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Federal Communications Commission
Office of the Secretary

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

In re Applications of)	MM Docket No. 92-2
DRY PRONG EDUCATIONAL)	
BROADCASTING FOUNDATION)	File No. BPED-900305MF
For Modification of Noncommercial)	
Station KVDP(FM), Dry Prong,)	
Louisiana)	
MISSIONARY ACTION PROJECTS)	File No. BPED-900905MK
For Construction Permit for a)	
New Noncommercial FM Station on)	
Channel 210, Alexandria, Louisiana)	

REPLY

COMES NOW Missionary Action Projects (MAP) which submits its reply to the Opposition of Dry Prong Educational Broadcasting Foundation (the Foundation) to MAP's Motion to Enlarge Issues.

BACKGROUND

MAP argued that there had been a transfer of control of noncommercial educational Station KVDP-FM and cited to the filing of an Ownership Report dated February 25, 1992 listing new directors for the station and indicating its filing was pursuant to a transfer of control; and cited to statements of counsel that a new entity, heretofore unreported to the Commission, was receiving "donations" from the station's listeners.

In its Opposition, the Foundation contends that, although Dry Prong Educational Broadcasting Foundation, Inc. (the Corporation), was formed specifically to participate in the

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operation of the radio station, no transfer of control has occurred. In an April 20, 1992 Declaration attached to the Opposition, Coy Edwards, a trustee of the Foundation states:

....No bank account was ever established for the Corporation. No books of account were ever kept for the Corporation. The Corporation never took any corporate actions. I anticipated that, eventually, the foundation would, in fact, turn control of the radio station over to the Corporation but I was in no hurry about this and no actions were taken in that direction.¹

Mr. Edwards states that he prepared the February 1992 Ownership Report after MAP's request for Admissions identified the Corporation and prompted him to call the Commission for guidance. He implies that he did not discuss this filing with his attorney, Lewis Cohen. He further states:

...the Corporation is not the licensee of Station KVDP, and the Corporation has played no part in the operation of the station. I hereby categorically deny that the Corporation has been active any way. It has no bank account and has never had a bank account. It has not filed any tax returns, because it has not done any business. No check has ever been written to the Corporation and the Corporation has never written any checks to anybody. It is simply a "shell" awaiting the day when we decide to assign to it the station license.²

Mr. Edwards further states that his new attorney, A. Dale Smith, was in error when he stated that the corporation had received any donations from listeners or others. Mr. Edwards emphatically denies that the corporation has ever received any donations from anyone.

¹Edwards Declaration, Para. 3, pp.1-2.

²Id., Para. 5, p. 2.

COY EDWARDS' FCC FILINGS AND HIS DECLARATION
ARE CONTRADICTED BY HIS ADMISSIONS

The Ownership Report submitted February 25, 1992 represents more than an oversight or a mistake. At minimum, it was done only after Mr. Edwards requested direction from the Commission and only after MAP called the Corporation's existence to the Commission's attention. The report lists ten individuals as the directors of the radio station:

Coy Edwards
Leta Edwards
Max Latham
Gary Sapp
Ed Pebbles
Jonathan Forester
Mrs. Bea Farmeal
Dina Rankin
Elaine Ward
Dale Smith

In requesting the Commission disregard the February, 1992 Ownership Report, counsel resubmitted a 1989 filing listing Coy and Leta Edwards, Max Latham and Gayle Tyler as the Foundation's sole trustees/directors.³ The Commission reasonably assumes that these four individuals control the station.

However, in Mr. Edward's contemporaneous broadcast statements and from the contemporaneous broadcast statements of others made in his presence, it is clear that there are more than four members in the governing body of the station.

³The Foundation's Declaration of Trust refers only to its "trustees."

In the on-air broadcasts of KVDP⁴, attached as Exhibit 1, numerous individuals identify themselves and others as directors. On April 7, 1992, with Coy Edwards present in the studio, Gary Sapp states that he is on "our Board of Directors here at the station". Exhibit 1, Page 1. He goes on to identify "Brother Ed Pebbles, Elaine Ward and Doctor Jonathan Forester" as being on the Board of Directors. Later that day he states that Elaine Ward "...serves on our Board of Directors and does a beautiful, beautiful job...." Exhibit 1, Page 2. On April 10, 1992, Coy Edwards also identifies Bea Formeal as a member of the Board of Directors. Exhibit 1, Page 4.

Now we have identified five additional people on the Board of Directors of the radio station - Gary Sapp, Ed Pebbles, Elaine Ward, Dr. Jonathan Forester and Bea Formeal. Of course, these are the individuals reflected in the withdrawn Ownership Report as directors of the Corporation, an entity which Coy Edwards states has no ongoing business, no bank accounts and no present connection with the radio station. The Commission recognizes that directors of a corporation have the same role as the trustees of an unincorporated association or foundation.⁵ If these are the directors, a transfer of control must have taken place. It can't be both ways. Either the Commission being

⁴These statements are presented as transcripts of the broadcasts of the station. Their accuracy is certified to by John William Coffman, Jr. of Alexandria, Louisiana who supervised the taping (Exhibit 4). The original tapes have the dates and times of the broadcasts encoded. A copy of the audio tapes is in the custody of counsel and available for review.

⁵Transfers of Control of Certain Licensed Nonstock Entities, 4 Rcd 3403 (1989).

deceived here by the licensee or the listeners of the station are.

THE TAX EXEMPT STATUS OF THE NON LICENSEE CORPORATION
IS REGULARLY BEING ATTRIBUTED TO THE LICENSEE

Apart from the constitution of the Board of Directors, how are the activities of the Foundation, which is station licensee, and the Corporation different? Coy Edwards' Declaration makes clear that the Foundation is not tax exempt, and never has been. That is why the dormant Corporation was formed.⁶ The announcers on KVDP, however, intentionally blur the distinction between the two in the solicitation of funds.

On April 9, 1992, Ken Edwards, son of Coy Edwards, states

We need to reiterate that all of your donations to KVDP are tax deductible. We are a bona fide, registered, dyed in the wool tax-exempt organization...so your donations are tax deductible....

Exhibit 2, Page 1. Later he explains that it is really the Corporation which is a tax exempt. However, he immediately resumes his discussion of "donations" which can only involve the Foundation, since the other entity is a "shell" corporation with no income.⁷

On April 10, 1992, Ed Pebbles, Coy Edwards and counsel A. Dale Smith enter into a discussion about the tax exempt status of "KVDP radio" and Coy Edwards reminds the listeners that "KVDP

⁶Edwards Declaration, Para. 2, p. 1.

⁷In its Opposition, accountant Bruce Melder states that the Corporation has no bank accounts, no assets, no cash flow and files no tax returns. Melder Declaration, p.1.

radio is recognized by the IRS as a nonprofit tax exempt organization" thanks to Dale Smith. Exhibit 2, Page 4 (emphasis added). Dale Smith, present in the studio, takes no action to contradict what presumably is a patently inaccurate statement made over the air.

Recall Coy Edwards' statement in his declaration that the corporation played no part in the operation of the station and his categorical denial that the corporation had been active in any way? How can they not be connected through the operation of the station?

COY EDWARDS' ADMISSIONS CONFIRM TRANSFER
OF CONTROL TO THE "NEW" DIRECTOR GROUP

Even if we assume that the appropriate individuals are installed as trustees and that the misrepresentations of "tax exempt status" do not indicate a transfer of control, who exercises decisional authority for the Foundation? On April 9, 1992, Coy Edwards explained how the "board" met concerning the proposed settlement of the comparative hearing.⁸ Exhibit 3, Page 1. He states that when he and his wife, Leta, traveled to Washington they agreed to accept \$2,500.00 and modify their radio application. Mr. Edwards states that he declined to sign a settlement agreement in Washington preferring to discuss it with the "board" in Louisiana. He praises the board's taking the

⁸ Mindful that settlement negotiations are not admissible, MAP presents these transcripts only for purposes of determining control of the application and not for the substance of the negotiations.

burden from him indicating that the board wished to press on with the comparative hearing.

He discusses it again on April 10, 1992, describing the board meeting in Dale Smith's office. He states that he indicated his position to the board and asked their opinion about what he should do. The group took control of the application and "picked up the load and I guarantee you that Leta and I have not carried that load since then," Edwards says. Exhibit 3, Page 3.

Mr. William D. Franks, President of MAP, was also present in Mr. Smith's office on the day that the meeting occurred. He went intending to execute the settlement papers as prepared and reviewed by counsel for both parties. His declaration is attached as Exhibit 5 and he states that attending the meeting at Smith's office that day were Ed Pebbles, Bea Formeal, Lonnie Hutto, Gary Sapp, Coy Edwards, Leta Edwards and Mr. Dale Smith. He also states that several of the participants introduced themselves to him as "directors" and told him they were there to approve the settlement. Except for Coy and Leta Edwards, none of the attendees are listed on the 1989 Ownership Report which the Commission has been informed represents the current ownership and control of Station KVDP. From Mr. Edwards' on-air statement there can be no question that he surrendered control of the application to this group at the meeting. Since the majority of that group is new to the licensee, the conclusion follows that there has been a transfer of control.

The Commission has never hesitated in recognizing the severity of unauthorized transfers of control. In 1951, the

Commission spoke of the power of even a minority shareholder or a group of shareholders "to dominate the management of corporate affairs" as indicia of transfer of control.⁹ In 1400 Corporation, the Review Board added issues in a renewal where it appeared that agreements had been entered into which had the effect of relinquishing control of the operations of a station.¹⁰ In Bartell Media Corp., the Commission assigned a \$10,000.00 fine for an unauthorized transfer of control which was a willful violation of Section 310(b) of the Communications Act, but found that public interest considerations mandated the grant of an assignment.¹¹ The allegations here are equally serious-- unauthorized transfer of control, misrepresentation to the Commission concerning the directors of a station and fraudulent representation of the tax exempt status of a noncommercial licensee in the solicitation of funds.

The people that now control the destiny of this station and the instant application are not the individuals who Mr. Edwards has represented to the Commission. The controlling individuals have never been examined by the Commission for compliance with Section 308 of the Act. The Commission has no knowledge of them. It further has no idea who controls the entity which is the licensee or the apparently affiliated corporation. No one knows who controls the programming or the finances of the station.

⁹Benjamin L. Dubb, 16 FCC 274, 289 (1951).

¹⁰12 RR2d 1 (Rev. Bd. 1968).

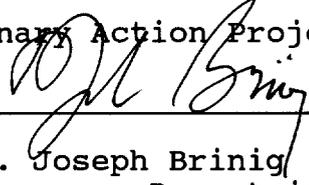
¹¹17 RR2d 478 (1969).

Missionary Action Projects thus requests that the requested transfer of control issue be added against Dry Prong Educational Broadcasting Foundation.

Respectfully submitted,

Missionary Action Projects

By: _____


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May 1, 1992

EXHIBIT 1

TRANSCRIPTS CONCERNING BOARD OF DIRECTORS

TRANSCRIPTS OF ON-AIR BROADCASTS

KVDP-FM

DRY PRONG, LOUISIANA

April 7, 1992 -- 8:14 am

Gary Sapp: (Speaking to Coy Edwards in the studio)

We need thirty more daily bread sponsors, we need \$2,375. You know Coy, what you were saying about our Board of Directors here at the station that are givers. God has blessed me, I thank the Lord that I am able to serve on the Board of Directors for this station, it is a volunteer thing and we do not get any pay for it, Brother Ed Pebbles, Elaine Ward, Doctor Jonathan Forester. We don't charge anything to serve on this board, we don't get anything, we do it because we love the station, we love Coy and Leta, we love what's going on out here, we believe it is a ministry and that's why we are involved in it....

April 7, 1992 -- 9:37 am

Gary Sapp: (Speaking to Edwards and Elaine Ward in the studio)

We really appreciate, Elaine, your coming out and spending time with us this morning, I know you are very, very busy. Elaine serves on our Board of Directors and does a beautiful, beautiful job helping us with our station....

April 7, 1992 -- 9:48 am

Elaine Ward: (Speaking to Edwards and Sapp in the studio)
...That is incredible.

Gary Sapp See, Elaine and I serve on the Board of Directors
for the radio station and we want you to know we
don't get any money for this. Somebody said we
got paid but we don't. That is not the truth. We
were also accused of taking money.

April 10, 1992 -- 8:39 am

Ed Peebles (Speaking with Coy Edwards in the studio)
I realized something this morning. I got up and walked my mile and sat there at the edge of the house...Hello Sister Bea!

Coy Edwards Sister Bea Formeal, a member of our Board of Directors, a very lovely lady. Do you know what I heard about her the other day? Someone said "That lady can preach...."

....

Coy Edwards You know Ed, we have some good news along that line [the application]. Our engineer came up with the fact that there is another channel available...

Ed Peebles There were two I understand...

Edwards Well now there are three...

Peebles Well, that's a miracle...

Edwards It really is. All our friends have to

do is change the numbers on their application, because ours is complete. Our application has been approved and is on somebody's desk in Washington just waiting for this thing to be resolved...

Peebles Does the resolution mean that someone has to withdraw their complaint? Is that it?

Edwards No, if the other applicant will simply move over to this other frequency...

Peebles ...modify their application...

Edwards Yes, because it has not been processed yet, it will be several months going through the machinery at the Commission before it can be approved....

April 9, 1992 -- 8:59 am

Coy Edwards:But he has not been to praiseathon....

Gary Sapp: I'm sure he will come, I know that. Ed [Peebles]
and his beautiful wife, Patty, they support this
station. Ed is on our Board of Directors.....

EXHIBIT 2

TRANSCRIPTS CONCERNING TAX EXEMPT STATUS

April 9, 1992 -- 11:56 am

Ken Edwards: We need to reiterate that all your donations to KVDP are tax deductible. We are a bona fide, registered, dyed in the wool tax-exempt organization....

Coy Edwards: ...and that wasn't easy....

Ken Edwards: ...that weren't easy, so your donations are tax deductible....

Gary Sapp: Amen.

April 9, 1992 -- 1:28 pm

Ken Edwards: (With Randy Tyler in the studio)

One of the things that wound up causing some of the confusion that we are having to go through deals particularly with our nonprofit status. Up until just a few years ago, the station was run by the Dry Prong Educational Broadcasting Foundation and when they went and applied for nonprofit status, the IRS required required this and that, you would have to get Dad or Leta in here to explain it all, they required this or that...we had to have a Board of Directors, and on down the line.

Oliver Deen: OK

Ken Edwards: Through a long, drawn out process, we were able to get everything taken care of and get us incorporated. We are now the Dry Prong Educational Broadcasting Foundation, Inc. So now, we are a nonprofit organization. All of your donations are tax deductible. Part of the thing we are fighting now with the FCC comes off of this, and it hinges off of a technicality in the fact that two entities now exist...

Oliver Deen: OK

Ken Edwards: ...Dry Prong Educational Broadcasting Foundation
and the Dry Prong Educational Broadcasting
Foundation, Inc.

Oliver Deen: OK

Ken Edwards: I won't go into any more detail. To make a long
story short, we are nonprofit...

Oliver Deen: Ken, you have an excellent memory just to be able
to recite the name, commendations to you...

Ken Edwards: My tongue works once in a while. I just want to
remind everybody that your all of your donations
are tax deductible--that's important to a lot of
folks and we do appreciate your giving....

April 10, 1992 -- 9:51 am

Ed Peebles: (Speaking to Edwards, Sapp and Dale Smith in the studio)

....preserve through Jesus and their faith and their witness.

Coy Edwards: I might also mention, Ed, that KDVP Radio is recognized by the IRS as a nonprofit, tax exempt organization thanks to our good friend Dale Smith and his legal expertise, he walked it through the corporation procedure and that's when I learned what pro bono meant ...(laughter)

Dale Smith: That's when I learned what it meant too.
(laughter)

Gary Sapp: What does it mean?

Dale Smith It means nary...for free.

EXHIBIT 3

TRANSCRIPTS CONCERNING SETTLEMENT DISCUSSIONS

April 9, 1992 -- 10:10 am

Coy Edwards: (Speaking about the prehearing conference)

...When we finished in Washington, we made a proposal that we would give them [MAP] \$2,500 or we would take their \$2,500. We were tired, we were just used up. Well, they agreed to give us the \$2,500 if we would modify our application, and they really leaned on us to sign the agreement there, but I said that I can't do that, I have to discuss it with our board. So we came home and on the way home we decided, Leta and I, give it up, we'll do something else, go another direction. But when we got home, the board said no, we don't feel that's right, we will continue to pursue this, and the board has taken the load of this thing from us and we appreciate that so very much. This is the first Board of Directors that I have worked with that will pitch in and do something.

Gary Sapp: Well, I thought that was the name of the game, Coy.

Coy Edwards: It is but it's not always the case.

Gary Sapp: You know, we that serve on the board--and I thank God that I am able to serve on the Board of Directors for this station--its been now over two years ago that the Lord spoke to me when I was driving down the road....

April 10, 1992 -- 11:35 am

Coy Edwards: (Speaking to Sapp and Peebles in the studio)
We have a Board of Directors that are doing some work, and we should give credit where credit is due....So the other day Leta and I came back from Washington and we were ready to give it up; we were were burnt out...

Gary Sapp: We know that!

Coy Edwards: ... and we went into a meeting in Dale's office and the board said to me "What do you want?" I said I want you to tell me what to do. And they picked up this load, and I guarantee you Leta and I have not carried that load since then. We are perfectly at ease about it and perfectly confident that it is in good hands and that God is in control, his will shall be done, and Dale told me today that he is very optimistic about our success.

Gary Sapp: You know, Coy, the thing and I think Ed would agree with me because we both serve and we do serve and we were even accused of taking money from the station--Ed, I don't know if you know this, but