Great Plains Christian Radio, Inc.
File No. BNPED-20071018AJV

Petition to Deny

Dear Counsel:

We have before us the above-captioned application of Templo Apostoles y Profetas Bethel ("TAPB") for a construction permit for a new noncommercial educational ("NCE") FM station in Bridgeport, Kansas ("TAPB Application"). We also have before us a Petition to Deny the TAPB Application ("Petition"), filed by Great Plains Christian Radio, Inc. ("GPCR") on March 17, 2010, contesting the Commission's tentative decision to grant the TAPB Application.¹ For the reasons set forth below, we grant the Petition and dismiss the TAPB application.

Background. TAPB, GPCR, and Family Stations, Inc. ("FSI") submitted their applications during a filing window for NCE FM applications in October 2007. On February 16, 2010, the Bureau

¹ TAPB filed an Opposition to Petition to Deny on April 28, 2010 ("Opposition"). GPCR filed a Reply on May 3, 2010 ("Reply").

issued a public notice that identified these three applications as mutually exclusive and grouped them into NCE MX Group 97.² Pursuant to established procedures,³ the Bureau determined that none of the applicants qualified for fair distribution preference under Section 307(b) of the Communications Act of 1934, as amended.⁴ The Commission, therefore, proceeded to consider the applications in a point system analysis, and based on this analysis, identified TAPB as the tentative selectee.⁵ The Commission's tentative selection of the TAPB Application triggered a 30-day period for filing of petitions to deny.

GPCR filed a Petition to Deny on March 17, 2010, arguing that Bridgeport, Kansas, is not a licensable community.⁶ GPCR urges us to dismiss the TAPB Application and to tentatively select its application for a new NCE FM station.⁷ In its Opposition, TAPB reaffirms its position that Bridgeport is a licensable community and requests that we deny the Petition and grant the TAPB Application.⁸

Discussion. In support of its contention that Bridgeport is not a licensable community, GPCR notes that Bridgeport is not incorporated and is not a census-designated place. GPCR asserts that Bridgeport is “no more than a geographic location consisting of a small cluster of about 25 houses approximately 15 miles south of Salina, Kansas.”⁹ While the exact population of Bridgeport is unknown, GPCR estimates that, given the small number of houses, fewer than 100 people live there. GPCR also notes that Bridgeport lacks paved roads, provides no municipal services, and has no local government, no civic, cultural, or religious organizations, no newspaper, no post office, no zip code, nor even a USPS collection box. Furthermore, according to GPCR, no signs identify Bridgeport by name, and Bridgeport is the site of only two commercial locations: a seasonal grain elevator and an operation which sells and

² See *Media Bureau Identifies Groups of Mutually Exclusive Applications*, Public Notice, 23 FCC Rcd 3914 (MB 2008). The Bureau included a fourth application filed by Marianna Educational Broadcasting Foundation (“MEBF”) in NCE MX Group 97. File No. BNPED-20071019AGG. The Bureau dismissed the MEBF Application on November, 12, 2008, at MEBF's request. See *Broadcast Actions*, Public Notice, Report No. 46864 (MB Nov. 12, 2008) at 5.

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) (“*NCE Comparative Order*”); Memorandum Opinion and Order, 16 FCC Rcd 5074, 5105 (2001), *rev'd in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

⁴ 47 U.S.C. § 307(b). A Section 307(b) analysis is ordinarily conducted at the staff level because the Bureau has delegated authority to make Section 307(b) determinations in NCE cases. See *NCE Comparative Order*, 15 FCC Rcd at 7397.

⁵ See *Comparative Consideration of 59 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 1681, 1704-05 (2010) (“*NCE Point Order*”). In the *NCE Point Order*, TAPB and GPCR each received two points on the basis of diversity of ownership, while FSI received no points. Accordingly, TAPB and GPCR proceeded to a tie-breaker, and based on the tie-breaker criterion, TAPB was identified as the tentative selectee. FSI's application was subsequently dismissed by Public Notice on March 29, 2010. *Broadcast Actions*, Public Notice, Report No. 47202 (Mar. 29, 2010). Because FSI did not appeal the dismissal of its application, that action is now final.

⁶ Petition at 2.

⁷ *Id.* at 6.

⁸ Opposition at 2, 5.

⁹ Petition at 2.

repairs used agricultural machinery. GPCR claims that these locations do not have regular hours and are not listed in any phone directory or on the internet.¹⁰

In its Opposition, TAPB does not dispute any of GPCR's claims but instead provides additional evidence to show that Bridgeport is a licensable community. TAPB notes that Bridgeport is shown on several online maps, including Google Earth, Yahoo! Maps, and Mapquest.¹¹ TAPB also observes that Bridgeport is included in a list of towns on the official Saline County web site and is recognized by the United States Geological Survey ("USGS") web site as a "Populated Place."¹² Furthermore, TAPB provides a Wikipedia article on Bridgeport, which refers to it as a "community."¹³ TAPB also supplies an excerpt on Bridgeport from a historic "Cyclopedia" of Kansas from 1912, which states that in 1910 Bridgeport had a population of 120, as well as a telegraph office and a post office.¹⁴ Finally, TAPB provides testimonies from various individuals, including Bridgeport residents, residents of the area, a local real estate agent, and a local historian, attesting to their perceptions that Bridgeport is a distinct community.¹⁵

All broadcasters must specify a licensable community in their applications. The Commission has defined "communities" as geographically identifiable population groupings, which have common local interests.¹⁶ This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census.¹⁷ However, neither incorporation nor recognition by the U.S. Census is a prerequisite to community status. The key factor in determining the existence of a community is the presence of a community of interest associated with an identifiable population grouping. A mere geographical location is not enough. Rather, there must be a clearly established, separate and distinct community with palpable political, economic and social needs that a radio station can address.¹⁸ The principal test is whether the residents function as and conceive of themselves as a community around which their interests coalesce.¹⁹ This may be proven by direct testimony of residents of the locality and by various community indicia.²⁰ Such indicia could include separate municipal services and institutions, or significant political, commercial, social and/or religious organizations and services serving the residents.

¹⁰ *Id.* at 2-3.

¹¹ Opposition, Attachments 6-8.

¹² *Id.*, Attachments 14, 15.

¹³ *Id.*, Attachment 1.

¹⁴ *Id.*, Attachment 2.

¹⁵ *Id.*, Attachments 3-5, 9-13.

¹⁶ *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 98 (1982).

¹⁷ *Id.*

¹⁸ *See, e.g., Beacon Broadcasting*, Decision, 104 FCC2d 808 (Rev. Bd. 1986), *modified*, 2 FCC Rcd 3469 (1987), *aff'd sub nom. New South Broadcasting Corp. v FCC*, 879 F.2d 867 (D.C. Cir. 1989) (the specified location must be an identifiable population grouping separate and apart from all others, and the geographic boundaries of the location must not enclose or contain areas or populations more logically identified as or associated with some other location).

¹⁹ *See Vimville, Mississippi*, Report and Order, 48 FR 56613 (1983).

²⁰ *See Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695, 1699 (MB 2008).

We find that Bridgeport is not a licensable community. As discussed above, Bridgeport is not listed in the U.S. Census Data and is not incorporated. Bridgeport also lacks a local government, post office, schools, or any religious or social organizations. Although Bridgeport is listed on three online maps, the mere appearance of a place name on a map is not alone sufficient to establish that location as a licensable community.²¹ Similarly, recognition of Bridgeport by the Saline County and USGS web sites simply establishes its geographical location. Neither the existence of a Wikipedia article about Bridgeport, nor anything contained within it, helps to establish Bridgeport as a community. Indeed, most of the information in the article refers only to Bridgeport's geographical location. Furthermore, the brief entry on Bridgeport in the historical "Cyclopedia" of Kansas provides details about Bridgeport which are no longer accurate, and thus it is irrelevant to our determination of Bridgeport's current community status. Finally, the two businesses allegedly located in Bridgeport appear to be unlisted and to have no regular hours of operation. In fact, two of the testimonies which TAPB has provided, including one from a self-described 40-year "resident" of Bridgeport, state that Bridgeport is the site of no commercial activity.²² Thus, TAPB has provided virtually no objective indicia which would help to establish Bridgeport as a community.

In the absence of any significant objective indicia, Bridgeport's community status rests solely on the basis of the testimonies TAPB has compiled. All of the testimonies state that Bridgeport is a distinct community, separate from any of the surrounding towns and villages. It is notable, however, that only two of these testimonies come from current residents of Bridgeport.²³ Furthermore, while the testimonies do provide some evidence that area residents share a subjective belief that Bridgeport is a community, they provide no evidence that the residents actually function as a community.²⁴ In determining community status, the Commission considers objective indicia and subjective testimony in conjunction.²⁵ The Commission has repeatedly found in close cases that neither type of evidence in isolation is sufficient to establish community status.²⁶ We are aware of no case in which the Commission has found an area to

²¹ See *Jefferson City, Tennessee*, Notice of Proposed Rulemaking, 9 FCC Rcd 5738 (MB 1994) (citing *Oak Beach and Bay Shore, New York*, Report and Order, 57 RR2d 1275 (1980)).

²² See Opposition, Attachments 12, 13.

²³ See Opposition, Attachments 5, 13.

²⁴ Cf. *Columbia City, Florida*, Memorandum Opinion and Order, 15 FCC Rcd 24725, 24727-28 (2000) (finding that a letter from the Assistant Principal of a local elementary school explaining that residents of Columbia City regularly attended school activities and fundraisers was evidence that the residents functioned as a community.)

²⁵ See *Teche Broadcasting Corp.*, Memorandum Opinion and Order, 52 FCC2d 970, 973 (Rev. Bd. 1975) (test for community status encompasses consideration of the totality of the circumstances).

²⁶ Cf. *Columbia City*, 15 FCC Rcd at 24727-28 (finding that Columbia City is a community on the basis of both objective indicia (nine churches, an elementary school, and a volunteer fire department) and subjective testimony (statements from local institutions and businesses and by 83 individuals attesting to their belief that Columbia City is a community), while noting that the evidence represented the "bare essentials required to establish the existence of a community" and that none of the factors in isolation would necessarily establish community status); *Cal-Nev-Ari, Boulder City, and Las Vegas, Nevada*, Memorandum Opinion and Order, 14 FCC Rcd 17153, 17157 (1999) (finding that Cal-Nev-Ari is a community on the basis of both objective indicia (residents' involvement in building a fire station and holding fundraisers for the volunteer fire department) and subjective evidence (a sociological study concluding that residents subjectively considered themselves a community)); *Semora, North Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 934 (1990) (finding that Semora is a community on the basis of both objective indicia (a post office, several businesses, two churches, and a volunteer fire department) and subjective testimony (a petition signed by a number of residents and letters from local organizations, all attesting to Semora's community status)).

be a community solely on the basis of subjective testimony. Accordingly, we find that TAPB has presented insufficient evidence to establish Bridgeport as a licensable community.²⁷

Because we conclude that Bridgeport does not have the attributes of a licensable community, the TAPB Application proposing service to Bridgeport is patently defective.²⁸ Accordingly, it will be dismissed.²⁹

Conclusion/Action. IT IS ORDERED, that the Petition to Deny filed by Great Plains Christian Radio, Inc. on March 17, 2010, IS GRANTED.

IT IS FURTHER ORDERED that the application for a new noncommercial educational FM station at Bridgeport, Kansas (File No. BNPED-20071018BBK) filed by Templo Apostoles y Profetas Bethel IS DISMISSED. IT IS FURTHER ORDERED THAT the application for a new noncommercial educational FM station at Hutchinson, Kansas (File No. BNPED-20071018AJV) filed by Great Plains Christian Radio, Inc. IS ACCEPTED FOR FILING.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Templo Apostoles y Profetas Bethel
Great Plains Christian Radio, Inc.

²⁷ The Commission has repeatedly found geographical locations not to be communities on the basis of insufficient evidence. *See, e.g., Barry P. Lunderville*, Letter, 23 FCC Rcd 12701, 12704 (2008); *Central Florida Educational Foundation, Inc.*, Letter, 23 FCC Rcd 1695, 1700 (2008); *Bruneau, Idaho*, Report and Order, 15 FCC Rcd 4685, 4685 (2000).

²⁸ *See* 47 C.F.R. § 73.3566.

²⁹ A dismissed NCE applicant generally has one opportunity to make any corrections that can be accomplished through a “minor” amendment within 30 days of dismissal, accompanied by a petition for reconsideration and request that the amended application be considered *nunc pro tunc*. Applicants specifying a non-licensable community, however, cannot cure the defects without changing community which, in the present case, would be considered a “major” change. Major amendments are not acceptable outside a filing window and, even in a filing window, would result in receipt of a new file number which would effectively disqualify the TAPB Application by removing it from this mutually exclusive group. *See* 47 C.F.R. § 73.3573(a)(1), (3).