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In re Application of)

City of Truth,)

Applicant,)

For an Original LPFM Construction Permit)
(Form 301))
_____)

File No. BNPL-20131114ATP

Facility ID No. 197133

To: The Media Bureau

**REPLY IN SUPPORT OF PETITION TO DENY OF
YA-KA-AMA INDIAN EDUCATION & DEVELOPEMNT**

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Its Attorney

September 26, 2014

INTRODUCTION

Ya-Ka-Ama Indian Education and Development (“Petitioner”) is now in receipt of City of Truth’s (“COT”) late-filed Opposition dated September 23, 2014. The Opposition must be disregarded because it is untimely pursuant to Section 73.3584(c) and because the claims therein are not supported by affidavit or sworn declaration.

Even ignoring these defects, COT’s application must be dismissed because COT President Chris McMinn’s vague divestiture pledge cannot be given the broad reading that COT seeks retroactively, and because COT fails to substantiate its non-profit status. Because COT also fails to adequately dispute the remaining facts set forth in the Petition to Deny, the untimely Opposition should be rejected.

ARGUMENT

I. THE OPPOSITION IS UNTIMELY AND SHOULD BE DISREGARDED

A party has fifteen (15) days to oppose a Petition to Deny pursuant to 47 C.F.R. Section 73.3584(c). Untimely pleadings which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the Commission’s staff without consideration. Section 73.3584(e).

Here COT never sought an extension of time to respond to the Petition. COT does not explain why it required an additional month to respond to the Petition, or why the above rules should be waived in this instance.¹

As the treasurer of One Ministries, Inc. with numerous attributable interests in other broadcast stations, COT’s President knew or should have known of the need to comply with Commission rules and procedures. COT’s failure to comply, without explanation, warrants return of the Oppositions without staff consideration pursuant to Section 73.3584(e).

¹. At most, COT alleges “there does not appear to be a certificate of service” on the Petition. However even this vague (and untrue) assertion is unsupported by affidavit or declaration.

II. THE OPPOSITION IS NOT VERIFIED, NOR SWORN TO UNDER DECLARATION UNDER PENALTY OF PERJURY

The Opposition must also be disregarded because COT's assertions are not verified or otherwise sworn to under penalty of perjury. There is no affidavit or declaration signed by someone with personal knowledge attesting to the facts set forth in the Opposition. Accordingly, COT's unsupported assertions (including the claim that COT is "a non-profit entity under California law without consideration of tax exempt status [sic]") must also be ignored.

III. COT INCORRECTLY ARGUES IT IS THE COMMISSION'S BURDEN TO FERRET OUT ALL ATTRIBUTABLE INTERESTS OF AN APPLICANT

The Petition to Deny argues the divestiture statement of COT President Chris McMinn was defective because it failed to identify each "broadcast station or other media outlet in which the applicant (or the party to the application) holds an attributable interest" along with his intention to divest each such interest. *See* Instructions to Form 318, Section II, Question 5(b). COT responds that Mr. McMinn's divestiture statement as to One Ministries, Inc. should be presumed to apply to all other broadcast stations held by that company besides KORB. (Opposition at 2).

Opposer's argument is untenable. A broadcast applicant cannot put the burden on Commission to ferret out all other attributable interests of a party to the application and have the Commission assume they all fall within the divestiture pledge. Rather, it is the responsibility of broadcast applicants to put the Commission on notice of all existing *station* interests in accordance with instructions to Form 318. To suggest otherwise would play havoc with the Commission's ability to enforce its prohibition as to cross-ownership pursuant to Section 73.860(a). Placing the investigatory burden on the Commission would also encourage applicants to play "hide the ball" and promote the submission of vague divestiture statements going forward.

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In any event, the broad reading of Mr. McMinn's divestiture claim in the Opposition is not supported by any affidavit or sworn declaration. As there is nothing binding on Mr. McMinn to relinquish his twenty-five percent (25%) attributable interest in the additional broadcast stations identified by Petitioner, they must all be attributed.²

IV. COT AGAIN FAILS TO DOCUMENT ITS ALLEGED NON-PROFIT STATUS

The Petition to Deny also observes that COT failed to comply with Form 318 instructions, requiring applicants to "submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants that fail to provide these materials are subject to dismissal." Form 318, Section II, Question 2(a).

COT again fails to make the necessary showing. No exhibits or other evidence is submitted to support the Opposition's claim that COT is a *non-profit* corporation. Instead, the Opposition relies on the unsubstantiated claim that COT is a "non-profit entity under California law." (Opposition at p.1). But even this claim is unsupported by affidavit or sworn declaration under penalty of perjury.

COT's failure to comply with instructions to Form 318 and document its non-profit status rendered the application subject to dismissal. Having failed to meet its evidentiary burden, COT's continued failure to document its non-profit status now warrants dismissal of its application.

V. COT'S REMAINING ARGUMENTS ARE ALSO UNAVAILING

The remaining scattershot claims in the Opposition are also without merit.

COT's initial argument concerning legal counsel's declaration is a red herring. That declaration concerns matters of which official notice may be taken, and the Opposition does not dispute any of those facts.

² Attributable broadcast media not previously identified in the application include FM stations KZBV (Carmel Valley, CA) and KDVZ (Point Reyes, CA); Class A TV station KKPM-CD and TV translator or LPTV stations KQRM-LP, K03HY-D, KUKR-LD, KFTY-LD, K03IC-D, K02QX-D, K14MW-D, K26JV-D and K02QO-D). See Petition to Deny.

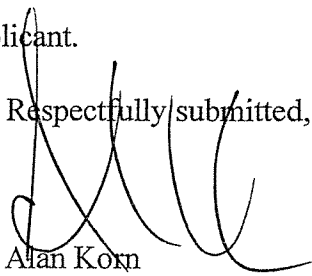
COT next argues that Petitioner fails to include a declaration of standing. This argument also fails. As a mutually exclusive tentative selectee for the same channel, Petitioner has the requisite standing.

Finally, COT's claim that religious programming is *de facto* educational evades Petitioner's argument that COT failed to submit a "detailed description" of proposed programming intended to advance its educational objective. *See* Instructions to Form 318, Section II, Question 2(a). COT cites the First Amendment rights of religious broadcasters here, but declines to articulate how or why a "detailed description" of its proposed programming would violate those rights. Because this requirement is to guarantee applicants intend to abide by their commitment to provide a local broadcast service in accordance with Commission's Low Power FM mandate, COT's argument here is also unavailing.

CONCLUSION

For the above reasons the Opposition should be rejected as untimely, and because the factual claims therein are not supported by affidavit or sworn declaration. Even assuming the Opposition is somehow admissible, COT's application must still be rejected based on the defective divestiture pledge of Chris McMinn, its failure to substantiate its non-profit status and its failure to provide a detailed description of proposed programming. For these reasons and those previously set forth, Petitioner remains the prevailing party and is entitled to the award of a Construction Permit as a "singleton" applicant.

Respectfully submitted,

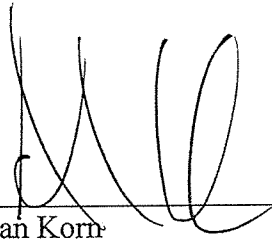


Alan Korn
Attorney for Petitioner

CERTIFICATE OF SERVICE

On September 26, 2014, the above REPLY IN SUPPORT OF PETITION TO DENY
was served by United States Mail, postage prepaid, to the following:

City of Truth
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P.O. Box 2705
Santa Rosa, CA 95405



Alan Korn