

FILED/ACCEPTED

JUL 23 2010

Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Application of )  
 )  
Immanuel Baptist Church ) File No. BNPED-20071022AWE  
New Non-Commercial Educational Station, ) Facility Id. No. 174666  
Pine City, Minnesota ) MX Group 374

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

**PETITION TO DENY**

Minnesota Public Radio (“MPR”), applicant for a new non-commercial educational (NCE) FM station at Hinckley, Minnesota (BNPED-20071016AHJ), by its counsel, hereby petitions to deny the above-captioned application filed by Immanuel Baptist Church (“Immanuel”).<sup>1</sup> The application, as originally filed, specifies a tower site for which Immanuel never obtained reasonable assurance. This lack of reasonable assurance is a fatal defect and cannot be cured by a subsequent amendment. Thus, MPR respectfully requests that the Media Bureau (“Bureau”) dismiss Immanuel’s application, then accept for filing and grant MPR’s competing application.<sup>2</sup> In support hereof, MPR states as follows:

<sup>1</sup> As an applicant in MX group 374, MPR has standing to file a Petition to Deny. See 47 C.F.R. §§ 73.3584, 73.7004.

<sup>2</sup> According to the Commission’s decision resolving MX group 374, MPR’s application for a new noncommercial educational station at Hinckley, Minnesota, is the next best application in the group. See *Comparative Consideration of 52 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, FCC 10-118, ¶¶ 111-13 (2010) (“2010 NCE Order”).

1. Immanuel filed the above captioned application on October 22, 2007.<sup>3</sup> In the application as originally filed, Immanuel specified a tower with the Antenna Structure Registration Number (ASR) 1041442. This tower is owned by Red Rock Radio Corp. (“Red Rock”). *See* Attachment 1. On November 19, 2008, Immanuel amended its application to specify a new transmitter site.<sup>4</sup> The Commission recently designated Immanuel over MPR as the tentative selectee in MX group 374 using tie-breaker procedures.<sup>5</sup>

2. According to the attached declaration of Ro Grignon, President of Red Rock, at no time has Immanuel possessed reasonable site assurance for the tower specified in its application as originally filed. *See* Attachment 2. Mr. Grignon attests under penalty of perjury that he has “no recollection of *ever discussing* the use of that antenna structure by Immanuel Baptist Church with anyone.” Further, Mr. Grignon has “no recollection of Red Rock ever granting Immanuel Baptist Church any right or assurance to use that structure.” Mr. Grignon also states that he reviewed Red Rock’s records and found “no record that any right or assurance to use the antenna structure registered under ASR 1041442 was ever granted to Immanuel Baptist Church.” In light of Immanuel’s failure even to communicate with Red Rock about possible use of the tower, Immanuel clearly lacked reasonable assurance for the site specified in its original Pine City application.

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<sup>3</sup> *See Media Bureau Announces NCE FM New Station and Major Change Filing Procedures for October 12-October 19, 2007 Window*, Public Notice, 22 FCC Rcd 15050 (Med. Bur. 2007). The Commission extended the window to October 22, 2007 due to problems that had occurred with the FCC’s CDBS system.

<sup>4</sup> The original site specified by Immanuel is apparently grossly short-spaced to three radio stations in violation of the FCC’s technical rules.

<sup>5</sup> *See 2010 NCE Order*, *supra* note 2.

3. By law, an applicant must possess reasonable assurance for a proposed transmitter site at the time it files the application.<sup>6</sup> Moreover, the Commission “has repeatedly held that ‘an applicant will not be permitted to amend where it did not have the requisite reasonable assurance to begin with ....’”<sup>7</sup> Indeed, failure to dismiss an application that lacked reasonable site assurance is reversible error.<sup>8</sup>

4. In a directly analogous case, the Bureau dismissed an application for a new NCE station, notwithstanding an amendment to specify a new site, because the applicant never had reasonable assurance for the original transmitter site.<sup>9</sup> That application, filed by Indiana Community Radio Corp. (“ICR”), like Immanuel’s application here, was tentatively selected under the Commission’s comparative procedures.<sup>10</sup> Subsequently, the Bureau discovered that ICR never possessed reasonable assurance for the original site. Even though ICR had amended to change transmitter sites, the Bureau dismissed the application because ICR lacked reasonable assurance at the original site.

5. As shown, Immanuel lacked reasonable assurance of site availability when it filed its application on the closing day of the October 2007 window. This is a fatal flaw that cannot, under Commission law, be cured by Immanuel’s November 19, 2008 amendment, even if

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<sup>6</sup> See, e.g., *Les Seraphim and Mana’o Radio*, 49 CR 1105 (Med. Bur. 2010); *Port Huron Family Radio, Inc.*, 66 RR 2d 545 (1989); *Radio Delaware, Inc.*, 67 RR 2d 358 (1989).

<sup>7</sup> *Edward A. Schober*, 23 FCC Rcd 14263, 14265 (2008).

<sup>8</sup> *Id.*

<sup>9</sup> See *Indiana Community Radio Corp. and Pennyrile Christian Community, Inc.*, 23 FCC Rcd 10963 (Med. Bur. 2008).


<sup>10</sup> See *Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, 22 FCC Rcd 6101 (2007).

reasonable assurance for the amended site is assumed. Therefore, the Commission must dismiss the Immanuel application as patently defective.

For the foregoing reasons, MPR respectfully requests that the Bureau dismiss the above-captioned application filed by Immanuel, then accept for filing and grant MPR's application at Hinckley.

Respectfully submitted,

**MINNESOTA PUBLIC RADIO**

By:   
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Todd Stansbury  
Scott Woodworth  
Wiley Rein LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 719-7000

Its Attorneys

July 23, 2010

# **ATTACHMENT 1**

**REFERENCE COPY**

**This is not an official FCC authorization. It is a record of public information contained in the FCC's Antenna Structure Registration database on the date that this reference copy was generated. In cases where FCC rules require the presentation, posting, or display of an FCC authorization, this document may not be used in place of an official FCC authorization.**

<b>United States of America</b> <b>Federal Communications Commission</b>	
<b>Antenna Structure Registration</b>	
Owner: RED ROCK RADIO CORP. FCC Registration Number (FRN): 0005676325	

RED ROCK RADIO CORP. Attention To: RO GRIGNON, PRESIDENT P.O. Box 9115 FARGO, ND 58106	Registration Number: 1041442
	Issue Date: 08/13/2007
Location of Antenna Structure: STATE HIGHWAY 14 AT HIGHWAY 61 PINE CITY, MN	Ground Elevation (AMSL): 298.7 meters
	Overall Height Above Ground (AGL): 89.9 meters
Latitude: 45-54-07.0 N Longitude: 092-57-26.0 W NAD83	Overall Height Above Mean Sea Level (AMSL): 388.6 meters
<b>Painting and Lighting Requirements:</b> FCC Paragraphs 1, 3, 11, 21	
<b>Special Conditions:</b>	

This registration is effective upon completion of the described antenna structure and notification to the Commission. **YOU MUST NOTIFY THE COMMISSION WITHIN 24 HOURS OF COMPLETION OF CONSTRUCTION OR DISMANTLEMENT OF YOUR ANTENNA STRUCTURE, please file FCC Form 854.** To file electronically, connect to the Antenna Structure Registration system by pointing your web browser to <http://wireless.fcc.gov/antenna/>. Electronic filing is recommended. You may also file manually by submitting a paper copy of FCC Form 854. Use purpose code "NT" for notification of completion of construction; use purpose code "DI" for notification of antenna structure dismantlement.

The Antenna Structure Registration is not an authorization to construct radio facilities or transmit radio signals. It is necessary that all radio equipment on this structure be covered by a valid FCC license or construction permit.

You must immediately provide a copy of this Registration to all tenant licensees and permittees sited on the structure described on this Registration (although not required, you may want to use Certified Mail to obtain proof of receipt), and display your Registration Number at the site.

You must comply with all applicable FCC obstruction marking and lighting requirements, as set forth in Part 17 of the Commission's Rules (47 C.F.R. Part 17). These rules include, but are not limited to:

- Posting the Registration Number:** The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure. Exceptions exist for certain historic structures. See 47 C.F.R. 17.4(g)(h).

## **ATTACHMENT 2**

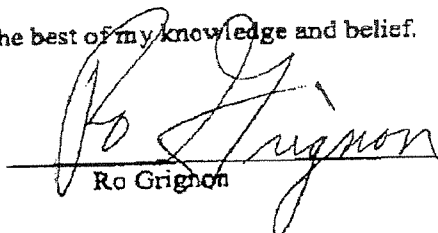
## DECLARATION OF RO GRIGNON

I, Ro Grignon, subject to the penalty of perjury, declare the following.

I am more than 18 years of age, am competent to testify, and I understand my obligation to tell the truth.

1. I am the President of Red Rock Radio Corp. ("Red Rock"), a position that I have held continuously, starting many years prior to 2007. As part of my duties, I oversee all of the operations of Red Rock, including its ownership and operation of radio stations and antenna structures.
2. Recently, it was brought to my attention that an applicant before the Federal Communications Commission ("FCC"), called Immanuel Baptist Church, filed an application on October 22, 2007 for a new radio station in which it asserted that it would make use of an antenna structure registered with the FCC under Antenna Structure Registration ("ASR") number 1041442 for the transmitting antenna it proposed in its application. See FCC File No. BNPED-20071022AWE.
3. On and before October 22, 2007, and continuously since that time, Red Rock has owned the antenna structure registered under ASR 1041442, which is in the vicinity of Pine City, Minnesota. I have no recollection of ever discussing use of that antenna structure by Immanuel Baptist Church with anyone. I have no recollection of Red Rock ever granting Immanuel Baptist Church any right or assurance to use that structure. In addition, I have reviewed the relevant records of Red Rock and find no record that any right or assurance to use the antenna structure registered under ASR 1041442 was ever granted to Immanuel Baptist Church.

The foregoing is true and correct to the best of my knowledge and belief.

  
Ro Grignon

July 16, 2010

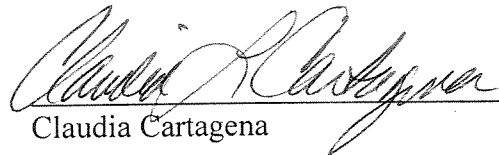


**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of July, 2010, I caused copies of the foregoing  
“**Petition to Deny**” to be mailed via first-class postage prepaid mail to the following:

Immanuel Baptist Church  
310 Noble Avenue  
Rice Lake, WI 54868

Randy Melchert  
4020 N. 128<sup>th</sup> Street  
Brookfield, WI 53005

  
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Claudia Cartagena