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

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In re

San Tan Educational Media

Licensee of LPFM Station KFXY-LP Mesa, AZ

BLL-20170710AAT Fac. ID No. 192016

# ACCEPTED/FILED

OCT - 5 2017

Federal Communications Commission Office of the Secretary

To: Office of the Secretary

#### PETITION TO FIND SAN TAN EDUCATIONAL MEDIA UNQUALIFIED TO HOLD A BROADCAST AUTHORIZATION and (ALTERNATIVELY) TO RECIND THE LICENSE OR DESIGNATE KFXY-LP FOR A BROADCAST AUTHORIZATION REVOCATION HEARING

1TV.com, Inc., licensee of Station KBSZ(AM) Apache Junction, AZ ("KBSZ"), by its attorney, hereby Petitions the Commission to find San Tan Educational Media ("STEM") unqualified to hold broadcast authorizations for station KFXY-LP Mesa, Arizona, and, as a result, rescind all KFXY-LP broadcast authorization or, in the alternative, designate KFXY-LP for a broadcast authorization revocation hearing.

#### **TIMELINESS**

This Petition is timely as it filed within 30-days of applicant admissions and new

information brought to the Commission's attention for the first time in STEM's September 5,

2017, Opposition to Petition for Reconsideration in FCC File No. BLL-20170710AAT

("Opposition") (copy attached, hereto).

#### **STANDING**

KBSZ has standing to file the instant Petition because it has broadcast service area in common with station KFXY-LP and, therefore, the stations compete for listeners.

#### **APPLICATION SIGNATURE FORGERY**

STEM's Opposition reports that "Christopher Shon White and his family moved out of

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Arizona for a period of time and transferred the station to me, Ryan Grieg." STEM does not disclose the dates of this transfer [of control] and provides no information on the way the station transfer was achieved, nor any documentation thereof.

STEM's Officer/Director/Shareholder Change form which it filed with the Arizona Secretary of State, (copy attached hereto) indicates that Mr. White was removed as a STEM officer effective January 1, 2016. STEM's Annual Report filed with the Arizona Secretary of State on February 28, 2017, copy attached hereto, reports the following STEM officers and directors:

> Ryan Grieg – President/CEO - Taking Office January 11, 2016<sup>1</sup> Jeff Allen- Vice President – Taking Office January 11, 2016<sup>2</sup> Len Novin - Director - Taking Office February 27, 2017 Carrie Ribeiro - Director - Taking Office February 27, 2017

STEM's Opposition concedes that Section II of license application File No. BLL-20170710AAT was certified and submitted over the signature of "Christopher Shon White" at a time when Mr. White had no connection or affiliation with STEM and there was no basis to represent that Mr. White was a bona fide representative qualified to certify such application to the Commission.

The Opposition claims that STEM had no intent to knowingly mislead the Commission because STEM's technical consultant who "prepared and filed the license application on STEM's behalf" ... "was unaware that Christopher Shon White was no longer president." STEM's attempt to shift culpability to its technical consultant is misplaced. STEM's claim is unsupported by any statement from the technical consultant as to what she did or did not know. Furthermore, by its own admission, STEM selected the technical consultant, accepted the consultant's work product, authorized filing the application, and relied on the content of that

<sup>&</sup>lt;sup>1</sup> This date is inconsistent with the January 1, 2016, "Date Taking Office" note on the Officer/Director Change Form <sup>2</sup> This date is inconsistent with the January 1, 2016, "Date Taking Office" note on the Officer/Director Change Form

application as a material representation to the Commission. As such, STEM is ultimately responsible for the accuracy of the consultant's work product, for the application content submitted for Commission review, and for compliance with Commission requirements. See, e.g., *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) ("licensees are responsible for the acts and omissions of their employees and independent contractors,").

Further, STEM's application for minor modification of broadcast facilities submitted in February 2017, (thirteen months after Mr. White was removed as a corporate officer) in File No. BPL-20170206ACD, and the subsequent license to cover application submitted in July 2017 (eighteen months after Mr. White was removed) in File No. BLL-20170710AAT are **both** ostensibly certified under penalty of perjury over the signature of "Christopher Shon White" as STEM "President/CEO." Both signatures are forgeries and Mr. White's designation as a corporate officer are misrepresentations. STEM admits that Mr. White transferred the KFXY-LP to Ryan Grieg and STEM's filings with the Arizona Secretary of State reflect that Mr. White was removed as a corporate office greater than one full year prior to STEM filing the subject applications in 2017.

The Opposition's attempt to present the forged certification and the "President" misrepresentation as inadvertent error is belied by a pattern of application false certifications, unsupported allegations concerning the technical consultant's knowledge, as well as Mr. White's forged signature in multiple applications. It is plain that no authorized party reviewed and certified the two applications prior to filing because all parties authorized by the Commission to control and operate KFXY-LP were removed as corporate officers and directors effective January 1, 2016. STEM continues to prosecute the license application over Mr. White's forged signature

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without amendment or Commission approval.<sup>3</sup> Accordingly, there was no basis to file or prosecute the fraudulent applications before the Commission.

Comparing STEM's 2013 board of directors shown in FCC File No. BNPL-20131017AAJ with the Officer/Director Change form filed with the Arizona Secretary of Station on January 11, 2016, and the board of directors listed on STEM's Annual Report filed with the Arizona Secretary of State on February 27, 2017, demonstrates that by February 2017, and perhaps as soon as January 1, 2016, STEM had completed a transfer of control from its initial board of directors to a new board of directors. The record shows that STEM transferred control in far less than the statutory three year license holding period required by Section 73.865(c) of the Commission's rules which provides that "[an LPFM] license cannot be transferred or assigned for three years from the date of issue."

As shown below, STEM's fraudulent application certifications, misrepresentations, and abuse of Commission processes should not be countenanced and are grounds to find STEM unqualified to be a Commission licensee.

#### MISREPRESENTATION/LACK OF CANDOR:

Parties seeking Commission action "are under the obligation to be truthful and forthright in their written submissions." See, <u>ConQuest Operator Services Corp.</u>, 14 FCC Rcd 12518, 12523-24 and n.32 (1999). The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." Misrepresentation is "a false statement of fact made with intent to deceive." Lack of candor is a "concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive." Intent to deceive is established if a licensee knowingly makes a false statement and can also be inferred when the surrounding circumstances clearly show the

<sup>&</sup>lt;sup>3</sup>The Commission's CDBS database reflects no application amendments to change the licensee certification.

existence of intent to deceive. A false certification may constitute a misrepresentation.<sup>4</sup>

As the Commission stated in its <u>Policy Regarding Character Qualifications in Broadcast</u> <u>Licensing</u>, 102 FCC 2d 1179, 1210 (1986): "The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying," echoing the U.S. Supreme Court's admonition in <u>FCC v WOKO, Inc.</u>, 329 U.S. 223 (1946) that "The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones <u>Id. at</u> <u>227</u>. Here, though, as demonstrated above, STEM's deception, when viewed in the entire context in which it occurred, is both material and intended to be persuasive.

Section 1.17(a)(2) of the Commission's rules provides that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement is correct and not misleading.

STEM's Opposition shows material lack of candor and failure to be forthcoming. Intent to deceive is evident where STEM had no basis to certify to the Commission that Christopher Shon White was the STEM President/CEO when it certified and authorized its technical consultant to file the February 2017 and July 2017 broadcast applications. STEM has plain motive to conceal the disqualifying facts and circumstances surrounding its unauthorized transfer of station control because a truthful representation would require the cancellation of its broadcast

<sup>&</sup>lt;sup>4</sup> Commercial Radio Service, Inc., Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006) ("CRS Order") citing, e.g., Contemporary Media, Inc., v. FCC, 214 F.3d 187, 193 (D.C. Cir. 2000)

license. STEM has committed fraud on the Commission by filing forged signatures and it lacks candor with regard to material circumstances surrounding STEM's unauthorized transfer of control. STEM's motive to commit fraud is clear: falsely reporting that Mr. White was still a corporate officer would deceive the Commission concerning the true facts of the prohibited transfer of control of the LPFM broadcast occurring within three years from the date of issue in violation of Section 73.865(c) of the Commission's rules.

Section 312(a)(2) of the Communications Act provides that the Commission may revoke a broadcast license and a construction permit because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application. Further, the Commission will revoke a broadcast license and disqualify an applicant who presents a pattern of abuse or deliberately makes misrepresentations. See, <u>Contemporary Media, Inc.</u>, Order to Show Cause and Notice of Apparent Liability, 10 FCC Rcd 13685 (1995).

Further, a broadcast license may be revoked where "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." <u>Heart of the Black Hills</u> <u>Stations</u>. 32 FCC 2d 196, 200 (1971).

#### ABUSE OF PROCESS

The term "abuse of process" has been defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule." Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuse of the Renewal Process, *First Report and Order*, 4 FCC Rcd 4780, 4793 n.3 (1989). The Commission considers the possibility of sanctions where the abusive nature of the action is clear. See, e.g., Litigation Recovery Trust, Memorandum Opinion and Order, 17 FCC Rcd 21852, 21857-58 ¶11 (2002).

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STEM is under the obligation to be truthful and forthright in its written submissions to the Commission. STEM fails in this obligation and falls squarely within the definition of "abuse of process" when it submits multiple forged documents, when it lacks candor in seeking Commission action, and when it continues to prosecute knowingly fraudulent applications.

#### **CONCLUSION**

Accordingly, based on filing and prosecuting forged applications and material lack of candor, deception and abuse of process, the Commission should find STEM unqualified to hold a broadcast authorization and, in the alternative, rescind the KFXY-LP broadcast authorizations or designate the broadcast authorization revocation hearing.

Respectfully Submitted,

1TV.COM. By John S. Neely Its Attorney

October 5, 2017

Miller and Neely, P.C. 3750 University Blvd. W. Suite 203 Kensington, MD 20895 301-933-6304

#### CERTIFICATE OF SERVICE

I certify that on October 5, 2017, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

San Tan Educational Media Suite 102-116 550 W. Baseline Road Mesa, AZ 85210

John Neely

#### Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

To: Office of the Secretary

In regards to the Petition for Reconsideration (BLL-20170710AAT).

San Tan Educational Media (STEM), the licensee of Low Power FM Station KFXY-LP, opposes the Petition for Reconsideration filed by 1TV.Com, Inc. (1TV) with respect to the grant of STEM's license application, FCC File No. BLL-20170710AAT.

1TV and Rocket Radio Corporation (RRC) are both under common ownership and control. The sole shareholder is John Low. Mr. Low is also the President of both corporations.

RRC is the licensee of FM Translator K256DB.

STEM has filed an Informal Objection in regards to the latest in a series of modification applications that RRC has filed with their FM Translator K256DB. This Translator is now co-channel with Station KFXY-LP (on Channel 256) and poses an interference threat to Station KFXY-LP. STEM therefore had a legitimate right to file its Informal Objection.

1TV's Petition for Reconsideration tries to raise several issues with respect to the grant of STEM's license application. Most of these issues are irrelevant to the application, which is technical in nature.

1TV is clearly trying to retaliate against STEM for having the temerity to defend STEM's service to the public. 1TV's efforts to retaliate even include contacting the county government in an effort to get KFXY-LP shut down.

STEM's informal objection against RRC's application, BPFT-20170710ABF, contains proof about how RRC never intended to broadcast from its last site and how RRC used a temporary setup, clearly an attempt to daisy-chain its way to the Phoenix metro area through a series of minor mods filed one after the other after the other.

1TV hypocritically accuses STEM of false certifications when its own sister corporation, RRC, engaged in far more serious false certifications in BLFT-20160404ACM and BLFT-20160519ABI. 1TV also hypocritically opposes STEM's request for a modest extension of time, when RRC itself over and over again filed for time extensions (See BPFT-20160129AWZ).

The previous President of STEM, Christopher Shon White, and his family moved out of Arizona for a period of time and transferred the station to me, Ryan Greig, a volunteer at the time. The station volunteers remained with the station through the process. We did not realize that prior FCC consent was necessary, and we intend to file an FCC transfer application to put things in order.

Our technical consultant, Michelle Bradley, prepared and filed the license application on STEM's behalf. She was unaware that Christopher Shon White was no longer the President. There was no attempt or intent to knowingly mislead the FCC.

With respect to KFXY-LP's tower/antenna height, we heard that the FCC's rule gave us a 4-meter margin of error in the downward direction, and we thought that this allowed us to construct a tower not quite as high. There was no attempt or intent to knowingly mislead the FCC. It should also be noted the 2 story house mentioned is STEM's studio for KFXY-LP. We intend to file any necessary modifications.

The foregoing is true, to the best of my personal knowledge and belief, under penalty of perjury. I certify that on September 5th, 2017, a copy of this opposition was mailed to: John Neely, 3750 University Blvd. W. Suite 203 Kensington, MD 20895.

Respectively Submitted,

Nyon Greyj

Ryan Greig President San Tan Educational Media

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DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

#### OFFICER/DIRECTOR/SHAREHOLDER CHANGE

Read the Instructions C017i

1. ENTITY NAME - give the exact name of the corporation as currently shown in A.C.C. records: San Tan Educational Media

### 2. A.C.C. FILE NUMBER: 16517049

Find A.C.C. file number on the upper corner of filed documents OR on our website at: http://www.azcc.gov/Divisions/Corporations

# CHECK THE BOX NEXT TO EACH CHANGE BEING MADE AND COMPLETE THE REQUESTED INFORMATION FOR THAT CHANGE.

3. SOFFICER CHANGE - FOR OFFICERS CURRENTLY SHOWN IN A.C.C. RECORDS - list the name of each officer being changed as it is currently shown in A.C.C. records, and below that provide any new information for that officer (new name and/or address), then check all boxes that apply to indicate the change being made for that officer. FOR NEW OFFICERS - list the name in the NEW Name blank, list the address, and check the appropriate box. If more space is needed, use another Officer/Director/Shareholder Change form.

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C017.001 Rev: 2010 Arizona Corporation Commission - Corporations Division Page 1 of 3

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5. SHAREHOLDER CHANGE - FOR SHAREHOLDERS CURRENTLY SHOWN IN A.C.C. RECORDS - list the name of each shareholder being changed as it is currently shown in A.C.C. records, and below that provide the new name, if any, for that shareholder, then check a box to indicate the change being made for that shareholder. FOR NEW SHAREHOLDERS - list the name in the NEW Name blank and check the appropriate box. If more space is needed, use another Officer/Director/Shareholder Change form.

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