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David Edward Smith (Smith), by his attorney, and pursuant to 47 CFR §1.115(d), hereby respectfully submits this Reply to the "Opposition to Application for Review"

dated March 4, 2009 by Emmis Radio License, LLC (Emmis).  
In support whereof, the following is shown:

**Standing**

1. Any interested party, whether or not he can claim "Article III Standing", electrical interference, economic injury or "listener standing", has the right under 47 C.F.R. §73.3587 to file and prosecute an "Informal Objection".

2. The Commission has held that where there is no statutory opportunity to file a formal petition to deny, the filing of an informal objection will preserve the objector's reconsideration rights. In addition, the filing of an informal objection may be made by one who is not a "party in interest". See e.g. ***The Last Bastion Station Trust, LLC, as Trustee***, 23 FCC Rcd 4941, 4942-43 and nn. 10-11 (Bureau, 2008), citing ***Cloud Nine Broadcasting, Inc.***, 10 FCC Rcd 11555 (Bureau, 1995), ***Rainbow Broadcasting Co.***, 9 FCC Rcd 2839, 2844, n. 24 (1994) and ***Great Northern Radio, LLC***, 22 FCC Rcd 16644 (Bureau, 2007).

3. Emmis and its employees, contractors and minions have attempted to crush Mr. Smith at every turn. When Mr. Smith engaged in acts of citizenship and persisted in sending the FCC's enforcement apparatus more than 60 examples of Emmis' violations of 18 U.S.C. §1464, a lawsuit was filed against Mr. Smith in a state court in Illinois seeking to deprive him of his federal constitutional right

to contact federal law enforcement. When Mr. Smith filed an Informal Objection against Emmis' Indiana license renewal applications, which were filed four months prior to Emmis' renewal of license application for WKQX(FM), Chicago, Illinois (based on the Commission's renewal application procedures involving a rotation of the states stated in 47 C.F.R. §73.1020(a)), Emmis apparently engaged in ex parte settlement negotiations with the FCC enforcement apparatus. Quite conveniently for Emmis, the FCC at the time was headed by a former employee of Emmis' law firm. The negotiations took place despite the existence of **Rainbow**, where it was held that the ex parte communication rules attached to a proceeding where an informal objection had been filed. Smith's position is that any negotiations that took place after the filing of his Informal Objection turned the "Consent Decree" upon which Emmis relies "fruit of the poisoned tree". The Commission should honor its precedents which adhere to the ancient judicial maxim but should adhere rather to the ancient judicial maxim "crimen omnia ex se nata vitiate" (crime vitiates everything that springs from it). **Marc A. Albert**, 6 FCC Rcd 13, 16 (Rev. Bd. 1991, Separate Statement of Member Blumenthal, citing **West Jersey Broadcasting Co.**, 90 FCC 2d 363, 375 (Rev. Bd. 1982).

4. This is the undersigned's thirtieth year in the practice of law representing clients before this agency on a

daily basis. This is probably the most unfair proceeding he has ever seen. Emmis serially violated 18 U.S.C. §1464, and it violated 47 C.F.R. §1.1200 in order to effectuate a settlement through which it essentially purchased a new eight year license term for its stations. When a citizen objected, a "SLAPP" law suit was filed against the citizen.

5. How can the Commission conclude, as it is required to do under Section 309(d) of the Communications Act of 1934, as amended, that a grant of applications for renewal of extremely valuable radio licenses to a miscreant such as Emmis would serve the public interest, convenience and necessity? It certainly could not do so with a straight face. It certainly could not do so in accordance with established law and precedent and on the facts and circumstances on this record. Therefore, the rulings below and the "Consent Decree" must be vacated, and a full and fair hearing before an independent administrative law judge must be designated on appropriate issues.


**Conclusion and Prayer for Relief**

**WHEREFORE,** David Edward Smith urges that his Application for Review **BE GRANTED**, that the above-captioned applications **BE DESIGNATED FOR HEARING** upon at least the following issues, and that he **BE GRANTED STATUS AS AN INTERVENOR** in such hearing:

1. To determine the facts and circumstances relating to the motivation of Erich Muller et al in filing the civil damage suit against David Edward Smith, et al.; and what effect, if any, the foregoing facts and circumstances have upon the qualifications of Emmis Radio License Corporation to be a Commission licensee;
2. To determine the facts and circumstances of the supervision of Erich Muller and the "Mancoo Morning Madhouse" program by Emmis Radio License Corporation; and what effect, if any, the foregoing facts and circumstances have upon the qualifications of Emmis Radio License Corporation to be a Commission licensee;
3. To determine whether Erich Muller, Emmis Radio License Corporation or any person or entity under their control or direction have violated 18 U.S.C. §§ 241, 1505 or 1512, and, if so, what effect that would have upon the qualifications of Emmis Radio License Corporation to be a Commission licensee;
4. To determine what effect the recidivist violations of 18 U.S.C. §1464 by Emmis Radio License Corporation have upon its qualifications to be a Commission licensee; and
5. In light of the evidence adduced pursuant to the foregoing issues, whether the applications for renewal of license of WIBC(AM), WENS(FM), WNOU(FM), WYXB(FM), WWVR(FM) and WTHI-FM should be denied, and whether the license of WKQX(FM) should be revoked.

Respectfully submitted,

**DAVID EDWARD SMITH**

By   
Dennis J. Kelly  
His Attorney

LAW OFFICE OF DENNIS J. KELLY  
Post Office Box 41177  
Washington, DC 20018  
Telephone: 202-293-2300

DATED: March 18, 2009

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing "Reply, etc." was served by first-class United States mail, postage prepaid, on this 18<sup>th</sup> day of March, 2009 upon the following:

John E. Fiorini, III, Esquire  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006  
Counsel for Emmis Radio License LLC

  
Dennis J. Kelly