



Federal Communications Commission
Washington, D.C. 20554

October 3, 2007

DA 07-4137

In Reply Refer To:

1800B3-IB

Released: October 3, 2007

Thomas Aquinas School
c/o Dennis J. Kelly, Esq.
P.O. Box 41177
Washington, D.C. 20018

Re: NEW(FM), Reno, Nevada
Facility ID No. 78489
BPED-19951127MA
MX Group No. 95072E

Petition to Deny

Dear Counsel:

We have before us a Petition to Deny ("Petition") filed on May 2, 2007, by Thomas Aquinas School ("TAS"). TAS is a party to MX Group 95072E, a group of three mutually exclusive applicants competing for a single permit to build a new noncommercial educational ("NCE") FM station. TAS argues that the Commission should deny the application of the group's tentatively selectee, the Board of Regents of the University of Nevada Acting on Behalf of Truckee Meadows Community College ("Regents"). For the reasons set forth below, we deny TAS's Petition and grant the referenced Regents application for a new NCE FM station in Reno, Nevada.

On March 27, 2007, the Commission released the *Omnibus Order*,¹ which applied the Commission's NCE comparative selection criteria² to seventy-six groups of mutually exclusive NCE FM applications and tentatively selected one winner in each group. The Commission determined that all three of the applicants in Group 95072E tied for the same number of points. The Commission tentatively selected Regents under the first tie-breaker criterion because Regents had the fewest attributable interests in existing radio authorizations.³ TAS held the second-fewest attributable interests.

The Commission's *Omnibus Order* delegated authority to the Media Bureau ("Bureau") to consider petitions to deny the tentative selectees, and to grant and dismiss applications in accordance with the Commission's tentative determinations in cases where no substantial and material question of fact is

¹ See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101 (2007) ("*Omnibus Order*").

² See 47 C.F.R. §§ 73.7000 – 05.

³ See *Omnibus Order*, 22 FCC Rcd at 6132 - 33; 47 C.F.R. § 73.7003(c)(1).

raised through the petition to deny process.⁴ TAS does not question the Commission's point determinations but alleges that two matters disqualify Regents from receiving a construction permit.

First, TAS alleges that Regents's ability to construct the proposed station is questionable because Regents once held a permit to construct an FM station in Reno but did not build. TAS demonstrates that Regents held a construction permit for DKRNC(FM), Facility ID 6082, between 1993 and 1994, let that permit expire, and failed to have the permit reinstated on reconsideration.⁵ TAS provides no support, however, for its proposition that an applicant's past failure to build a station is potentially disqualifying. Its claim that a hearing is appropriate relies primarily on inapposite permit extension proceedings before the Review Board in the 1970's.⁶

Second, TAS alleges that Regents's application is defective because 11 members of its governing board at the time of its 1995 application are no longer on the board. TAS alleges that Regents has failed to keep its application complete and accurate, as required.⁷ It further alleges that it is not clear whether there has been a major change in control of Regents, possibly necessitating a dismissal or denial of the application.

A fifty percent change in the governing board of an NCE applicant would generally be considered a "major change" and would not be permissible outside of a filing window.⁸ The *Omnibus Order* recognized, however, that many NCE applicants had experienced such changes and determined that it would be unreasonable to penalize applicants for routine and inevitable changes over the substantial period that the Commission was unable to act on their applications due to judicial challenges to the new NCE comparative procedures.⁹ The Commission thus waived the major change rule for many NCE applicants that experienced gradual ownership changes over long periods and not as an outgrowth of the party's desire to gain control over the NCE station application. It directed the staff to grant such waivers for similarly situated NCE applicants.¹⁰

On May 9, 2007, Regents amended its application to provide updated information about its governing board.¹¹ It reports that the changes were the result of gradual changes that occurred in the normal course of operations, and requests a waiver of the major change rule pursuant to the *Omnibus Order*. Regents should have notified the Commission contemporaneously of the changes that it first reported in May 2007. Nevertheless, its delayed reporting of that information is neither disqualifying nor comparatively decisional. In particular, TAS has not shown that the change in Regents's governing board

⁴ See *Omnibus Order*, 22 FCC Rcd at 6132 - 33; 47 C.F.R. §§ 0.61(h), 0.283.

⁵ See *Petition*, Exhibit B.

⁶ E.g., *Harold A. Jahnke*, Decision, 74 FCC 2d 276 (Rev. Bd. 1978); *Community Telecasters of Cleveland, Inc.*, Decision, 58 FCC 2d 1296 (Rev. Bd. 1976). The Commission has since done away with permit extensions, and implemented tolling rules. See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23092 (1998), *aff'd*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17539 - 40 (1999); 47 C.F.R. § 73.3598(b).

⁷ See 47 C.F.R. § 1.65(a).

⁸ 47 C.F.R. § 73.3573(a)(1), (b)(2), and (b)(3).

⁹ See *Omnibus Order*, 22 FCC Rcd at 6125.

¹⁰ *Id.*

¹¹ Regents also reported that its name had changed to Board of Regents of the Nevada System of Higher Education for the Benefit of Truckee Meadows Community College, without any corresponding change in ownership.

would reduce the number of points for which Regents would have qualified or its standing in the tie-breaker. TAS has failed to make a *prima facie* issue that the grant of Regents's application would be contrary to the public interest.

Accordingly, IT IS ORDERED, That the Petition to Deny filed on May 2, 2007, by Thomas Aquinas School IS DENIED.

IT IS FURTHER ORDERED, That Section 73.3573 of the Commission's Rules, 47 C.F.R. § 73.3573, is waived with respect to the ownership change in Board of Regents of the University of Nevada Acting on Behalf of Truckee Meadows Community College (now Board of Regents of the Nevada System of Higher Education for the Benefit of Truckee Meadows Community College).

IT IS FURTHER ORDERED, That the application of Board of Regents, University of Nevada System of Higher Education on behalf of Truckee Meadows Community College (File No. BPED-19951127MA) IS GRANTED CONDITIONED UPON its compliance with Section 73.7005 of the Commission's Rules, 47 C.F.R. § 73.7005, which sets forth a four-year holding period for applicants that are awarded permits by use of a point system.

IT IS FURTHER ORDERED, That the mutually exclusive applications of Thomas Aquinas School (File No. BPED-19950718MA) and of Stockton Christian Life College (File No. BPED-19951113MB) ARE DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Board of Regents, Nevada System of Higher Education
Stockton Christian Life College