

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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COMMUNICATIONS SERVICES DIVISION

2011 FEB -3 A 5:57

In re Application of)
)
BIBLE BROADCASTING)
NETWORK, INC.)
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)

MX Group No. 403
File No. BNPED-20071019APD
Facility ID No. 175920

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FILED/ACCEPTED

JAN 31 2011

Federal Communications Commission
Office of the Secretary

To: The Office of the Secretary
Attn: Chief, Audio Division, Media Bureau

REPLY

Berks Radio Association (BRA), by its attorneys, submits its Reply to the January 19, 2011 "Opposition to Petition for Reconsideration" filed by Bible Broadcasting Network (BBN). In support, BRA submits the following:

BBN takes issue with the thrust of BRA's petition - that the supporting exhibits submitted to the Commission by BBN failed to address the maintenance of diversity by its current BBN board members. Specifically, there is no obligation by BBN's current board members to maintain diversity. As a result of this omission, the Commission should not have awarded any diversification points to BBN.

BBN, at page four (4) of its Opposition, states the following:

While BRA nit-picks the verbiage of BBN's diversity documentation, claiming that the document "does not bind the principals of BBN," BRA has not shown that BBN's directors and officers listed in Section II, Question, of Form 340, have any undisclosed attributable interest or plans to obtain an attributable interest in another authorized station

with a principal community contour overlapping the proposed Leesport principal community contour.

The statement is incredible. BRA does not have the burden to demonstrate the future intent of BBN's principals. Rather, BBN is required to submit documentation that binds its existing principals to maintain diversity. BBN has not done so.

BBN correctly points out at pages 4-5 of its Opposition that there is nothing in the instructions to FCC Form 340 that "specifies the form of the documentation that BBN was required to submit." However, that argument is quite hollow in that BBN has not submitted any documentation addressing the maintenance of diversity by its existing principals. BBN's reliance on "the Bureau has inspected and found BBN's documentation to be adequate" (BBN Opposition, page 5) is specious. BRA's request for reconsideration was predicated on the fact that the Bureau was in error in awarding BBN's points under diversity. The Bureau, at pages 5-6 of its letter ruling, found "BBN may have inartfully neglected to mention specifically its current members, directors and officers in its supporting exhibit..."¹

Furthermore, BBN's reference at page 5 of its Opposition to the *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Memorandum Opinion and Order*, 16 FCC Rcd 5074 ("NCE MO&O"), at par. 55 and 58, that applicants may word the language in their governing documents as "they deem best for their organization" is unavailing. The facts demonstrate that the documents submitted by BBN are totally devoid of any requirement for the maintenance of diversity by its current principals. BRA does not dispute that BBN was free to use verbiage of its choosing; however, silence on the issue in question is not an acceptable choice.

¹ The Bureau conveniently sidesteps the issue by taking a quantum leap of faith to ascribe maintenance of diversity on the existing BBN principals. See *BRA Petition for Reconsideration*, p. 4.

At page 6 of its Opposition, BBN attempts to argue that the cases cited by BRA are not precedential since they involved commercial radio allocations, live testimony and because comparative hearings were invalidated.²

BBN's position is untenable. In this regard, the Commission itself has repeatedly cited to comparative cases in support of its rulings. See *Comparative Consideration of 52 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 25 FCC Rcd 8793, 8799, n. 35 (2010). There, the Commission cited *Silver Springs Communications*, 65 RR 2d 426 (1988) a Review Board Decision involving a comparative proceeding for a new FM station in Silver Springs, Florida. That case is cited by the Commission in a noncommercial radio ruling even though it involved commercial applicants and there was "live testimony." BBN fails to explain why cases involving commercial radio applicants should be distinguished from those involving noncommercial. Equally perplexing is why cases involving "live testimony" cannot be relied upon.

BBN has conveniently ignored or is unaware of the landmark case *Communications Investment Corp. v. FCC*, 641 F. 2d 954 (D.C. Cir. 1981). There the court chastised the Commission relative to ignoring precedent. The court stated:

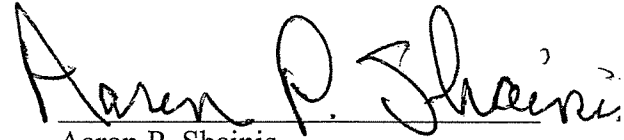
Distinguishing cases on the basis of principled differentiations is one thing; consciously setting out to "confine each case to its own facts," another - one which would virtually eliminate all precedent. After all, finding factual variations from case to case is a trivial task, and to say a case has 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 clear from the foregoing that the cases cited by BRA in its petition are valid binding precedent. Moreover, these type of cases have been relied upon by the Commission in recent

² *FCC v. Bechtel*, 10 F. 3d 875, 878 (D.C. Cir. 1993).

rulings. Clearly, the Bureau should be guided by them and accordingly, BBN should not receive any points for diversity.

Respectfully submitted,

A handwritten signature in black ink that reads "Aaron P. Shainis". The signature is written in a cursive style with a horizontal line underneath the name.

Aaron P. Shainis
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Berks Radio Association

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January 31, 2011

CERTIFICATE OF SERVICE

I, Jason Silverman, hereby certify that I have sent, this 31st of January, 2011, by First Class U.S. Mail, postage prepaid, copies of the foregoing REPLY to the following:

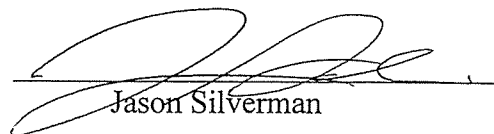
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