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AUG 27 2003

Federal Communications Commission
August 27, 2003 Office of the Secretary

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BY HAND DELIVERY

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

~~RECEIVED - FCC
AUG 27 2003
Federal Communication Commission
Bureau / Office~~

Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

Re: EB Docket No. 03-152

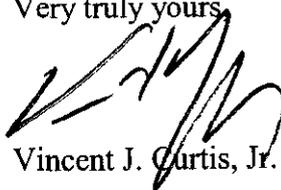
Dear Ms. Dortch:

On behalf of Richard B. Smith, pursuant to Section 1.223 of the Commission's Rules, there is transmitted herewith, an original and six copies of a Petition for Leave to Intervene.

If additional information is necessary, please communicate with this office.

Please date stamp the extra enclosed copy and return it to the undersigned.

Very truly yours,


Vincent J. Curtis, Jr.

VJC/st

Enclosure

cc: The Honorable Arthur I. Steinberg (with enclosure) (via hand delivery)

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

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AUG 27 2003

Federal Communications Commission
Office of the Secretary

EB Docket No. 03-152

In the Matter of)
)
WILLIAM L. ZAWILA)
)
Permittee of FM Station KNKS,)
Coalinga, California)
)
AVENAL EDUCATIONAL SERVICES, INC.)
)
Permittee of FM Station KAAX,)
Avenal, California)
)
CENTRAL VALLEY EDUCATIONAL)
SERVICES, INC.)
)
Permittee of FM Station KAJP,)
Firebaugh, California)
)
H.L. CHARLES D/B/A FORD CITY)
BROADCASTING)
)
Permittee of FM Station KZPE,)
Ford City, California)
)
LINDA WARE D/B/A LINDSAY)
BROADCASTING)
)
Licensee of FM Station KZPO,)
Lindsay, California)
)
In re Application of)
)
WESTERN PACIFIC BROADCASTING, INC.)
)
For Renewal of License for AM Station KKFO,)
Coalinga, California)

Facility ID No. 72672

Facility ID No. 3365

Facility ID No. 9993

Facility ID No. 22030

Facility ID No. 37725

File No. BR-19970804YJ
Facility ID No. 71936

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AUG 27 2003

Federal Communications Commission
Office of the Secretary

TO: The Honorable Arthur I. Steinberg
Administrative Law Judge

PETITION FOR LEAVE TO INTERVENE

1. Pursuant to Section 1.223 of the Commission's Rules, Richard B. Smith hereby petitions for leave to intervene in the above-captioned proceeding.¹

2. As set forth in the HDO, Mr. Smith complained to the Commission in 1999 that William Zawila had engaged in misrepresentation before the Commission. *See* HDO at, *e.g.*, ¶3. Mr. Smith's complaint was partially responsible for the investigation of Mr. Zawila by the Commission's Enforcement Bureau, which in turn led ultimately to the HDO. Mr. Smith is the licensee of Station KMAK(FM), Orange Grove, California, which operates on Channel 262 (100.3 MHz) One of the authorizations held by Mr. Zawila – a construction permit for Station KNGS(FM), Coalinga, California – specifies operation on first adjacent Channel 261 (100.1 MHz) If the KNGS permit is deemed to be in full force and effect, it would prevent Mr. Smith from seeking to increase the power of Station KMAK(FM). If, on the other hand, the KNGS permit is deemed no longer to be extant – whether because it expired by its own terms without the facilities having been timely constructed, or because, as a result of Mr. Zawila's misconduct which is the subject of this proceeding, the permit is cancelled – that impediment to the possible improvement of Mr. Smith's station could be eliminated. Thus, Mr. Smith clearly is a party in interest.

3. Moreover, Mr. Smith believes that he will be able to assist materially in this hearing. As set out in the HDO, Mr. Smith undertook his own investigations into the validity of certain of Mr. Zawila's representations, and determined that those representations were false.

¹ This proceeding was initiated by an Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order ("HDO"), FCC 03-158, released July 16, 2003. The HDO was published in the Federal Register on August 22, 2003, 68 Fed. Reg. 50771. Petitions for leave to intervene may be filed within 30 days of such publication. *See* 47 C.F.R. §1.223(b). Accordingly, the instant Petition is timely filed

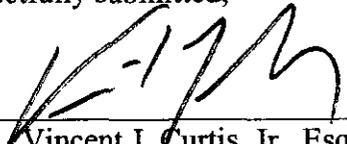
See, e.g., HDO, ¶9. Mr. Smith thus has first hand information and experience with respect to central aspects of the designated issues. As a party hereto, he will be able to assist in the development of the factual record based on that information and experience.

4. Mr. Smith is not aware at this time of any further issues which might be appropriately added with respect to Mr. Zawila, and Mr. Smith does not hereby propose the addition of any such issues.

5. A sworn Statement in support of the factual statements herein is included as Attachment A hereto.

WHEREFORE, for the reasons stated, Richard B. Smith requests leave to intervene as a party in the above-captioned proceeding.

Respectfully submitted,



Vincent J. Curtis, Jr., Esq.
Harry F. Cole, Esq.
Susan A. Marshall, Esq.

Counsel for Richard B. Smith

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(703) 812-0400

STATEMENT UNDER PENALTY OF PERJURY

1. My name is Richard B. Smith. I am licensee of FM Station KMAK, which operates on Channel 262 A (100.3 MHz) and is licensed to Orange Cove, California. I am preparing this Statement for submission to the Federal Communications Commission (“FCC” or “Commission”) in connection with a Petition for Leave to Intervene in MB Docket No.03-152.

2. On November 17, 1999, an Informal Objection was submitted on my behalf to the FCC to advise the Commission of serious misrepresentations made before it by William L. Zawila. Mr. Zawila is the permittee of FM Station KNGS, which is authorized to operate on Channel 261 (100.1 MHz) to serve Coalinga, California.

3. I believe that Mr. Zawila’s most significant misrepresentation was contained in his license application (File No. BLH-990804KJ) filed for KNGS, in which he misrepresented that the station had been built in accordance with its authorized specifications. A Complaint was also filed on my behalf on December 5, 2000, in which I raised the same issue.

4. My submissions to the Commission, in part, prompted the FCC’s investigation into the operation of Station KNGS and other stations owned by Mr. Zawila. The Commission’s investigation led ultimately to the Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order (the “HDO”), released on July 16, 2003, and published in the *Federal Register* on August 22, 2003.

5. My Informal Objection and Complaint described what I saw when I visited the KNGS transmitter site on September 4, 1999, one month after Mr. Zawila had filed his license application. Although KNGS was authorized to operate at 88 meters on a 91-meter tower, upon reaching the site, I found no 91-meter tower, but rather two utility poles approximately 50 feet in

height, each with an FM antenna mounted on it. I also did not see a main studio at the site.

6 Because of the preclusionary effect that the KNKS facility has on the upgrade of my station, I have been watching the progress (or lack thereof) of the KNKS construction since Mr. Zawila was first issued a permit in 1987 in File No. BPH-850709MT. If Mr. Zawila is permitted to keep the construction permit for KNKS, even though he has not constructed in accordance with its terms and even though he significantly misrepresented to the Commission about its construction, the station will continue to preclude the upgrade of my Station KMAK from a three to a six-kilowatt operation. However, if the KNKS construction permit is deemed extinguished – whether because it expired by its own terms without the facility having been timely constructed, or because, as a result of Mr. Zawila’s misconduct, the permit is cancelled – that impediment to the improvement of my station could be eliminated. Therefore, I am a party in interest to this proceeding.

7. In addition, since I initiated my own investigation in 1999 into the validity of Mr. Zawila’s representations to the FCC and determined that those representations were false, I have first-hand information and experience with respect to the issues designated by the Commission with respect to Station KNKS. As a party to this proceeding, therefore, I believe that I will be able to assist in the development of the factual record based on my information and experience.

8. I have read the foregoing Petition for Leave to Intervene and hereby state that all factual matters contained therein are true and correct.

I hereby state under penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief.

Richard B. Smith
Richard B. Smith, Licensee of
Station KMAK

August 26, 2003
Date

CERTIFICATE OF SERVICE

I, Suzanne Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Petition for Leave to Intervene" was sent this 27th day of August, 2003, by first-class United States Mail, postage prepaid to:

William L. Zawila, Esquire
Suite A
12550 Brookhurst Street
Garden Grove, CA 92840

David H. Solomon, Chief *
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 7-C485
Washington, DC 20554

*via hand delivery


Suzanne Thompson