

Daniel Vetsalo
4306 NE 166th Ave
Vancouver, WA 98682

2017 AUG 15 A 11:11

August 10, 2017

Received & Inspected

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

AUG 15 2017

FCC Mailroom

Petition to Deny
KXRY 91.1 FM, Portland, Oregon, Application
"BALED-20170717ADP"

Dear Federal Communications Commission,

On July 18, 2017 Common Frequency, Incorporated (or "Common") filed application form 314 to request assignment of KXRY 91.1 FM Portland, Oregon to Cascade Educational Broadcast Service (or "Cascade", or also under the name "XRAY.FM"¹). Not too long ago we noticed that a new Low Power FM (LPFM) radio station came on the air in Vancouver, WA. Instead of broadcasting material produced locally as LPFM stations were intended by the FCC, it was rebroadcasting progressive programming relayed from KXRY Portland, including some indecent language. Upon closer research, a collection of low power stations with similar call signs around the Portland area were found that seemed to have

¹ Public information available from Oregon Secretary of State online at http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login, Cascade does business under the name "XRAY.FM" also.

common connection. A lawyer was contacted who has extensive knowledge in broadcasting, along with some radio hobbyists, uncovering many inconsistencies centering on KXRY. We then noticed Common was transferring the license of KXRY to this group Cascade.

As a member of the Portland area radio listening community, this petition is being filed as a party of interest against the proposed assignment. This petition aims to demonstrate that from research it was found Cascade and Common are in violation of FCC rules which may complicate the assignment.

***There are ownership connections not disclosed on the assignment form:**

A FCC CDBS search (a publicly available database on the FCC website, which can be downloaded) was performed to view if any board members on the assignment form may have not disclosed affiliation with other FCC permits or licenses.

<1> Jenny Logan, board member for the assignee (Cascade) listed on form 314, is incidentally listed as a board member of LPFM KZRY-LP Portland, Oregon (Facility 196096) on the ownership part of form BNPL-20131115ABB, with 11.11% ownership (Attachment I).

Due to Section 73.860 of the FCC rules, this cross-ownership prevents assignment.²

<2> Max Woodbury and Matthew Jacobson, board members for the assignee (Cascade) listed on form 314, are incidentally listed as board members of LPFM KXVY-LP Wilsonville, Oregon (Facility 196592) on the ownership part of form BNPL-20131114BPE, with 33.3% each ownership (Attachment III). Due to Section 73.860 of the FCC rules, this cross-ownership prevents assignment.

<3> The application is signed for Cascade by Jefferson Smith. Because only officers (board members) are are only allowed to authorize FCC forms, should it be assumed Jefferson Smith is an officer of Cascade? If so, Smith also appears to be a board member of LPFM license KSFL-LP Portland, Oregon (Facility 195582). In the ownership part of form BNPL-20131114AYQ, Smith has 14.3% ownership (Attachment III) of KSFL-LP. If Smith is a board member, this prohibited cross-ownership under Section 73.860 prevents assignment.

<4> Jeff Shaw, board member for the Assigner, is listed on the license for station KDOA in The Dalles, Oregon (Facility 185138).

² Section 73.860: ...no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.

See BAPED-20131204ABQ, where Shaw is listed with 33.3% ownership. This is not disclosed on the application.

<5> Cascade holds the license for K219KU Nehalem, Oregon (Facility 85732) which is not disclosed on the application.

***If signer of the application, Jefferson Smith, is not on Cascade's board, then the board has not officially authorized form 314:**

It is not clear if Jefferson Smith, signer for the Assignee, is on the board of Cascade or not. If so, there is proposed cross-ownership in a LPFM. If not, he is an employee of Cascade. An employee not on the board of directors is not eligible for signing FCC forms due to Section 73.3513(a)(3). If Smith is an employee (Executive Director) the form as submitted would then be considered not authorized from Cascade. The form is technically not submitted properly.³

***Cascade appears to have already been operating KXRY without any knowledge to the FCC since March 2014:⁴**

³Refer to 73.801, 73.3513(a)(3); see also Mary Ann Salvatoriello, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991) (dismissing application that did not comply with signature requirement of Section 73.3513)

⁴ March 2014 is the month XRAY began broadcasting. See "Extra Terrestrial--New Radio Station.FM's Uphill Struggle Could Be Worth It", Marjorie Skinner, *The Portland Mercury* March 12, 2014. <http://www.portlandmercury.com/portland/extra-terrestrial/Content?oid=11946408>

It is widely public knowledge that KXRY is operated from 5415 N Albina Ave Portland, Oregon by nonprofit Cascade Educational Broadcast Service.⁵ However, the owner of the license appears to be Common Frequency, a nonprofit corporation from Davis, California. In certain instances, third parties may provide programming and management under the authority of the license holder if the parties outline that agreement to the FCC in the form of a managerial agreement. The FCC was contacted to see if such agreement existed on file and the FCC does not have record of such. This violates Section 73.3613 which requires such notification. In addition, Cascade's direct operation without any oversight could be considered an unauthorized transfer of control, a violation of Section 310(d) and 73.3540. We do not exactly know of the extent of Cascades control over the broadcast, whether Common or Cascade pays for music licensing, insurance, studio-to-tower link, etc. It is known that Cascade -- the proposed Assignee -- directly leases (pays for) the KXRY antenna site from SBA Communications Corporation at SBA's "Rocky Butte" tower site⁶ which according to knowledge provided by a lawyer, Common should be managing as the duty of the license

⁵ On-Line Search with Oregon Secretary of State online public information http://egov.sos.state.or.us/br/pkg_web_name_srch_ing.login states Cascade with registry date 08-13-2012 with Principle Place of Business as "5415 N ALBINA AVE #104 Portland OR 97217".

⁶ From call with SBA Communications regarding SBA Tower Site OR12026-A Rocky Butte 45.540514, -122.565269 3002 Rocky Butte Rd. Portland, OR 97220.

holder. This might be "unauthorized control" of the license. The FCC might ask the extent of Cascade's oversight given these findings. Without knowing the specifics from a FCC inquiry, no assignment should be permitted.

***Assignee appears basing business operation off income from the KXRY license for years:**

We found that Cascade has been a nonprofit since 2012. With a search done at the Oregon Dept of Justice's website, in 2012, its revenue was \$0. In 2013 its revenue was \$23,820. When KXRY launched under Cascade operations in March 2014. In 2014 its revenue was \$260,579.⁷ The jump in total revenue between 2013 to 2014 of \$236,759 is likely due to fundraising from KXRY 91.1 FM, licensed to Common. In 2015, that revenue surged to \$355,705. Cascade's ending assets in 2015 amounted to \$53,052.⁸ Could this be assumed to be profit via fundraising via the operation of KXRY? If all this is true, the FCC has no knowledge of this arrangement (no agreement from what we know appears on file with the FCC), Cascade is a third party entity pursuing large scale ongoing fundraising on KXRY without both nonprofits paying attention to Sections 73.503(d) and 73.621(e) that prohibit this use.

⁷ Yearly revenue quoted for all years above is public record from the Oregon Dept of Justice website
<https://justice.oregon.gov/charities>

⁸ Source, see footnote 7.

***KXRY 91.1 FM is a Non Commercial Educational broadcaster using Low Power FM as a repeater:**

KXRW-LP 99.9 FM is a new Low Power FM station recently started in Vancouver, Washington. Tuning in, we noticed the station was simply simulcasting a progressive talk radio show on Non Commercial Educational radio station KXRY 91.1 FM from Portland. KXRY's website, www.xray.fm, states that they simulcast on the KXRW 99.9 FM radio channel in Vancouver (Attachment IV). Upon web search for "KXRW", KXRW's website www.mediamakingchange.org/kxrw/ which states "KXRW will stream content from Portland's XRAY.FM". Tuning into KXRW 99.9 FM, the station identification of "KXRY 91.1 FM" is heard. Tuning back and forth, it is noted 91.1 FM and 99.9 FM play the same programming.

A Non Commercial Educational station using a LPFM station as a repeater station is not permitted under the FCC rules. Only other LPFM stations can rebroadcast other LPFM station programs according to FCC rule Section 73.879. From the call letters, it would appear KXRW-LP is a project of KXRY. KXRW is owned by a nonprofit called Media Institute for Social Change. Searching in FCC CDBS, Media Institute for Social Change used to own a trans-lator K219KU in Nehalem, Oregon until it was transferred to Cascade. The webpage of KXRW

(<http://www.mediamakingchange.org/kxrw/>) mentions the Chair of KXRW having an email address connected with XRAY-FM:⁹ "Susan Galaviz, KXRW Chair, Board of Directors susan.galaviz@xray.fm" (Attachment IV-b). So it is apparent both organizations are working together, with the possibility Galaviz working for XRAY (aka KXRY) as a project of KXRY 91.1 FM. Although the real time rebroadcast might also be a question for KXRW, the bigger question is there a financial connection to construct/operate this repeater for KXRY? Was KXRW-LP supplied by third party fundraising from Cascade or Common from KXRY?

KZRY-LP: Jenny Logan, President of Cascade, the Assignee, also appears on the application for a current LPFM permit for Community Alliance of Tenants, KZRY-LP. The call sign coincidentally is close to KXRY and KXRW-LP, and coincidentally proposed to be located at the same spot as the KXRY 91.1 FM transmitter.¹⁰ KZRY-LP would appear to be another station connected to KXRY 91.1 FM, like KXRW-LP. If there is some kind of behind-the-scenes control over this station, this is not suitable behavior for FCC Non Commercial Educational license holder. It would be interesting to know who is paying to set up KXRW and KZRY, and who is paying for the tower site.

⁹ The "ABN" of Cascaded Educational Broadcast Service is "XRAY FM".

¹⁰ Antenna sites are the same: KXRY 45 32' 26.40" N 122 33' 50.60" W KZRY-LP 45 32' 25.80" N 122 33' 51.00" W (source FCC's CDBS Search)

***Common's current board of directors does not have approval to assign KXRY under FCC ownership rules:**

It was difficult to ascertain who the current board of Common is. In fact, a "Biennial Ownership Report" was never filed for KXRY in 2015 (from a search done via the publicly accessible FCC Ownership Database). The last board transfer (form 315 BTCED-20110818AAA) on-file for Common from 2011 describes to board as follows: Jeff Shaw, Sue Wilson, Clay Leander, Kristin Koster, Chris Marland, Yoo-Hyun Oak, Marque Cass, and Tracy Rosenberg.

The 2013 Ownership Report, BON-20130930ARS, shows that ownership as: Jeff Shaw, Clay Leander, Gavin Dahl, Sue Wilson, and Vanessa Maria Graber.

A California Secretary of State Statement of Information filing¹¹ from 2015 states the principal board members are: Jeff Shaw, Clay Leander, and Vanessa Maria Graber.

It is not clear what the current ownership is. Whatever the case, Common's current board never filed a board transfer with the FCC for a more than 50% change. The current board is thus not permitted to file for assignment of KXRY until the new board requests a transfer of ownership from the old board and the FCC approved that transfer.

¹¹ Public information search at <https://businesssearch.sos.ca.gov/>

***Local public notice was never placed regarding the application for assignment:**

An essential part of submitting FCC form 314 includes following the rules of Section 73.3580. This rule states public notice must appear twice a week for two consecutive weeks in the local newspaper of greatest circulation. The principal newspaper of the community of license of Portland, Oregon is *The Oregonian*. Since the application had been submitted July 18 the Oregonian had been checked in their Online Public Notices section at:

http://classifieds.oregonlive.com/?temp_type=browse&category=results&tp=ME_olive&cur_cat=6869&classification=Notices%20and%20Announcements

From the time the application was submitted, no public notice appeared published in the Legal Notices section as of August 10. This was validated with Kim O'Neil at the Oregonian Legal Noticed Desk (Attachment V). It is also not clear if Common pursued on-air broadcast notice the second week of filing. The FCC might inquire about that issue. Because of violation of 73.3580 of the FCC rules, the application has been filed without notice to the public regarding the transaction.

***Conclusion:**

The assignment of the license to progressive nonprofit Cascade has many complications:

<1> Evaded truth of ownership on form 314 of five board members. This is more than just a "mistake".

<2> Proposed multiple cross-ownership violation.

<3> Proposed assignee lacks proper character to legally operate a FCC broadcast facility due to multiple reasons.

<4> Proposed assignee has not been properly authorized (Form 314 signed) from a member from the Cascade's board of directors.

<5> Collusion to control and program LPFM(s) from a Non Commercial Educational station directly evident from KXRW re-broadcast and LPFM board ownership overlap with three LPFM stations of similar call letters to KXRY that is more than coincidence.

<6> Improper transfer of control of operations between Cascade and Common since 2014 with no management agreement on file with the FCC outlining the relationship. What type of oversight does Common have in place for operations?

<7> Unauthorized third-party fundraising from Cascade on KXRY with no notification to the FCC. There is question of how that money was spent--other LPFM stations?

<8> No Biennial Ownership filed for KXRY.

<9> Common has not previously requested board transfer when members changed by more than 50%.

<10> No public notice of the application, what what we know, had occurred in the local newspaper, with question to if it occurred over the air.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Vetsalo', with a stylized flourish at the end.

Daniel Vetsalo
4306 NE 166th Ave
Vancouver, WA 98682

Attachment I

KZRY-LP COMMUNITY ALLIANCE OF TENANTS BNPL - 20131115ABB

Form 318 Ownership Section II 3a

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
MICHELLE LASLEY 7052 N VILLARD AVE, PORTLAND, OR 97217	US	PRESIDENT	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
CHRIS MARIN 5322 SW 8TH PORTLAND OR 97219	US	VICE PRESIDENT	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
SUSAN MUND 16615 E BURNSIDE, GRESHAM, OR 97233	US	SECRETARY	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
STEVE WEISS 2727 SE 16TH AVE, PORTLAND, OR 97202	US	MEMBER	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
TED DORONILA 4105 SW BEAVERTON HILLSDALE HWY, PORTLAND OR 97221	US	MEMBER	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
LIONEL SCOTT 4242 N ALASKA ST., PORTLAND, OR 97217	US	MEMBER	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
LIONEL SCOTT 4242 N ALASKA ST., PORTLAND, OR 97217 YES MEMBER YES KEIKO ANDRESS 3600 SE 66TH AVE., PORTLAND OR 97206	US	MEMBER	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
JENNY LOGAN P.O. BOX 1902, PORTLAND, OR 97207 YES MEMBER YES	US	MEMBER	11.11	

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
DEBORAH OLSON 2356 SE 139TH AVE., APT 1,	US	MEMBER	11.11	

Attachment II

KXVY-LP: WILSONVILLE RADIO PROJECT BNPL- 20131114BPE

Form 318 Ownership Section II 3a

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
SIMON SPRINGALL 7577 SW VLAHOS DRIVE WILSONVILLE OR 97070	US	DIRECTOR	33.3	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
MATTHEW JACOBSON 5439 NE SANDY BLVD. #279 PORTLAND, OR 97232	US	BOARD MEMBER	33.3	0

(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
MAX WOODBURY 1133 SE 57TH AVE PORTLAND, OR 97214	US	BOARD MEMBER	33.3	0

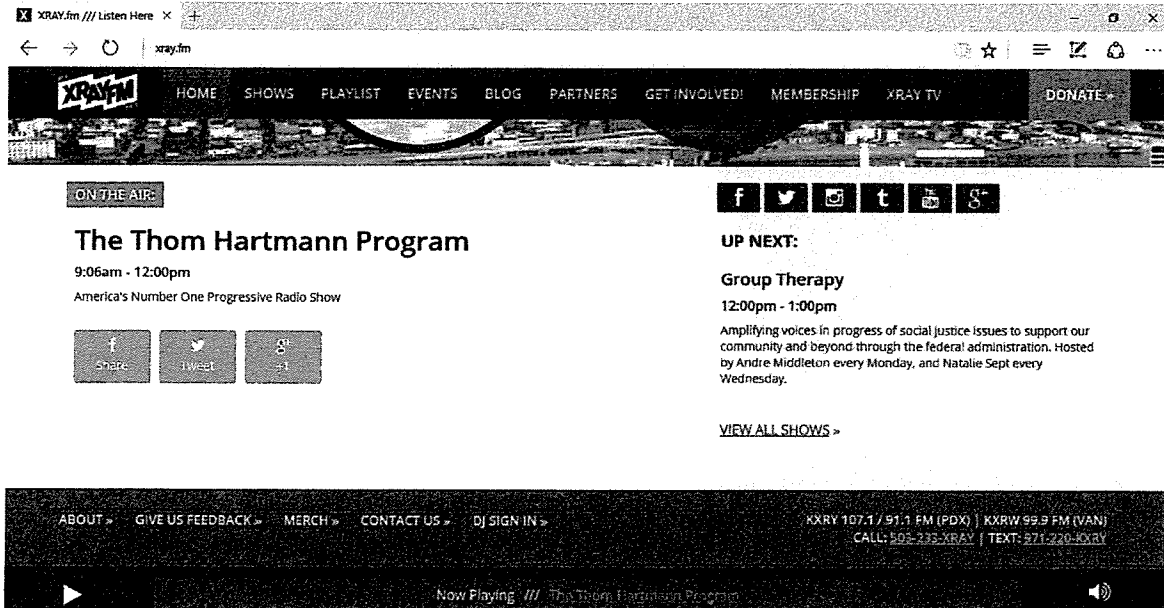
Attachment III

KSFL-LP: WE MAKE THE MEDIA INC BNPL-20131114AYQ
Form 318 Ownership Section II 3a

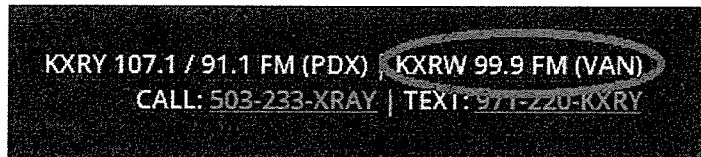
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
RONALD A. BUEL 1810 NE 70TH AVE. PORTLAND, OR 97213	US	14.30	14.3	14.3
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
JASON E. KAPLAN 9021 N CHICAGO AVE. PORTLAND, OR 97203	US	14.30	14.3	14.3
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
JANA ADAMSANN 11612 SW 128TH AVE. TIGARD, OR 97223	US	14.30	14.3	14.3
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
TOM D'ANTONI 2457 NW LOVEJOY ST. PORTLAND, OR 97210	US	14.30	14.3	14.3
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
JEFFREY STRANGE 23225 NW 46TH AV. PORTLAND, OR 97213	US	14.30	14.3	14.3
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
MICHELE BOWLER-FAILING 2649 SW GEORGIAN PL. PORTLAND, OR 97201	US	14.30	14.3	14.3
(1) Name and Address	(2) Citizenship	(3) Positional Interest	(4) Percentage of Votes	(5) Percentage of total assets
JEFFERSON SMITH 11633 N. PACIFIC PORTLAND, OR 97220	US	14.30	14.3	14.3

Attachment IV

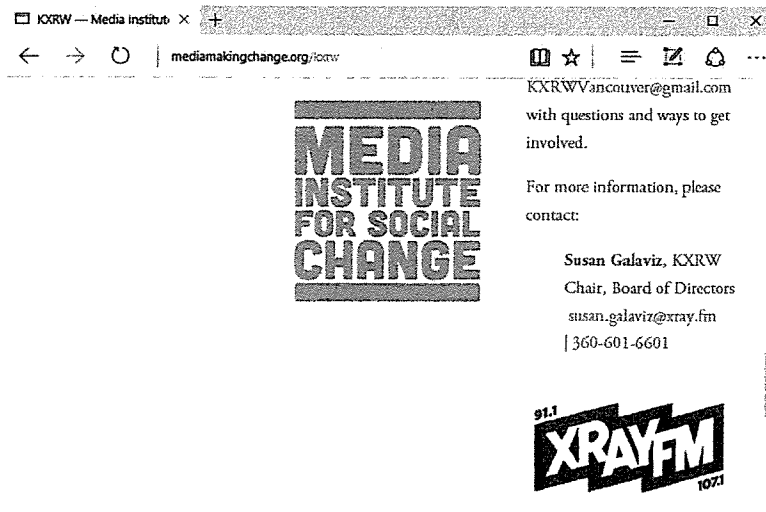
<A> Screen of KXRY-FM 91.1 FM's website www.xray.fm. Website states in bottom right corner its frequencies: 91.1 FM (a non commercial educational station) Portland, 107.1 FM (a trans-lator) Portland, and 99.9 FM KXRW (low power-FM) in Vancouver, WA.



Right bottom corner of website is enlarged below, red circle around KXRW repeater channel



 Chair of KXRY affiliated with XRAY-FM



Attachment V

Public Notice

Subject: RE: Legal Public Notice Question
Local Time: August 10, 2017 1:18 PM
UTC Time: August 10, 2017 8:18 PM
From: koneill@oregonian.com

Hi, ----

The Oregonian has not run a public notice in the last month re:
KRXV radio station.

Kim

Kimberlee W. O'Neill
Inside Sales Executive - Legal Notices
1500 SW 1st Ave., Suite 500
Portland, OR 97201

koneill@oregonian.com
o. 503-221-8431
m. 503-347-5204
f. 503-294-4121

Mailing Certificate

This petition to deny was sent 8-15-17:

To the FCC using FedEx Delivery:
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

With a copy of this petition sent in the US mail to :
Michael Couzens
(For Common Frequency Incorporated)
PO Box 3642
Oakland, CA 94609

A handwritten signature in black ink, appearing to read 'D. Vetsalo', with a long horizontal stroke extending to the right.

Daniel Vetsalo