

the station as a personal investment (Declaration, Pg. 5). The MAP application is a noncommercial application. As such, Mr. Franks is but a member of the Board Directors of MAP and stands ready to fulfill the MAP mandate in operating a noncommercial FM radio station. Mr. Franks states affirmatively his commitment to adhere to all FCC policies and guidelines regarding noncommercial operation for the new station. The proposed station is not a vehicle to cross-promote KWDF as ABC speculates. Mr. Franks, an experienced clergyman and charitable organizer, certainly knows the difference between commercial and noncommercial operation.

The Petitioner further speculates about a nefarious purpose in the the fact that the facilities of the proposed station will be co-located with KWDF. As Mr. Franks makes clear in his declaration, the ability to co-locate is essential to the viability of MAP's proposal to bring a new noncommercial station to Alexandria. The common location of commercial and noncommercial stations does not present a violation of the Communication Act or of FCC Policies. Northern Illinois University, 62 RR 2d 1449, 1451.

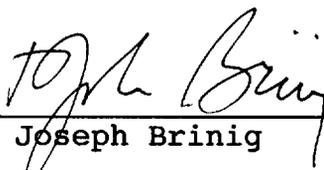
In conclusion, MAP is a bona fide educational organization by the Commission's standards and it has specific goals and programs which it proposes for its new noncommercial station. The fact that one of the trustees of MAP owns a small interest in an AM station nearby does not disqualify MAP as a noncommercial applicant. MAP's President has declared that there will be no

impermissible promotion between the stations and that MAP is committed to adhering to all Commission's policies concerning noncommercial operation. The station's co-location with KWDF represents an opportunity for the applicant to conserve expenses and thus provide a greater broadcast service to Alexandria. Its programs are designed to meet the educational needs of the citizens of the listening area, and will provide additional diversity to those citizens.

WHEREFORE the foregoing premises considered, Missionary Action Projects, Inc. requests the Petition to Deny be rejected and its application be granted.

Respectfully submitted,

MISSIONARY ACTION PROJECTS

By:   
F. Joseph Brinig  
Its attorney.

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December 21, 1990

Attachment

DECLARATION OF WILLIAM D. FRANKS

I, William D. Franks, President of Missionary Action Projects hereby declare under penalty of perjury that this statement is true and correct:

I have read the petition to Deny filed by Alexandria Broadcasting company ("ABC") and I understand that ABC alleges that Missionary Action Projects ("MAP") will operate our proposed noncommercial educational station in Alexandria, Louisiana as a commercial station. This is not true. We will operate our proposed station as a bona fide noncommercial station and will abide by all FCC rules and policies concerning noncommercial operation.

We are an ongoing community service organization which has been working for the past ten years in missionary, charitable, and educational causes. MAP has helped to organize and build facilities for the Colegio Bella Jerusalem school in Santo Domingo, Dominican Republic. We have worked on this project from 1983 until the present and the school now has 960 students. We continue to work with them. I personally, on behalf of MAP, have made two trips so far this year to the Dominican Republic and will make a third shortly after Christmas.

MAP is working with the Inglesia De Dios Camino De Salvacion (Church of God) in Eagle Pass, Texas. we are

beginning a ministerial training school for ministers and workers. Construction was begun this past summer on the first dormitory for the school with workers from Louisiana, Oklahoma, Missouri, and Texas participating. Many of our workers were from the Church of God and the Baptist Church. Additional youth and adult groups will be working there in the summer of 1991, building additional facilities. We hope that operations will begin in September 1991.

In 1984, I, helped to organize and build facilities for the Guatemala Bible College in Guatemala, Central America. MAP continues to be actively involved in Guatamalan work.

We incorporated Missionary Action Projects, in 1987. Since that time, we have had an eye towards expanding our community outreach programs and our charitable and ministerial operations. We are a free-standing agency of the Church of God in Anderson, Indiana, which is a tax-exempt organization section 501(c)(3) of Internal Revenue Code.

I served as pastor of the Oakmont Church of God in Shreveport, Louisiana for thirty-five years. From 1965 until 1974, we operated the Oakmont Christian School. At the time, the school closed in 1974, we maintained classes through the twelfth grade. Presently, I serve on the Board of Trustees of the Mid-America Bible College in Oklahoma City, Oklahoma, in my eleventh year on that board. I also serve on

the Executive Committee in the capacity of Vice-Chairman of the Board. My term expires in 1994.

I am also a member of the Association of Evangelists of the Church of God in Anderson, Indiana and I serve on the Executive Committee of that organization. I am a member of the Executive Committee of the Louisiana Assembly of Church of God and, presently Chairman of the Department of Church Service for our Assembly.

As director of MAP, I am a co-director of the Central Louisiana Singles Fellowship. This group, along with MAP, makes an annual trip to Eagle Pass, Texas, and Piedras Negras, Mexico to take clothing, food, toys and other items that have been collected throughout the year to needy people and children there. This trip is traditionally made in December. For purposes of collection, we use many of the facilities of the Faith Baptist Church in Alexandria, Louisiana and a large number of churches throughout Central Louisiana take part in the collection of items.

MAP is excited about the prospect of owning and operating a noncommercial radio station in Alexandria. We feel that we are in a unique position to provide programs to an underserved audience.

I believe radio to be a most effective tool when used in the educational field. MAP has as its desire and objective to

provide and distribute programs and to train people in the field of broadcasting.

MAP will, through this broadcast medium, seek to help resolve community problems and issues. Map will provide news coverage, public service announcements and public affairs programing to inform and educate the public in developing a better community. Map will bring an awareness of opportunities and needs of the communities in its service area.

MAP proposes to provide programing and educational opportunities for the large black population of Alexandria. To accomplish this, MAP will work closely with the black educational institutions and black churches in the absence of other significant media attention being directed to these groups in Alexandria. I perceive a need for a noncommercial educational station to serve the black audience.

Another ethnic group, although somewhat smaller, whose needs are not being met, is the Hispanic community. MAP proposes to offer educational and religious broadcasts in the Spanish language. To the best of my knowledge, I do not know of any Spanish programing in the Alexandria area.

Prospective programs to be broadcast include:

Daily Programs:

FOCUS ON BLACK WOMEN  
CARL ROWEN REPORT  
INSIDE GOSPEL (BLACK PRODUCED)  
TODAY IN BLACK HISTORY  
UNSHACKLED  
NEWS  
FOCUS ON THE FAMILY

Weekly Programs:

LAW ENFORCEMENT WORKS FOR YOU  
BLACK BUSINESS REPORT  
INSPIRATION ACROSS AMERICA  
ODYSSEY USA  
FOCUS ON THE FAMILY WEEKEND  
YOUR SOCIAL SECURITY  
LA HORADE HERMANDAD CRISTIANA

The opportunity to co-locate our facilities with those of KWDF, Ball, Louisiana, represents a significant advantage for our operation of our station. As a noncommercial entity, we will be restricted in our ability to raise money from sponsors and advertisers. We understand the rules of the FCC concerning broadcast over this type facility and know we will need to conserve our funds very diligently.

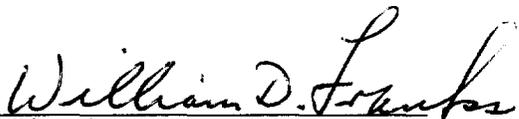
KWDF-AM, represents a personal investment of mine. I am

currently a minority partner, owning 20% of the station. My ownership will not affect the operation of the noncommercial station, which will be owned by MAP, a non-profit corporation.

Our noncommercial station will carefully observe all FCC prohibitions on its operations, including restriction of cross-promotion of the commercial stations in the area.

Our proposed operation of the noncommercial station will be on a nonsectarian basis; that is to say facilities will be open to all individuals who need them. We plan to offer the facilities of the station to all educational institutions, regardless of denominational affiliation.

I am happy to provide further information to the Commission if it is desired.

  
William D. Franks

December 20, 1990

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing  
Opposition to Petition to Deny was mailed on December 21, 1990  
first class, postage prepaid to:

Wiley, Rein and Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

  
F. Joseph Brinig

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

JAN - 8 1991

Federal Communications Commission  
Office of the Secretary

In re Applications of )  
 )  
MISSIONARY ACTION )  
PROJECTS )  
 )  
For a New Noncommercial )  
Educational FM Station )  
on Channel 210, Alexandria, )  
Louisiana )

BPED-900905MK

RECEIVED

JAN - 9 1991

To: Roy J. Stewart  
Chief, Mass Media Bureau

FM EXAMINER

JAN 8 10 33 AM '91  
COMMUNICATIONS

REPLY TO  
OPPOSITION TO  
PETITION TO DENY

Alexandria Broadcasting Company, licensee of KALB(AM) and KZMZ-FM, Alexandria, Louisiana ("KZMZ"), hereby submits its reply to the Opposition to Petition to Deny ("Opposition") filed by Missionary Action Projects ("MAP") on December 21, 1990.

I. BACKGROUND

In its Petition to Deny ("Petition"), KZMZ demonstrated that MAP made no showing, let alone a sufficient one, to establish its noncommercial educational ("NCE") FM bona fides. In particular, MAP entirely neglected to establish that it (1) was a non-profit educational organization, (2) that it had an educational goal, and (3) that it was committed to the advancement of an educational program. Indeed, MAP has failed to submit any showing that can provide the agency with assurance that it will operate the proposed station in an NCE mode.

As KZMZ also pointed out, MAP's President is a 20% general partner in KWDF(AM), a commercial broadcast station located just 8 miles northeast of Alexandria, Louisiana, and MAP has elected to collocate the proposed station with the commercial AM station -- facts which raise prima facie questions as to MAP's true intentions.

In response, MAP has resolutely refused to cure the patent defects in its application. Rather than provide the requisite specificity as to its objective and program, MAP asks the Commission to find it qualified as an NCE FM applicant on the basis of unsupported assertions. Accordingly, its application should be denied or, in the alternative, designated for hearing.

## II. ARGUMENT

### A. KZMZ Has Standing as a Petitioner

According to MAP, because it "proposes" a noncommercial educational service, KZMZ, a commercial licensee, has no standing. However, this argument presumes to be fact the ultimate point in issue -- the bona fides of MAP's NCE FM proposal.

It is well established that standing is assessed on the basis of the petitioner's claims "on the assumption that the specific facts set forth are true." See Citizens for Jazz on WRVR v. FCC, 775 F.2d 392, 397 (D.C. Cir. 1985). Thus, the Supreme Court and the lower federal courts have repeatedly

held that "[t]he standing requirement is [an] essential preliminary to reaching the merits of the claim, focusing on the party seeking to get his complaint before a federal court, not on the issues he wishes to have adjudicated."

Bachur v. Democratic Nat. Party, 666 F. Supp. 763, 770 (D.C.Md. 1987).<sup>1</sup>

As demonstrated in the petition, KZMZ's allegations easily satisfy the standing requirements. See FCC v. Sanders Brothers, 309 U.S. 470, 477 (1940). In line with the tripartite standing test of Allen v. Wright, 468 U.S. 737, 751 (1989), KZMZ has alleged that a grant of MAP's application will injure KZMZ by creating an additional competitor in its market contrary to the requirements of the Communications Act and that such injury would be prevented by a denial of the MAP application. MAP's Opposition does not attempt to refute this analysis.<sup>2</sup>

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<sup>1</sup> See also Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 484 (1982) ("The requirement of standing 'focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.'"); Hill v. City of Houston, 764 F.2d 1156, 1159-1160n.4 (5th Cir. 1985) ("[S]tanding involves whether this plaintiff is a proper party to request an adjudication of the particular issue. This is a separate inquiry from whether the party should prevail. In fact, it is not proper for the court to consider the likelihood of success on the merits in determining the plaintiff's standing...").

<sup>2</sup> Even if standing were not found, it is the agency's practice in such cases to treat the petition as an informal objection under Section 73.3587 and consider it on the merits. See, e.g., Christian Broadcasting Association, 47

B. The KZMZ Petition Satisfies the  
Section 309(d) Pleading Requirement

MAP argues that the KZMZ Petition cannot be considered on the merits because it lacks requisite factual specificity and is not supported by an affidavit. The factual basis for the Petition is the MAP application itself. The matter raised by KZMZ concerns the failure of MAP to satisfy the Section 73.503 standard; the MAP application provides all of the factual support necessary to a decision on the merits.

C. MAP Has Failed to Establish  
That It Qualifies as an NCE FM Applicant

MAP asserts that it is an established non-profit corporation with a history of charitable work and community service.<sup>3</sup> However, the actual status of MAP is not at all clear. MAP states that it is a "free-standing agency of the Church of God in Anderson, Indiana, which is a tax-exempt organization [under] section 501(c)(3) of [the] Internal Revenue Code." See William D. Franks' Declaration, appended to the MAP Opposition, at 2. MAP does not establish that it is a 501(c)(3) organization but only that the Church of God in Anderson, Indiana has that tax-exempt status. Moreover, although MAP explains that it was incorporated in 1987, it

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R.R.2d 885 (1980). KZMZ specifically requests such treatment in the event that the agency does not find standing.

<sup>3</sup> Even were MAP a long-standing, non-profit organization, this fact alone would not establish that MAP will operate its proposed station in a noncommercial educational mode.

does not state its charter purpose. MAP makes reference to community service projects it and Mr. Franks have performed but none of these projects is shown to involve the community of Alexandria, Louisiana, and MAP has not shown how any of these projects ties into a noncommercial, educational broadcast goal or educational program for the proposed Alexandria, Louisiana station. Furthermore, MAP concedes that it is not an accredited educational institution.

MAP repeatedly states that it has educational goals and that it proposes an educational program. However, other than making these conclusory assertions, MAP has failed to submit a showing (as is required in response to Form 340 and under Section 73.503) of what its educational goals are and how its educational program will fulfill these goals. Consequently, MAP has failed to satisfy the strictures of the applicable Commission rule and policies. MAP's application remains in a patently defective state.<sup>4</sup>

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<sup>4</sup> MAP contends that KZMZ has erroneously relied upon Way of the Cross of Utah, Inc., 58 R.R.2d 455 (1985), a TV case, in identifying the appropriate standard to apply in this FM case. In fact, the footnote KZMZ cited to in Way of the Cross (note 5 on page 457) expressly applies to FM applications. In that note, the agency quoted at length and affirmed its commitment to standards it originally set forth in Notice of Inquiry, Docket No. 78-164, 43 FR 30842 (1978), an FM proceeding on the nature of the agency's NCE FM standards:

.... Organizational applicants:

Organizational applicants may qualify in any community. But, they must

MAP erroneously persists in its belief that a general pledge of issue-responsive programming, as required for commercial applicants, is enough to satisfy Section 73.503 of the Commission's Rules.<sup>5</sup> Similarly, MAP admits that in its

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demonstrate that they have an educational goal and are committed to the advancement of an educational program.

In considering whether organizational applicants have a suitable educational program, we will give primary weight to those programs which may properly be categorized as 'instructional' or 'general educational.' ....

We recognize the fact that noncommercial educational FM stations may present a wide variety of programming including such matters as light entertainment, gospel or popular music and sports. Nevertheless, for the purpose of determining the applicant's qualifications, we must place principal emphasis on those programs, as defined above, which are clearly educational in nature....

Way of the Cross, supra, at 457-458, quoting Notice of Inquiry, Docket No. 78-164, 43 FR 30842, at 30844-30845 (emphasis added).

<sup>5</sup> Writes Franks in his declaration:

MAP has as its desire and objective to provide and distribute programs and to train people in the field of broadcasting.

MAP will, through this broadcast medium, seek to help resolve community problems and issues. MAP will provide news coverage, public service announcements and public affairs program[ming] to inform and educate the public in developing a better community. MAP will

application it did not present a developed set of educational goals and explains that these goals are "being developed," leaving the agency with nothing certain to rule on in adjudging MAP's compliance with Section 73.503 of the Commission's Rules. See MAP Opposition at 5; 5n.6. MAP lamely asserts that "[t]he fact that the MAP programming proposal is not final is no impediment to staff consideration of the MAP application." See MAP Opposition at 6. Of course, in the absence of a clear educational objective and educational program, MAP has deprived the Commission of a way to know with any, let alone reasonable, certitude whether MAP is qualified under Section 73.503. Without such confidence, the Commission is in no position to grant MAP's application.

In sum, to be qualified, Section 73.503 requires that an applicant demonstrate that it has an "educational goal" and that it is "committed to the advancement of an educational program"<sup>6</sup>--this MAP has assiduously refused to do both in its application and in its Opposition. Because MAP lacks NCE FM qualifications, its application should be denied.

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bring an awareness of opportunities and needs of the communities in its service area.

Franks' Declaration, appended as Exhibit 1 to the MAP Opposition, at 3-4.

<sup>6</sup> See Way of the Cross of Utah, Inc., 58 R.R.2d 455, 457n.5 (Comm'n 1985).

III. CONCLUSION

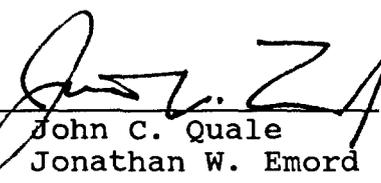
In its Petition, KZMZ raised substantial and material questions of fact concerning the bona fides of MAP's proposal. MAP's failure to specify educational goals and an educational program, viewed in light of the collocation and cross-ownership of the proposed station with a commercial station, raises prima facie public interest questions.

Presented with KZMZ's petition, MAP defaulted, resting its case on a series of conclusory assertions. In the absence of any substantive refutation, the substantial and material questions of fact raised in KZMZ's Petition persist and require that the agency either deny MAP's application due to its incompleteness or, at a minimum, designate it for hearing on appropriate issues in accordance with controlling precedent. See Astroline Com. Co. Ltd. Partnership v. FCC, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

Respectfully submitted,

ALEXANDRIA BROADCASTING  
COMPANY

By

  
John C. Quale  
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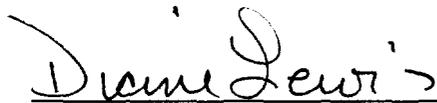
CERTIFICATE OF SERVICE

I, Diane Lewis, do hereby certify that copies of the foregoing "Reply to Opposition to Petition to Deny" were sent by First Class United States mail to the following on January 8, 1991:

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Diane Lewis