



Federal Communications Commission
Washington, D.C. 20554

April 17, 2009

DA 09-861

In Reply Refer to:

1800B3-ATS

Released: April 17, 2009

Peter Gutmann, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1401 I Street, NW
7th Floor
Washington, D.C. 20005

Richard Snyder
Box 374
Davidsonville, MD 21035

In re: New NCE-FM, Springville, Alabama
Eternal Word Television Network, Inc.
Facility ID No. 174604
File No. BNPED-20071018AJH
Informal Objection

Dear Counsel and Mr. Snyder:

This letter concerns the construction permit application (the "Application") filed by Eternal Word Television Network, Inc. ("EWTN") for the construction of a new noncommercial educational station at Springville, Alabama. Also on file is an "Informal Objection" filed by Richard Snyder ("Snyder") on December 18, 2007 ("Objection") and related pleadings.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. On October 18, 2007, during the filing window opened for new noncommercial educational ("NCE") applications,² EWTN timely filed the Application. On December 18, 2007, Snyder filed the Objection, asserting that EWTN: a) violated the Commission's rules by filing over 100 applications during the application window; b) did not have a reasonable assurance of site availability at the time it filed the Application; c) did not comply with local public notice requirements; and d) has conflicts of interest.

EWTN filed the Response on October 15, 2008, stating that: a) EWTN did not file any other applications in the subject application window; b) EWTN obtained written assurance of site availability for the Application; c) EWTN complied with local public notice rules; and d) there are no conflicts of interest in the matter. Attached to the Response is an Affidavit of Publication signed by Randy S. Crayne, the Billing Manager of *The Birmingham News*, which includes a copy of a public notice EWTN ran in the

¹ EWTN filed a "Response to Informal Objection" ("Response") on October 15, 2008. EWTN subsequently filed a "Supplement to Response to Informal Objection" ("Supplement") on January 16, 2009.

² See *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 (2007).

newspaper. EWTN submitted the Supplement on January 16, 2009, in response to a request by the staff seeking a copy of the written confirmation. Attached to the Supplement is a printout of electronic correspondence between Stephen Gajdosik, EWTN's engineering consultant, and George Njezic, an employee of Crown Castle, the owner of the tower on which EWTN proposed to place its antenna.

Discussion. Pursuant to the Communications Act of 1934, as amended (the "Act"), informal objections, like petitions 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).³

We initially note that Snyder has provided no evidence to support his Objection. His unsupported allegations could be rejected on this basis alone.⁴ Moreover, analysis of each of his claims reveals that they are baseless.

Snyder first charges that EWTN and its "agents" filed over 100 applications in this window.⁵ He further states that although "they are not filed in the name of EWTN," these applicants all have the same contact person, the same engineer, and the same or similar programming proposal.⁶ Snyder does not identify a single one of these applications. EWTN responds that Michael P. Warsaw, the applicant's contact representative, is not listed as the contact in any other known NCE-FM application.⁷ A search of the Commission's CDBS database verifies this. EWTN also states that it is common industry practice for a consulting engineer to be listed in numerous applications, as it is likewise common for multiple stations to become affiliates of a network and run the same programming.⁸ We agree with EWTN and find Snyder's argument to be without merit.

Snyder next claims that EWTN failed to ask the owner of tower where it proposes to place its antenna for permission to use the site.⁹ Snyder fails to provide any evidence supporting his assertion that EWTN did not have reasonable assurance of site availability. Moreover, in its Response, EWTN states that it obtained "written confirmation of site availability from the owner of its proposed tower prior to filing the subject application."¹⁰ In support of this assertion, EWTN provided in the Supplement a printout of electronic correspondence in which its engineering consultant, Stephen Gajdosik, contacted George Njezic at Crown Castle, the owner of the tower, and obtained permission to locate an antenna on

³ 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) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁴ *Area Christian Television, Inc.*, 60 RR 2d at 864.

⁵ Objection at 1.

⁶ Id.

⁷ Response at 2.

⁸ Id.

⁹ Objection at 1.

¹⁰ Response at 2.

the Crown Castle tower.¹¹ This is all that is necessary to establish a reasonable assurance of site availability.¹² We therefore find that Snyder's site availability objection has no merit.

Snyder also states that EWTN failed to comply with local public notice requirements.¹³ EWTN has provided an "Affidavit of Publication" with its Response signed by Randy S. Crayne, the Billing Manager of *The Birmingham News*, attesting that EWTN ran a public notice in that newspaper on four separate dates announcing its intention to construct a new station.¹⁴ The Commission's Rules outline the public notice requirements an applicant must satisfy.¹⁵ We find that EWTN satisfied the requirements of Section 73.3580 and Snyder's claim is therefore baseless.¹⁶

Lastly, Snyder claims that there are "[c]onflicts of interest ... including applications by FCC registered attorneys... on their own behalf... who have no relation to the applications applied for...."¹⁷ Snyder fails to explain what conflicts of interest exist, or how this argument applies to EWTN's Application. This claim requires no further discussion.

Conclusion/Actions. Accordingly, for the reasons set forth above, the Informal Objection IS DENIED. The Application (File No. BNPED-20071018AJH) for a construction permit for a new NCE station on FM Channel 204A at Springville, Alabama is GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Michael P. Warsaw

¹¹ See attachment to Supplement.

¹² See, e.g., *National Innovative Programming Network, Inc. of the East Coast*, Memorandum Opinion and Order, 2 FCC Rcd 5641, 5643 (1987) (all that is ordinarily necessary for reasonable assurance is some clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated, and that he would give notice of any change of intention; reasonable assurance may be acquired by informal telephone contacts by the applicant's agent).

¹³ Objection at 1.

¹⁴ See Affidavit of Publication, attached to Response.

¹⁵ See 47 C.F.R. § 73.3580(c)(1).

¹⁶ EWTN's notice ran on October 26 and 27 and November 2 and 3, 2007, thus satisfying our requirement that the notice be published "twice a week for two consecutive weeks." See § 73.3580(c)(1)(i).

¹⁷ Objection at 1.