

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

In re Applications of	)	NAL/Acct. Nos. MB-201041410022
	)	MB-201041410023
Iglesia Jesucristo Es Mi Refugio, Inc.	)	MB-201041410024
	)	MB-201041410025
)	
Applications for New NCE Radio Stations at	)	FRN: 0013086228
)	
)	
Quemado, Texas	)	Facility I.D. No. 172844
	)	File No. BNPED-20071017AIL
)	
Crosbyton, Texas	)	Facility I.D. No. 173338
	)	File No. BNPED-20071017AIH
)	
Hulldale, Texas	)	Facility I.D. No. 174026
	)	File No. BNPED-20071017AID
and)	
)	
Cuero, Texas	)	Facility I.D. No. 174029
	)	File No. BNPED-20071017AIB

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: November 29, 2010

Released: November 30, 2010

By the Chief, Audio Division

1. The Commission has before it the captioned applications (“Applications”) of Iglesia Jesucristo Es Mi Regugio, Inc., (“IJR”) for new noncommercial educational (“NCE”) stations at Quemado, Texas, Crosbyton, Texas, Hulldale, Texas, and Cuero, Texas. We also have before us a Petition to Deny (“Quemado Petition”) filed on May 25, 2010, by Radio Bilingue, Inc., (“Bilingue”) against the above-referenced application for a new NCE FM station in Quemado, Texas (the “Quemado Application”).¹ Also before us are an Opposition to that Petition (“Quemado Opposition”) filed by IJR on June 30, 2010, and a Reply to the Quemado Opposition (“Quemado Reply”) filed by Bilingue on July 8, 2010. IJR was the “tentative selectee” in Mutually Exclusive Group No. 235.² The issues involved also affect IJR’s pending Crosbytown, Hulldale, and Cuero, Texas, applications (collectively, with the Quemado Application, the “Applications”).

¹ IJR filed the following additional applications for new NCE FM stations: BNPED-20071017AIM, Johnstone, TX (dismissed June 7, 2010); BNPED-20071017AIK, Angus, TX (dismissed November 10, 2009); BNPED-20071017AIJ, Mexica, TX (dismissed November 10, 2009); BNPED-20071017AII, Horizon City, TX (dismissed September 10, 2010); BNPED-20071017AIF, Encinal, TX (granted June 29, 2010); and BNPED-20071017AIE, Sulphur Springs, TX (granted July 20, 2009).

² See *Comparative Consideration of 32 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 5013, 5031-32 ¶¶65-67 (MB 2010)(“*Comparative Consideration Order*”).

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Sections 0.283 and 1.80 of the Commission’s Rules (the “Rules”),³ we find that IJR apparently willfully and repeatedly violated Section 1.65 of the Rules,⁴ by failing to report changes in relevant information in the Applications. Based upon our review of the facts and circumstances before us, we grant the Petition in part, conclude that IJR is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000), and we grant the captioned Quemado Application.⁵

3. **Background.** IJR is the licensee of several low power television stations which it uses “both as a revenue enhancement for the ministry and to spread the Gospel.”⁶ On August 9, 2007, the Commission announced that a window for the filing of applications for NCE station licenses would open on October 12, 2007, and close on October 19, 2007.⁷ Prior to the opening of the filing window, the Commission announced that parties would be limited to filing ten applications.⁸ In this filing window IJR filed ten applications and was the tentative selectee of an NCE station in Quemado, Texas.⁹

4. The principals of IJR are, and at all times pertinent hereto, have been: Roberto Gomez (Church Pastor and President of IJR),¹⁰ Elva R. Gomez and Daniel Gomez, who are directors of IJR. According to copies of their Articles of Incorporation submitted by Petitioner, shortly after the Commission announced the filing window the principals of IJR formed two other entities - Iglesia Jesucristo Es Mi Refugio De San Antonio, Inc. (“IJRSA”) and Iglesia Jesucristo Es Mi Refugio De Austin, Inc. (“IRSA”) – and, on August 17, 2007, filed Articles of Incorporation with the Corporations Section of the Office of the Secretary of State of Texas (“Secretary of State”). On October 11, 2007, IJRSA and IJRA each filed Articles of Amendment with the Secretary of State stating that the IJRSA and IJRA Articles of Incorporation were amended to delete the members of the Gomez family as directors and to replace them with other individuals. On October 17, 2007, IJR filed its ten applications for NCE stations. Then, on October 22, 2007, IJRSA and IJRA each filed ten applications for NCE FM stations. Those applications were signed by the new IJRSA and IJRA directors.

5. On June 23, 2008, IJRSA and IJRA each filed Articles of Amendment with the Secretary of State stating that their articles had been amended on May 17, 2008, to delete as directors the individuals who

³ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. §§ 0.283.1.80.

⁴ 47 C.F.R. § 1.65.

⁵ The captioned applications for Crosbyton (NCE MX Group 537), Hulldale (NCE MX Group 432), and Cuero (NCE MX Group 538), Texas have not been accepted for filing.

⁶ Quemado Opposition at Attachment 1, Declaration of Roberto Gomez at 2.

⁷ The filing window was announced *Media Bureau Announces NCE FM New Station and Major Modification Application Filing Window for New and Certain Pending Proposals; Window to Open on October 12, 2007*, Public Notice, 22 FCC Rcd 6726 (MB 2007).

⁸ *See FCC Adopts Limit for NCE FM New Applications in October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 18699 (2007).

⁹ The Quemado Application was tentatively selected in NCE MX Group 235. *Comparative Consideration Order*, 25 FCC Rcd at 5031-32 ¶¶65-67 (MB 2010). As noted above, Bilingue filed the Quemado Petition with regard to this application.

¹⁰ Quemado Opposition at Attachment 1, Declaration of Roberto Gomez at 1.

had signed their applications and that they were replaced as directors by Roberto, Elva and Daniel Gomez.¹¹ These amendments to the IJRSA and IJRA articles left the three above-named members of the Gomez family back in control of IJR, IJRSA, and IJRA, each of which had ten applications filed in the October 2007 filing window then pending before the Commission.¹²

6. Essentially, Petitioner alleges that:

- IJRSA and IJRA are sham entities created to enable IJR principals to control in excess of the ten applications per applicant limit;
- IJRSA and IJRA failed to amend their applications to reveal the mid-2008 resumption of control of each of the entities by the Gomez family;
- IJR failed to identify all the parties to the IJRSA and IJRA applications¹³ by failing to reveal the interests of the members of the Gomez family;
- IJR made a false response to Question 2 in Section V of the Quemado application which required certification of the number of pending applications in which any party to the application had an attributable interest;¹⁴
- IJR made a false certification as to Character Issues in Section II, Question 8 of the Quemado application and as to Adverse Findings in Section II, Question 9, by failing to report a civil suit against IJR, Roberto Gomez and others,¹⁵ and by failing to report a 1988 misdemeanor drug conviction of Roberto Gomez;¹⁶ and,
- IJR lacked adequate site assurance.

7. In opposition, IJR asserts that IJRSA and IJRA were formed to establish independent congregations and that the Gomez family members had to return to the boards of these companies because, in both cases, the directors who signed the applications left the churches after the applications were filed.¹⁷ IJR states that the Gomez family's resumption of involvement in IJRSA and IJRA affairs was "temporary" and that those entities recently had installed new principals.¹⁸ There was, IJR avers, no

¹¹ According to the Quemado Opposition, "Evangelina Gaitan went through a divorce and left the areas, and Ruth M. Solis [sic] left to another church." Quemado Opposition at Attachment 1, Declaration of Roberto Gomez at 2. Neither the Opposition nor the Articles of Amendment make any reference to the apparent departure of Jaime A. Carillo as an officer/director.

¹² Subsequent to the filing of petitions to deny against the Quemado Application and one of IJRSA's tentatively granted applications, which petitions revealed the revolving directorships of IJRSA and IJRA and the continuing involvement of the members of the Gomez family as directors, both IJRSA and IJRA filed Certificates of Amendment with the Secretary of State's office stating that the members of the Gomez family had been again replaced as directors of IJRSA and IJRA by other individuals. Additionally, both IJRSA and IJRA filed with the Commission what they styled as "minor amendments" to their applications which included as signatories these new directors.

¹³ Section II, Question 6.

¹⁴ Petition at 9.

¹⁵ Petitioner cites a civil case in which IJR, its President, Roberto Gomez, and others were alleged to have fraudulently obtained money for the sale of low-power television stations without disclosing that they were not the licensee of the stations. (*Unidad de Fe y Amor Corporation v. Iglesia Jesucristo Es Mi Refugio, Inc., Robert Gomez, H.C.C.N., Inc., Antonio Cesar Guel*, U.S.D.C.N. Cal, Case No. C08-04910.) Petition at 12-23.

¹⁶ Petition at 11.

¹⁷ Quemado Opposition at 2-3.

¹⁸ *Id.* at 3 and Attachment 2, Declaration of Oscar Ordonez, at ¶ 4.
(continued . . .)

intent for IJR or its principals to control in excess of the ten applications each applicant was permitted to file in the filing window and the Petition's argument to the contrary is speculation.¹⁹ IJR also asserts that the alleged drug "misconduct" occurred over thirty years ago and did not result in a felony conviction.²⁰ With regard to the civil case cited in the Petition, IJR states that there was "no finding of actual "fraud" ever reached by a court."²¹ Additionally, it states that it was merely an unadjudicated allegation of which the Commission does not take cognizance.²² Finally, IJR claims it had verbal transmitter site assurance and the Petition's claim to the contrary is based on hearsay.²³

8. In its Reply, Bilingue reiterates the allegations in its Petition. Bilingue states that IJR's Opposition does not deny the basic facts about control of IJRSA and IJRA and contends that "the definitive official records" of the Texas Secretary of State demonstrate that the allegations in its Petition are correct.²⁴ The Reply asserts that, even if the directors who signed the IJRSA and IJRA applications actually controlled those corporations at one time, it is beyond dispute that they gave up that control by June 23, 2008, when the Gomez family resumed *de jure* legal control of both corporations.²⁵ Bilingue argues that the facts here are not consistent with those of other cases involving changes of control for which NCE applicants have previously been granted waivers of Section 73.3573 of the Rules²⁶ and notes that the Commission has dismissed applications that exceed the limit of ten NCE window applications on the basis of *de facto* control alone.²⁷ Moreover, even though the board changes pertained to IJRSA and IJRA, and not to IJR, according to the Reply, IJR made a misrepresentation to the Commission in certifying that it had attributable interests in only ten other pending applications.²⁸

9. With respect to Roberto Gomez's criminal conviction, the Reply states that he was charged with a felony, which was reduced to a misdemeanor, and that he was obligated to report "any adverse finding" brought under a law related to a felony.²⁹ Nor, according to the Reply, did the

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¹⁹ Quemado Opposition at 2-3.

²⁰ *Id.* at 4-5. IJR admits that Roberto Gomez was convicted of a single misdemeanor.

²¹ *Id.* at 5 (emphasis in original).

²² *Id.* at 5.

²³ *Id.* at 6.

²⁴ Reply at 2. All IJR provided in its Opposition, Bilingue continues, are self-serving statements by Roberto Gomez. Reply at 3.

²⁵ Quemado Reply at 5-6.

²⁶ 47 C.F.R. § 73.3573.

²⁷ Reply at 7, citing *Spirit Communications, Inc. and The Helpline*, 23 FCC Rcd 12665 (2008). Bilingue also states that IJRSA and IJRA have now produced, in application amendments in the guise of "minor engineering amendment[s]," entirely new boards for IJRSA and IJRA which do not include members of the Gomez family. Quemado Reply at 9. Bilingue states that the amended applications were not served on it.

²⁸ *Id.* at 16-17.

²⁹ *Id.* at 21.

application disclose the conviction, as required by the application form.³⁰ The Reply further contends that, although the civil suit against IJR, Roberto Gomez, and his engineer, Antonio Cesar Guel, was settled, it involved trafficking in drugs, is predictive of their truthfulness, and should be considered here.³¹

10. With respect to the transmitter site assurance issue, the Reply avers that the information provided in the Opposition by IJR's engineer does not go beyond the information provided by the tower operator on its website.³² Finally, Bilingue asserts that the unsigned diversity maintenance resolution provided by IJR is not contained in IJR's governing documents.³³

11. **Discussion.** Pursuant to the Section 309(d) of the Act, 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.³⁴

12. *Misrepresentation.* The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”³⁵ Misrepresentation is “a false statement of fact made with intent to deceive.”³⁶ Lack of candor is “concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.”³⁷ Intent to deceive is established if a licensee knowingly makes a false statement³⁸ and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive.³⁹ The

³⁰ *Id.*

³¹ *Id.* at 22-23.

³² *Id.* at 24.

³³ Bilingue's assertion that the unsigned diversity maintenance resolution provided by IJR is not contained in IJR's governing documents was made for the first time in its Reply and, therefore, need not be considered. *See New Jersey Public Broadcasting Authority*, Letter, 24 FCC Rcd 2835, 2838 (MB 2009) (declining to consider site availability argument when it was improperly raised for the first time in the Reply).

³⁴ *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), *reh'g 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).

³⁵ *See Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006) (“*CRS Order*”) citing, *e.g., Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (“*Contemporary Media*”); and *Cumulus Licensing, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13711, 13717 (MB 2007) (“[I]t is essential that licensees make full and clear disclosure of all material facts in every application . . .”).

³⁶ *CRS Order*, 21 FCC Rcd at 9986, citing *Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1210-11 (1986) (subsequent history omitted).

³⁷ *CRS Order*, 21 FCC Rcd at 9986 (citing *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983)). A false certification may also constitute a misrepresentation. *Id.* at 9986 n.15.

³⁸ *Id.* at 9986 (citing *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

³⁹ *Id.* (citing *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983)).

Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.⁴⁰

13. IJRSA and IJRA Applications. As an initial matter, IJR filed its ten applications on October 17, 2007. The IJRSA and IJRA applications were not filed until October 22, 2007. The certification of pending applications contained in Section V, Question 2, of IJR's application specifically relates to the number of attributable pending applications in which the applicant has an attributable interest "as of the date of filing." At the time of filing, the principals of IJR had interests in only the ten IJR applications and, accordingly, did not make a misrepresentation to the Commission by certifying to that fact.

14. Nevertheless, IJR failed to update its applications when, on May 17, 2008, the three members of the Gomez family resumed their control of both IJRSA and IJRA which, together with IJR, placed thirty applications for new NCE FM stations under their control. IJR admits this failure would "technically" constitute a violation of Section 1.65 of the Rules.⁴¹ It argues, however, that had IJR filed a timely amendment reflecting a major change in ownership, it would have been considered a "suicide amendment" that would have been returned to IJR, which, consequently, would have been given an opportunity to correct.⁴²

15. IJR is incorrect that had it filed a major amendment, the Commission would have returned the amendment and given IJR an opportunity to correct its application. Section 73.3573(b)(3) of the Rules, which was adopted subsequent to the *Golden Shores Broadcasting* decision, clearly states, in pertinent part, "[a] new file number will be assigned to a reserved band application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change...." Accordingly, had IJR satisfied its obligations under Section 1.65 of the Rules and filed an amendment showing the Gomez family members back in control of IJRSA and IJRA, we would have accepted it and, because the Gomez family would have then controlled thirty applications, we would have dismissed the twenty applications most recently filed.⁴³ Indeed, we have dismissed all pending IJRSA and IJRA applications in contemporaneously released letter.⁴⁴

16. Based on the facts before us, we find that IJR apparently willfully and repeatedly violated Section 1.65 of the Rules by failing to update the Applications after its principals resumed their control of IJRSA and IJRA and their combined twenty applications.⁴⁵ As of May 17, 2008, the principals of IJR

⁴⁰ *Contemporary Media*, 214 F.3d at 196.

⁴¹ Opposition at 4 n. 3. 47 C.F.R. § 1.65, *inter alia*, requires that applicants inform the Commission within 30 days of any change that may be of decisional significance regarding a pending application.

⁴² Opposition at 4 n. 4. In support, IJR cites *Golden Shores Broadcasting, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 4743, 4744 ¶ 8 (1987).

⁴³ See *FCC Adopts Limit For NCE FM New Station Applications*, Public Notice, 22 FCC Rcd 18699 (2007).

⁴⁴ We have determined that IJRSA and IJRA were, in fact, controlled by the Gomez family members. For that reason, in letters released this date, both applicants were notified that their still-pending applications for new NCE FM stations are being dismissed.

⁴⁵ Section 1.65(a) of the Rules (47 C.F.R. § 1.65(a)) provides, in pertinent part, "Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate."

(continued . . .)

controlled thirty applications for new NCE FM stations. This information was “decisionally significant,” and IJR was required to update its applications within 30 days thereafter to reflect that fact. This failure to timely report that IJR had come into control of an additional 20 applications for new NCE stations was knowingly committed and involved all ten of IJR’s applications. Moreover, it constituted a “continuing violation”⁴⁶ under Section 503(b) of the Act. That violation continued for over two years, from May 17, 2008, until June 30, 2010, when IJR informed the Commission of the changes in IJRSA’s and IJRA’s boards of directors in its Opposition to Petition to Deny.⁴⁷

17. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁴⁸ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁴⁹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁵⁰ and the Commission has so interpreted the term in the Section 503(b) context.⁵¹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”⁵²

18. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file required forms or information.⁵³ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵⁴

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⁴⁶ See, e.g., *Application of US West Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 8286, 8301 (1998) (\$5,000 forfeiture for “willful and repeated violation of Section 1.65 of the rules proposed for each day of the failure to report communications between competing bidders Broadband Personal Communications Service auction), *proceeding terminated by Consent Decree*, 14 FCC Rcd 8816 (1999).

⁴⁷ The IJRSA and IJRA applications were amended to remove the Gomezes from the entities’ boards and replace them with apparently unaffiliated persons on June 25, 2010 and July 13, 2010, respectively.

⁴⁸ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

⁴⁹ 47 U.S.C. § 312(f)(1).

⁵⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁵¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁵² 47 U.S.C. § 312(f)(2).

⁵³ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I. See also *Inflation Adjustment of Maximum Forfeiture Penalties*, Order, 69 FR 47788 (Aug. 6, 2004).

⁵⁴ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II, “Adjustment Criteria for Section 503 Forfeitures -- Upward Adjustment Criteria.”

Section 1.80(b) of the Commission's Rules authorizes the Commission to assess a maximum forfeiture of \$37,500 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$375,000 for any single continuing violation.⁵⁵

19. Based on the facts before us and having considered the statutory factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we conclude that the base amount of the forfeiture for violation of our reporting requirements should be adjusted upward.⁵⁶ Specifically, we propose to increase the forfeiture from the base amount of \$3,000 for each application to \$5,000 for each of IJR's four remaining pending applications. In this case, IJR's failure to report required information (*i.e.*, the fact that it had come into control of twenty additional applications for new NCE FM stations) was serious and continuing. While it belatedly has admitted that this failure was "technically" a violation of Section 1.65 of the Rules, it was a serious violation that allowed it to continue to prosecute the twenty combined applications of IJRSA and IJRA to which it was not entitled. In addition to wasting Commission resources, in several cases this failure resulted in entities under IJR's control improperly obtaining construction permits for new NCE FM stations⁵⁷ and, in at least one of these cases,⁵⁸ another competing applicant was wrongfully denied a license that was awarded to IJRSA. Moreover, as noted above, these violations occurred with regard to all of IJR's ten applications, four of which are still pending, and lasted from June 16, 2008, the date by which IJR was required to have apprised the Commission of its control of twenty additional applications, until June 30, 2010, the date on which IJR finally apprised the Commission of these matters in its opposition to the Bilingue Petition. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude the IJR is apparently liable for a forfeiture in the total amount of \$20,000.

20. Civil Law Suit. We further conclude, however, that Bilingue has not raised a substantial and material question concerning IJR's qualifications to be a Commission licensee. We find that IJR did not misrepresent or lack candor when it failed to note that it, its Director Robert Gomez, and others were defendants in a civil suit in California. In that case, Plaintiffs alleged that Defendants falsely represented themselves as the licensees of low-power television stations, and accepted money from Plaintiffs in connection with the sale of those stations from the Defendants to the Plaintiffs. Although Petitioner contends that the lawsuit⁵⁹ involved alleged fraudulent misconduct,⁶⁰ it notes that the case was settled. The Commission has concluded that "with respect to nonbroadcast related activity, we shall limit our character inquiry to those adjudicated violations discussed previously."⁶¹ This case was not adjudicated and, accordingly, we may not consider it.⁶²

⁵⁵ 47 C.F.R. § 1.80(b).

⁵⁶ 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II, "Adjustment Criteria for Section 503 Forfeitures -- Upward Adjustment Criteria" (upward adjustment factors include egregious misconduct, substantial harm, intentional violation, and repeated or continuous violation).

⁵⁷ See IJRSA applications BNPED-20071022ABM (for Campana, California, granted October 8, 2008); and BNPED-20071022ABA (for Port Mansfield, Texas, granted July 15, 2010); IJRA applications BNPED-20071022ADF (in Darrington, Washington, granted May 28, 2008); and BNPED-20071022ACW (in Oscar, Oklahoma, granted December 24, 2008).

⁵⁸ See *Comparative Consideration Order* at 5032 (Group 236).

⁵⁹ *Unidad de Fe y Amor Corporation v. Iglesia Jesucristo Es Mi Refugio, Inc., Robert Gomez, H.C.C.N., Inc., Antonio Cesar Guel*, U.S.D.C.N. Cal, Case No. C08-04910.

⁶⁰ Petition at 12-13.

⁶¹ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1200-01 (1986) recon. granted in part, denied in part, 1 FCC Rcd 421(1986), appeal dismissed *sub nom.* (continued . . .)

21. Adverse Actions. With regard to IJR's certification that no adverse final action had been taken against it or any party to its applications, Bilingue asserts that Roberto Gomez, on the IJR website and elsewhere, has admitted to a past addiction to heroin and cocaine and refers to a 1988 conviction for misdemeanor drug possession.⁶³ His probation, Bilingue continues, lasted until 1993.⁶⁴ Nevertheless, Bilingue states, IJR checked the "Yes" box in Section II, Question 9, of the subject application which asked the applicant to certify to being free from adverse actions, including criminal convictions. Accordingly, Bilingue concludes that IJR made a false certification.⁶⁵

22. It is undisputed that IJR Director Roberto Gomez was charged with a drug possession felony in 1988 but was convicted of a misdemeanor.⁶⁶ The instructions to the FCC Form 340, however, clearly state, "[i]n responding to Question 9, the applicant should consider any relevant adverse finding that occurred within the past ten years." Because Roberto Gomez's conviction took place more than ten years ago,⁶⁷ it did not have to be reported and IJR did not make a false certification to the Commission by checking the "Yes" box in Section II, Question 9, certifying to being free from adverse actions, including criminal convictions.⁶⁸

23. Site Availability. Finally, with respect to Petitioner's allegation that IJR lacked reasonable transmitter site assurance, 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.⁶⁹ While the Commission does not require (and has never required) NCE broadcast

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National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987) (Footnote omitted. Emphasis added) ("*Character Policy Statement*").

⁶² The case cited by Petitioner in support of its proposition that we may take the lawsuit into consideration (*Rev. J. Bazzel and Elizabeth Mull d/b/a Seymour Communications*, Hearing Designation Order, 5 FCC Rcd 3070 (MB 1990)), involved a case in which identical character issues were left unresolved in ten Commission broadcast application proceedings involving affiliates of the same licensee, when the applicants each withdrew their applications prior to hearing. That case presents a different situation than here, where there was no Commission proceeding involving IJR or Roberto Gomez in which character issues had been designated but left unresolved.

⁶³ Petition at 11.

⁶⁴ *Id.*

⁶⁵ Petition at 11-12.

⁶⁶ Opposition at 5 and Attachment 4; Reply at 21 and Attachment 2. We do not have any information as to whether this misdemeanor conviction resulted from plea agreement or the verdict reached upon conviction by a judge or jury.

⁶⁷ Additionally, his probation ended more than ten years ago.

⁶⁸ Although not raised by the Petitioner, the misdemeanor drug conviction likewise would not have had an impact on IJR's certification under the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 862). Pursuant to the Anti-Drug Abuse Act of 1988, a first conviction for drug possession would have made Gomez ineligible for federal benefits for one year. 21 U.S.C. § 862(b)(1)(A)(i). Roberto Gomez's conviction was over two decades ago.

⁶⁹ *Indiana Community Radio Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 10963, 10965 (MB 2008) ("*Indiana Community Radio*"); *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 (1984).

applicants to certify the availability of the transmitter site in its application procedures,⁷⁰ there must be, at a minimum, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”⁷¹ A mere possibility that the site will be available is not sufficient.⁷²

24. The Petition states that Bilingue’s engineering consultant, Gray F. Haertig, contacted Ms. Vikki Amrine, a former employee of American Tower Corporation, the company that owned the tower to be used as the transmitter site, to inquire as to whether IJR had obtained reasonable transmitter site assurance from American Tower. Ms. Amrine recalled “having some communications with [IJR] or its engineering representative Antonio Cesar Guel” but “did not recall sending a letter to Iglesia with respect to [the Quemado site.]”⁷³ Bilingue states that “at most [Ms. Amrine] might have indicated *via* e-mail whether there was space available at the site” but that American Tower would “probably not rent space to Iglesia because it owed the company money and had a bad history of paying.”⁷⁴ Ms. Amrine also noted that “there was probably no one left at American Tower familiar with communications with [IJR] during that time due to a subsequent internal reorganization at the company.”⁷⁵

25. We find that Haertig’s statements amount to unpersuasive hearsay. While hearsay that is relevant and material is admissible, for example, in administrative proceedings,⁷⁶ the weight to be accorded it depends on its truthfulness, reasonableness, and credibility.⁷⁷ A prime indicium of probity is whether the declarants are disinterested witnesses.⁷⁸ Here, we can accord little weight to Haertig’s statements, because he is the petitioner’s engineering consultant. Bilingue’s failure to provide a timely declaration made under penalty of perjury from the tower owner or its representative and its reliance instead on the uncorroborated hearsay account of Haertig’s conversation with Amrine, are fatal to its claim.⁷⁹

26. Notwithstanding IJR’s violations of Section 1.65 of the Rules, we believe that the public interest, convenience and necessity would be served by a grant of IJR’s Quemado, Texas, Application. While its violation is a serious one warranting the imposition of a proposed forfeiture and the dismissal of the IJRSA and IJRA applications and the IJR remaining pending Crosbytown, Huldale, and Cuero, Texas applications, we do not believe the violation is disqualifying and we conclude that Bilingue has failed to

⁷⁰ *Indiana Community Radio*, 23 FCC Rcd at 10965; *Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914 (MB 1992).

⁷¹ *Indiana Community Radio*, 23 FCC Rcd at 10965; *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (Rev. Bd. 1988).

⁷² *Indiana Community Radio*, 23 FCC Rcd at 10965; *William F. Wallace and Anne K. Wallace*, 49 FCC 2d at 1425.

⁷³ Petition at 14; Affidavit of Gray F. Haertig at 1..

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *See, e.g., Johnson v. United States*, 628 F.2d 187, 190 (D.C. Cir. 1980).

⁷⁷ *Id.* at 190-91.

⁷⁸ *Id.* at 191.

⁷⁹ *See, e.g., Letter to Mark van Bergh, Esq. and Donald E. Martin, Esq.*, 25 FCC Rcd 4474, 4478 (MB 2010); *see also, Wine Country Radio*, Memorandum Opinion and Order, 11 FCC Rcd 2333, 2334 (1996) (without affidavit from tower owner, statements made by petitioner in affidavit even less reliable).

raise a substantial and material question as to whether grant of the Quemado Application would serve the public interest. Accordingly, we will grant that one Application.

27. **Conclusions/Actions.** In view of the foregoing, IT IS ORDERED, pursuant to Section 503 of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Iglesia Jesucristo Es Mi Refugio, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for the apparent willful and repeated violation of Section 1.65(a) of the Commission's Rules with regard to each of the above-captioned applications.

28. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Iglesia Jesucristo Es Mi Refugio, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

29. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. Nos. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

30. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

31. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

32. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸⁰

33. IT IS FURTHER ORDERED that the May 25, 2010 Petition to Deny filed by Radio Bilingue, Inc. IS GRANTED to the extent indicated above and IS DENIED in all other respects.

⁸⁰ See 47 C.F.R. § 1.1914.

34. IT IS FURTHER ORDERED that the Application of Iglesia Jesucristo es Mi Refugio for a new NCE FM station at Quemado, Texas (File No. BNPED-20071017AIL), IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau