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	)	

To: The Office of the Secretary
Attn: The Commission

REPLY

Berks Radio Association ("BRA"), by its attorney and pursuant to Section 1.115 of the Commission's rules, submits its Reply to the December 7, 2011 Opposition to Application for Review ("Opposition") filed by Bible Broadcasting Network, Inc. ("BBN"). In support, BRA submits the following:

BBN, in its Opposition, argues that the Application for Review is procedurally defective and substantively meritless. As will be demonstrated, BBN is incorrect in its assertions.

BBN argues that BRA, in its Application for Review, does not specify with particularity from among the factors which warrant Commission consideration. BBN ignores paragraph 5 of BRA's Application for Review. There, BRA states, *inter alia*, the following:

> The Media Bureau's October 24, 2011 letter ruling is incorrect. The Bureau in its ruling has ignored **binding precedent** (emphasis added). The Commission has been chastised for ignoring precedent. In *Communications Investment Corp. v. FCC*, 641 F. 2d 954 (D.C. Cir. 1981), the court stated:

> Distinguishing cases on the basis of principled differentiations is one thing; consciously setting out to "confine each case to its own facts," another - one which would virtually eliminate all precedent. After all, finding factual variations from case to case is a trivial task, and to say a case has been confined to its facts is just a polite way to say it has been ignored. But the Commission cannot be so cavalier with its own precedent and those of this court without suggesting that the rationale by which it is reaching its conclusions is either illogical or *sub rosa*, and thereby inviting reversal.

It is submitted that BRA's submission is consistent with the mandate of Section 1.115(b)(2) of the Commission's rules. *See* "(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy." Accordingly, BBN's procedural argument is devoid of merit.

At Page 9, paragraph C, BBN makes the incredible argument that "for the first time, BRA argues that BBN's bylaw amendment 'only prohibits future interest acquisition by the Network [BBN] in **radio**. There is no prohibition from the acquisition of **television**." BBN contends that BRA's assertion violates Section 1.115(c) of the rules.[1] BBN argues that BRA did not raise this matter either at the Petition to Deny or Petition for Reconsideration stage, and "as the Commission has had no opportunity to pass on it, BRA may not raise it now in the AFR."

This argument by BBN is troubling and disingenuous. The Application for Review was predicated on the October 24, 2011 letter ruling of the Chief, Audio Division, Media Bureau. In that ruling, the Bureau pointed out in support of the denial of the Petition for Reconsideration the following:

> Indeed, our further review of BBN's governing documents reveals that it amended its bylaws on October 17, 2009, prior to the filing of its application, to provide that:
>
> > 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

[1] Section 1.115(c) provides: "No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."

principal community contour overlaps the principal community contour of such Window Application station.[1]

[1]See *BBN Application* at Exhibit 14.

BRA pointed out in its Application for Review that the Bureau's reliance on this amendment was of no support and by the amendments own wording undermined the Bureau's ruling. In this regard, the amendment does not mention officers or directors. Furthermore, it only prohibits future interest acquisition by the Network parent or subsidiary of the Network in **radio**. BRA was merely addressing a glaring deficiency relative to a matter which was *raised by the Bureau itself in its letter ruling*. It is also interesting to note that BBN does not disagree with BRA's analysis on this point. The reason is obvious; there is no counter to the argument.

It should also be noted that BBN also cites the language of the October 17, 2007 amendment to buttress its claim that BBN's documentation binds current and future principals. Thus, having relied on this, albeit erroneously, further makes it fair game for inclusion in BRA's instant Reply.

BBN also argues that the cases relied upon by BRA are inapposite. It attempts to disparage these cases, arguing that the cases cited involve a commercial allocation; the comparative hearing process has been invalidated; and that, since the Review Board is "defunct," its decisions are no longer of any precedential value. BBN misses the point. It fails to explain why a decision involving a commercial allocation is not of precedential value; or why the Review Board decisions cited must be ignored because the Review Board is no longer in existence; and why the principals garnered from the comparative hearing process cannot be relied upon. Because the comparative hearing process is no longer in existence does not mean that all precedent evolved from that process must be ignored. Such a conclusion would wreak havoc with the entire concept of *stare decisis*. BBN also ignores the fact that the Commission

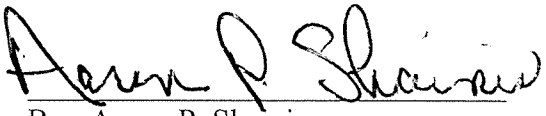
has repeatedly cited Review Board decisions and comparative hearing principals subsequent to the demise of the Review Board and the court's ruling in *FCC v. Bechtel*, 10 F. 3d 875 (D.C. Cir. 1993).

The cases cited were done so to demonstrate that there is substantial precedent for carefully holding applicants to the exact wording of their proposals. See *Margaret Garza*, 1 FCC Rcd 1294 (1986); *Blancett Broadcasting Co.*, 17 FCC 2d 227, 15 RR 2d 1349 (Rev. Bd. 1968); *Lewis Broadcasting Corp.*, 11 FCC 2d 889, 12 RR 2d 629 (Rev. Bd. 1968). Just because these cases are comparative hearing cases and involve rulings by the Review Board does not mean they cannot be relied upon for the principal they were cited.

The BBN proposal, by its own wording, fails to bind its **current** principals. Thus, BBN is not entitled to any points for diversity of ownership.

Respectfully submitted,

BERKS RADIO ASSOCIATION



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December 19, 2011

CERTIFICATE OF SERVICE

I, Jason Silverman, hereby certify that I have sent, this 19th day of December, 2011, by First Class U.S. Mail, postage prepaid, copies of the foregoing REPLY to the following:

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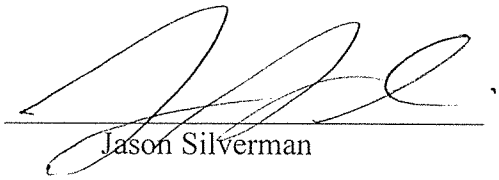

Jason Silverman