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Washington, D.C. 20554**

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**DA 12-1614**

*In Reply Refer To:*

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**In re: NCE Reserved Allotment Group 29**

New NCE(FM), Terre Haute, IN  
Facility ID No. 184662  
Terre Haute Bible Baptist Church, Inc.  
File No. BNPED-20100224AAV

New NCE(FM), Terre Haute, IN  
Facility ID No. 184620  
Terre Haute Seventh-Day Adventist  
Church  
File No. BNPED-20100224AAE

New NCE(FM), Terre Haute, IN  
Facility ID No. 184889  
The Light House Mission Ministries, Inc.  
File No. BNPED-20100224AAF

**Consolidated Petition to Deny**

Dear Counsel:

We have before us (1) the applications of Terre Haute Bible Baptist Church (“THBBC”), Terre Haute Seventh-Day Adventist Church (“THSAC”), and The Light House Mission Ministries, Inc. (“Light House”), for new noncommercial educational (“NCE”) FM stations at Terre Haute, Indiana; and (2) THBBC’s Consolidated Petition to Deny the applications of THSAC and Light House (“Consolidated Petition”).<sup>1</sup> For the reasons set forth below, we deny the Consolidated Petition.

**Background.** NCE Reserved Allotment Group 29 consisted of 12 mutually exclusive applications proposing service on vacant Channel 298B at Terre Haute, Indiana, an allotment reserved for an NCE station by the third channel reservation standard.<sup>2</sup> Pursuant to established procedures,<sup>3</sup> the Commission engaged in a point system selection process in which it awarded THBBC, THSDA, and Light House three points each as established local applicants and two points each for diversity of ownership.<sup>4</sup> Since THBBC, THSDA, and Light House all were tied with five points, the highest number of points in this group, they proceeded to a tie-breaker.<sup>5</sup> Because the tie-breaker did not change the outcome, the Commission identified these three applicants as the tentative selectees of Group 29 on a time-sharing basis.<sup>6</sup> The Commission then accepted their applications for filing and announced a 30-day period for filing petitions to deny.<sup>7</sup> THBBC timely filed its Consolidated Petition.

**Discussion.** Pursuant to Section 309(d) of the Communications Act of 1934, as amended (“Act”),<sup>8</sup> a petition to deny must provide properly supported allegations of fact that, if true, establish a substantial and material question of fact that granting the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>9</sup>

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<sup>1</sup> THBBC filed its Consolidated Petition on May 25, 2011. THSDA filed a Partial Opposition to Consolidated Petition to Deny (“Partial Opposition”) on June 14, 2011 (THSDA opposed the denial of its application but supported THBBC’s petition to deny Light House’s application). THBBC filed a Reply to Partial Opposition and Motion to Strike on June 20, 2011 in response to THSDA’s Partial Opposition. Light House filed an Opposition to Petition to Deny (“Opposition”) on June 23, 2011. In response to Light House’s Opposition, THBBC filed a Reply to Opposition to Petition to Deny on June 28, 2011. THSDA filed an Opposition to Motion to Strike on July 6, 2011.

<sup>2</sup> See *Comparative Consideration of 37 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the February 2010 and October 2007 Filing Windows*, Memorandum Opinion and Order, 26 FCC Rcd 7008, 7018 (2011) (“*Tentative Selectee Order*”).

<sup>3</sup> See 47 C.F.R. § 73.7003 (point system selection procedures); 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) (“*NCE Comparative MO&O*”), *rev’d in part on other grounds*, *NPR v. FCC*, 254 F.3d 226 (D.C. Cir. 2001).

<sup>4</sup> See *Tentative Selectee Order*, 26 FCC Rcd at 34-35.

<sup>5</sup> *Id.* at 35.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 7058-59.

<sup>8</sup> See 47 U.S.C. § 309(d).

<sup>9</sup> 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).

*THBBC's petition to deny THSDA's application.* In its Consolidated Petition, THBBC argues THSDA's application should be denied because THSDA was improperly credited with three points as a local applicant. THBBC states THSDA failed to provide any actual governing documents stating THSDA will maintain the qualities of an established local entity.<sup>10</sup> THBBC states that THSDA's exhibit to the application, which recites its policy to maintain its localism, does not fulfill the Commission's requirement for documentation.<sup>11</sup> Additionally, THBBC argues THSDA did not provide documentation that THSDA has been an established local entity, and the narrative in the exhibit does not fulfill the Commission's requirement for documentation.<sup>12</sup>

THSDA's application exhibit explains that the church has no governing documents, such as articles of incorporation or bylaws.<sup>13</sup> Instead, the actions of the church board serve as its governing documents, and in support of its application, the church board adopted a policy to maintain its localism.<sup>14</sup> The policy states:

The local Seventh-Day Adventist Church has no governing documents similar to articles of incorporation, a constitution or bylaws. Consequently, local policy and governance are implemented by the church board. Actions of the church board serve as governing documents for the church. In support of the church's claim to comparative points, the church board has adopted the following policies.... 1) It is our policy to always maintain the headquarters (i.e. the church building and facilities) of our local church within 25 miles of the reference coordinates for the community of Terre Haute, Indiana.... These policies are adopted for the purpose of complying with the FCC's comparative selection procedures for noncommercial broadcast applications as set forth in Sections 73.7000 and 73.7003 of the FCC's Rules (47 CFR 73.7000 and 73.7003).<sup>15</sup>

THSDA's exhibit also states it "has operated in and served the community of Terre Haute (within 25 miles of the reference coordinates for Terre Haute) since 1902. The Church has committed in a written policy statement adopted by the church board to maintain the qualities of an established local entity...."<sup>16</sup> The exhibit states that the church itself is the THSDA headquarters.<sup>17</sup>

THSDA believes it has properly fulfilled the Commission's documentation requirements.<sup>18</sup> It argues the Commission has accepted similar statements in the past and credited applicants even if they did not provide governing or historical documents.<sup>19</sup>

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<sup>10</sup> Consolidated Petition at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> THSDA application at Exhibit 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Partial Opposition at 2.

<sup>19</sup> *Id.* at 4-6, citing *Alaska Federation for Community Self Reliance* (File No. BNPED-20071018AVG); *Kodiak Public Broadcasting Corporation* (File No. BNPED-20071018AVG); *Kachemak Bay Broadcasting, Inc.* (File No. BNPED-20071019ADH); *Calvary Chapel of Modesto, Inc.* (File No. BNPED-20071022BOJ); *Crested Butte Mountain Educational Radio, Inc.* (File No. BNPED-20071019AHW); *Summit Public Radio & TV, Inc.* (File No.

THBBC does not attempt to rebut THSDA's claim to have maintained its headquarters locally since 1902. Instead, THBBC replies that in the instances cited by THSDA, the applicant had provided some physical documentation to support its claims for localism points, such as a copy of the board resolution or a copy of the bylaws. THBBC argues that none of the applicants in those cases simply relied on a narrative in an exhibit to the application.<sup>20</sup>

An NCE applicant is awarded three localism points if it certifies that it has been local and established for at least two years.<sup>21</sup> We find that THBBC's objection to THSDA's localism exhibit is misplaced. Although Section 73.7003 states the applicant must demonstrate that its governing documents require that its localism be maintained,<sup>22</sup> we have previously determined that such documentation is not necessary to demonstrate that an applicant will maintain local headquarters.<sup>23</sup> Instead, we have found that FCC Form 340 and the orders adopting the current NCE point system only require documentation about maintaining localism when the localism claim is based on local residence by the members of the applicant's board of directors.<sup>24</sup> The Commission adopted the documentation requirement as a "safeguard" to ensure that *governing board characteristics* are maintained notwithstanding inevitable changes in board composition.<sup>25</sup> This concern is not relevant, particularly on the facts of this case, when an applicant has maintained its headquarters in its proposed service area for an extended period. In these circumstances, we conclude that THBBC's challenge to the sufficiency of THSDA's "established local applicant" documentation is wholly misguided. Accordingly, THBBC's failure to present any question about the validity of THSDA's certification of its application as "true, complete, and correct" requires that we deny the Petition for failure to present a *prima facie* question about THSDA's localism certification.<sup>26</sup>

*THBBC's petition to deny Light House's application.* In its Consolidated Petition, THBBC argues Light House's application should either be dismissed or denied because Light House was improperly credited with three localism points. THBBC raises a question as to whether Light House is an independent applicant or is acting for, instead, an undisclosed and unidentified real party in interest outside of the Terre Haute community of license. THBBC offers a letter from Pastor Keith McIntyre, a member of Light House's Board, as evidence that the real party in interest is not a member of the local community. In relevant part, the letter states:

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BNPED-20071018AKW); *Southwest Project for Community Education* (File No. BNPED-20071015ABU); *Common Ground Athens, Inc.* (File No. BNPED-20071022AQA); *Inter Mirifica, Inc.* (File No. BNPED-20071022BHU); *Horizon Christian Fellowship of Indianapolis* (File No. BNPED-20071017ABZ); *Summit Seekers, Inc.* (File No. BNPED-20071022AXE); *Harvest Chapel, Inc.* (File No. BNPED-20071022BJS); *Crisis Pregnancy Help Center of Slidell* (File No. BNPED-20071016ABC); *Brice's Creek Bible Church* (File No. BNPED-20071015AFC).

<sup>20</sup> Reply to Partial Opposition and Motion to Strike at 3-4.

<sup>21</sup> 47 C.F.R. § 73.7003 (b)(1).

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., *Black Media Works*, Letter, 27 FCC Rcd 6397, 6401 (MB 2012) (applicant's physical location within community of license was sufficient to demonstrate that it would maintain its local headquarters). See also FCC Form 340 at 9 (requiring governing documents to ensure that applicant maintain "local" characteristics of governing board); FCC Form 340, Worksheet 4 (same).

<sup>24</sup> *Id.*

<sup>25</sup> *NCE Comparative MO&O*, 16 FCC Rcd at 5095.

<sup>26</sup> See THSDA application, Section VI.

The Light House Mission was approached by an individual from Fort Wayne, Indiana who is interested in bringing a nonprofit radio station to Terre Haute. As a mission we have no funds available to apply, and no manpower to operate such a station. The individual asked if he could apply on our behalf, and he would take care of the funding and operation of the station.<sup>27</sup>

THBBC states that at a minimum this letter is evidence that the real party in interest is not a local applicant, and the application should not have been awarded localism points.<sup>28</sup> THBBC also states the letter provides grounds for a Commission investigation of a potential undisclosed real party in interest.<sup>29</sup> THBBC argues that if the Commission determines that a misrepresentation was made, Light House could be disqualified as an applicant.<sup>30</sup>

In response, Light House argues the letter offered by THBBC is insufficient to support the Consolidated Petition.<sup>31</sup> Light House argues THBBC's allegations do not fulfill the procedural requirements of Section 309(d)(1) of the Communications Act or Section 73.7004(b) of the Commission's rules.<sup>32</sup> Light House states the allegations are not specific and are not supported by a sworn affidavit or a declaration under penalty of perjury.<sup>33</sup>

As noted above, in considering the Consolidated Petition, we must first determine whether THBBC has made specific allegations of fact that, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest. These specific allegations must be supported by the affidavit of a person with knowledge of the facts alleged, except for those of which we may take official notice.<sup>34</sup> If the specific allegations make a *prima facie* case, we next examine and weigh the evidence presented to determine "whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for."<sup>35</sup> We must also determine whether grant or denial of the application would serve the public interest.<sup>36</sup>

Here, THBBC has neither provided the documentation necessary to support its allegations nor set forth specific facts to support its conclusion that Light House was not acting independently. THBBC fails to provide a sworn affidavit or an unsworn declaration in lieu of an affidavit to support its allegations.<sup>37</sup>

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<sup>27</sup> Consolidated Petition at 5.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 5-6.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> Light House Opposition at 2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* (citing 47 C.F.R. §1.16).

<sup>34</sup> See 47 U.S.C. § 309(d); 47 C.F.R. § 73.5006(b).

<sup>35</sup> *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985). See also 47 U.S.C. § 309(d)(1) ("The petition shall contain specific allegations of fact sufficient to show that . . . grant of the application would be *prima facie* inconsistent with [Section 309(a)]. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."); 47 C.F.R. § 73.3584(b).

<sup>36</sup> See *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). See also *Rocky Mountain Radio Co., LLP*, Memorandum Opinion and Order, 15 FCC Rcd 7166, 7167 (1999).

<sup>37</sup> See 47 C.F.R. § 1.16.

Instead, THBBC relies on a vague and unverifiable letter from Pastor McIntyre. The letter fails to identify the alleged third party or provide any supporting details such as any date(s) or location(s) of any alleged interaction with that party. The letter does not specify what role the third party may have played in the application process, nor does it specify what role the third party would have in the operations of the station. THBBC also does not specify whether Pastor McIntyre was present when these statements were made by the unidentified third party. It is also unclear whether Pastor McIntyre is relying on hearsay statements and/or merely providing his personal opinion regarding Light House's ability to construct and operate a station. Allegations consisting of generalizations and hearsay are not sufficient to satisfy the specificity requirements of Section 309(d) or the Commission's rules.<sup>38</sup> Therefore, THBBC has failed to present a substantial and material question of fact as to either the basic or comparative qualifications of Light House under Section 309(d) of the Act.

Time Share Agreement. By this letter, we announce the opening of the 90-day period for the tentatively selected applicants in Reserved Allotment Group 29 to negotiate a voluntary time-sharing agreement. Upon negotiation and submission of such an agreement, the referenced applications will be granted, conditioned upon each selectee's compliance with Section 73.7005 of the Commission's Rules.<sup>39</sup> Should the three applicants fail to file with the Commission an acceptable voluntary time-sharing agreement by January 8, 2013, we will designate the applications for evidentiary hearing on the sole issue of an appropriate time-sharing arrangement, as directed by the Commission.

**Conclusion.** Accordingly, IT IS ORDERED, that the May 25, 2011, Consolidated Petition to Deny the applications of Terre Haute Seventh-Day Adventist Church and The Light House Mission Ministries, Inc., filed by Terre Haute Bible Baptist Church, Inc., IS DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Terre Haute Bible Baptist Church, Inc.  
Terre Haute Seventh-Day Adventist Church  
The Light House Mission Ministries, Inc.

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<sup>38</sup> See *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC2d 1267, 1267 (1974) ("Hearsay, rumor, opinion or broad generalization do not satisfy the specificity requirements of Section 309(d) or the Commission's regulations implementing that provision of the Communications Act").

<sup>39</sup> 47 C.F.R. § 73.7005.