

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
Creation of a Low Power Radio Service) MB Docket No. 99-25
and)
) AUC-03-83-B (Auction No. 83)

OPPOSITION TO MOTION TO DISMISS

Petitioners Prometheus Radio Project, *et al.* (“Prometheus Radio”), by their counsel Media Access Project, hereby file this *Opposition to the Emergency Motion to Dismiss* of “Ministries.” Ministries has failed to produce any evidence to rebut the *prima facie* case, based on publically available documents, that the principles of “Ministries” have engaged in an illegal scheme to traffic in Commission licenses in violation of Section 309(j) (3) (C) and Section 309(j) (4) (E) of the Communications Act and longstanding Commission policy. Accordingly, the Commission should place an immediate freeze on processing applications in the Translator Window and take all other appropriate action as requested in the *Petition*.

Furthermore, the accusation that former Commissioner Gloria Tristani violated the *ex parte* rules is simply inaccurate and represents a misunderstanding of the procedural posture of the case and of the *ex parte* rules. Accordingly, the request in footnote 2 of the *Motion* should be dismissed with prejudice.

ARGUMENT

Applicants Parrish, Williamson and Atkins do not give more than general denials to the facts stated in the *Petition* and supported by public documents. As discussed in

the *Petition*, Parrish, Williamson and Atkins are the three principal officers and only board members of Radio Assist Ministry, Inc., Edgewater Broadcasting, Inc., and World Radio Link, Inc. (collectively “Ministries”). Other indicia described and supported in the *Petition* provide further evidence that Parrish, Williamson and Atkins applied for over 4,000 licenses in the translator window when they never intended to construct translators and provide service. Instead, “Ministries” engaged in active marketing of construction permits in violation of the Communications Act and long-standing Commission policy.

Caught with their hands in the public cookie jar, “Ministries” has attempted to shift ground and seek dismissal on procedural grounds. The thrust of “Ministries” *Motion* is that the *Petition* constitutes an untimely *Petition to Deny* the initial applications of Parrish, Williamson and Atkins in their various corporate guises.

This misunderstands the nature of Petitioner’s filing.

Petitioners discovered evidence of illegal trafficking of Commission licenses by “Ministries” and circumstances that suggest widespread abuse of the licenses issued pursuant to Auction No. 83. Accordingly, Petitioners filed a request for immediate Commission action pursuant to Section 1.41 of the Commission’s rules. *See* 47 CFR § 1.41. As required under Section 1.41, Petitioners “set forth clearly and concisely the facts relied upon, the relief sought, the statutory and/or regulatory provisions (if any) pursuant to which relief is sought, and the interest of the person submitting the request.”

“Ministries” argument that the *Petition* constituted an untimely *Petition to Deny* the

assorted applications of Parrish, Williamson and Atkins wholly lacks merit. Petitioners have asked for a general freeze on processing *all* applications relating to the window, regardless of the identity of the Applicant. The evidence provided in the Petition demonstrates the very real probability of widespread abuse because the Commission's anti-trafficking rules, explicitly required pursuant to Section 309(j) (4) (E) of the Communications Act, have proven wholly inadequate to detect and prevent widespread trafficking in construction permits by "Ministries."

Similarly, to the extent that the *Petition* urges the Commission to commence an investigation into the specific actions of "Ministries," the request arises from the evidence of illegal trafficking recently developed by Petitioners rather than from any untimely objection to "Ministries" initial applications. Petitioners had no evidence of "Ministries" intent to speculate in naked construction permits in violation of the law at the time of their applications. Only now, when evidence of illegal trafficking by Parrish, Williamson, and Atkins is made plain through their conduct, is a request for relief under Section 1.41 timely.

Because the *Petition* was filed pursuant to Section 1.41, it did not require formal service pursuant to Section 1.47 as "Ministries" suggest. For the same reason, "Ministries" allegation that former Commissioner Tristani, a representative of one of the Petitioners, violated the *ex parte* rules is wholly without merit. Informal complaints pursuant to Section 1.41, when filed in open proceedings such as 99-25 and AUC-03-83-B (Auction No. 83), do not become closed proceedings

under the *ex parte* rules absent express action by the Commission or staff to render action on the informal request closed. See 47 CFR § 1.1206(a)(1).¹

CONCLUSION

WHEREFORE, the *Emergency Motion to Dismiss* filed by “Ministries” should be dismissed with prejudice, and the Commission should act upon the *Emergency Petition* filed by Petitioners on March 9, 2005.

Respectfully submitted,

/s/

Harold Feld
Andrew Jay Schwartzman
MEDIA ACCESS PROJECT
1625 K St., NW
Washington, DC 20006
Tel: (202) 232-4300
Fax: (202) 466-7656
Counsel for Petitioners

¹Even if the Commission were subsequently to determine that the *Petition* somehow created a “closed” proceeding pursuant to Section 1.1208, former Commissioner Tristani’s *ex parte* contacts were made *prior* to the filing of the *Petition* (although the timely *notices of oral ex parte presentation* were filed on the next business day). To the extent contacts occurred after the filing of the *Petition*, they fall within the exception of Rule 1.1204(a)(11).

CERTIFICATE OF SERVICE

I, Harold Feld, hereby certify that I caused to be served a copy of the attached
OPPOSITION TO MOTION TO DISMISS on the following parties:

March15, 2005

Date