

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

In Re Applications of)	File No.: BALED-20110125ACE
)	
University of San Francisco,)	Facility ID No. 69143
(Assignor))	
)	
And)	
)	
Classical Public Radio Network LLC)	
(Assignee))	
)	
)	
For Consent to Voluntary Transfer of Control)	
Station KUSF(FM), San Francisco, California.)	
)	

To: The Commission

Application for Review by Commission of Order and Consent Decree

By: Ted Hudacko
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Richmond, California
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July 2, 2012

1. By this Application for Review, Ted Hudacko ("Petitioner") hereby requests review of the Order and Consent Decree issued by the Media Bureau (the "Bureau") on June 7, 2012 in the above-captioned matter. Petitioner has been aggrieved by the Bureau's action in multiple manners.^{1 2} The matter has been mishandled by Media Bureau staff through prejudiced

¹ 47 U.S.C. § 1.115 (b)(2)

² *Association of Data Processing Service Organizations, Inc. v.B. Camp*, 397 U.S. 150, 90 S. Ct.827, (1970).

procedural error and disregard for proper due process.³ Petitioner has suffered “concrete injury” which is “likely to be redressed by a favorable decision.”⁴

2. University of San Francisco (“USF”) and Classical Public Radio Network LLC (“CPRN”) made willful misrepresentations in their filings, including in their Joint Response to the Bureau’s Letter of Inquiry (“LOI”), and improperly withheld from Petitioners non-privileged materials from the Joint Response.⁵ Subsequently, Petitioner filed a Freedom of Information Act (“FOIA”) Request seeking those materials.⁶ The staff in the Office of Communications and Industry Information (within the Media Bureau) made concession that Petitioner should see the Privilege Log.⁷ Subsequently, USF appealed for review of the FOIA Request grant in order to continue to prevent production of the Privilege Log. Petitioner replied⁸, demonstrating that USF’s and CPRN’s failure to produce the Privilege Log had violated multiple Federal Rules of Civil Procedure, that the Appeal’s case law citations were inapplicable, and that the Privilege Log should have been produced previously by USF and CPRN without requiring Petitioner to seek it via FOIA Request.⁹
3. Upon seeing the Privilege Log, Petitioner would be able to show that USF had made intentional misrepresentations to the Commission with respect to premature transfer of control of the license, demolition of the Main Studio, failure to maintain broadcast capability, failure to update its Application, failure to provide timely notice to the Commission, and

³ 47 U.S.C. § 1.115 (b)(2)(v)

⁴ *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976)

⁵ 47 C.F.R. § 1.17

⁶ *FOIA Request*, by Ted Hudacko. FOIA control number 2012-071. November X, 2011.

⁷ *FOIA 2012-071 Decision Letter*, by Michael S. Perko, Chief, Office of Communications and Industry Information, Media Bureau. February 9, 2012.

⁸ *Reply to Application for Review submitted by University of San Francisco re: FOIA 2012-071*, by Ted Hudacko. March 1, 2012.

⁹ 47 C.F.R. § 1.115 (b)(2)(v)

other violations and character issues. While waiting for this smoking gun, which was under review by the General Counsel, the Media Bureau made a back room deal with USF and CPRN to negotiate the so-called Consent Decree and Order and effectively to moot the Review of Petitioner's FOIA Request. There was no adversarial process on the Privilege Log. Instead, a bogus process was substituted which violated Petitioner's right for due process.

4. Petitioner has been a party to the above-captioned matter since filing his Petition to Deny ("PTD"). The Bureau's LOI was issued subsequent to PTDs by this Petitioner and others and demonstrates that substantial and material questions of fact had been raised, including character issues and other qualifications of the Assignor and Assignee to hold the NCE License.¹⁰ "Consent orders may not be negotiated with respect to matters which involve a party's basic statutory qualifications to hold a license."¹¹ The Bureau exceeded its authority and negotiated an improper and impermissible consent order.
5. Further, the Bureau did not adhere to its statutory process for consent orders. "Negotiations leading to a consent order may be initiated by the operating Bureau or by a party whose possible violations are issues in the proceeding. Negotiations may be initiated at any time after designation of a proceeding for hearing."¹² However, the Bureau either elected to or agreed to initiate consent order negotiations without having designated the proceeding for hearing, or at best, conducted a sham, "paper" hearing instead of a real hearing. No notice was provided to Petitioner of *any* hearing which is prerequisite to consent order negotiations.

¹⁰ 47 U.S.C. § 1.308 (b)

¹¹ 47 C.F.R. § 1.93 (b)

¹² 47 C.F.R. § 1.94 (a)

Furthermore, the Bureau elected to or agreed to initiate the consent order negotiations with *only* CPRN and USF.

“Other parties to the proceeding are entitled, but are not required, to participate in the negotiations, and may join in any agreement which is reached.”¹³ This begs the obvious question: If Petitioner was *entitled* to participate, how would it have been possible for Petitioner to actually have participated (and given his consent) if Petitioner was not informed of the negotiations’ commencement until *after* the Order was issued? Answer: It was not possible for the Petitioner to participate and exclusion of Petitioners was the Bureau’s intent. The Bureau has exceeded its delegated authority, failed to follow its own procedures, and has violated Petitioner’s rights for due process under both the Telecommunications Act and the Fifth Amendment.¹⁴ Bureau also has violated Petitioner’s First Amendment speech rights and because the right for due process is a “Thing” that each of the People possesses, Petitioner’s property rights under the Fourth Amendment also have been violated.

6. The egregiousness of the Bureau’s conspiring with CPRN and USF is compounded by its simultaneous mooted of Petitioner’s FOIA Request and violated Petitioner’s speech and due process in that matter as well. Petitioner hereby appeals the consent order and moves the Commission to review and reject the consent order.^{15 16}
7. The consent agreement addresses only violations from the Public Service Operating Agreement (“PSOA”) and even here is vague about specifics of the violations. Chief Lake

¹³ 47 C.F.R. § 1.94 (b)

¹⁴ *Constitution for the united States of America*. Amend. V, cl. 3.

¹⁵ 47 C.F.R. § 1.94 (e)

¹⁶ 47 C.F.R. § 1.302

reiterated that only misrepresentations with respect to the PSOA had been considered and these were determined “unintentional.”¹⁷ Furthermore, the Lake statement, which is separate from “the Order,” elaborates on the “unintentional” nature of the certifications by USF and CPRN and adds that the PSOA was based on “a practice that developed in past NCE transactions, in apparent violation of the rule, without our knowledge.”¹⁸ How were the cited examples of LMAs and TBAs filed without the Bureau’s knowledge? How did the practice of payment for consideration in addition to reimbursement of operational costs develop in any of the examples cited? How does any of the foregoing provide confidence that the Bureau is properly exercising oversight or that this matter doesn’t exemplify the problem of regulatory capture?

8. Petitioners in this matter have raised material and substantial issues of violations besides the PSOA. These involve questions of law or policy which have not previously been resolved by the Commission, including premature transfer of control, whether an NCE licensee must possess any broadcast capability at all or meet any of the Main Studio requirements, whether it is permissible to falsify records and make intentional false representations to the Commission, and what constitutes an NCE service.¹⁹ USF and CPRN retained counsel (based in Northern Virginia and the District of Columbia and presumably competent) to represent them before the Commission, but the Consent Order determines that “unintentional” false certifications were made (repeatedly) and filed on their behalves by their attorneys. Were false statements made against the advice of their attorneys? Did

¹⁷ *Statement of Media Bureau Chief William T. Lake regarding Adoption of Consent Decree with the University of San Francisco and Classical Public Radio Network LLC.*

June 7, 2012. http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0607/DOC-314496A1.pdf

¹⁸ *Ibid.*

¹⁹ 47 C.F.R. § 1.115 (b)(2)(i), (ii)

these attorneys make or sign off on several “unintentional” statements for an entire year after advising their clients against it?²⁰

9. For the forgoing reasons, Petitioner requests the Commission to reject the Consent Order.²¹

Petitioner states specific relief sought:²²

- Petitioner requests the Commission to reject and void the Bureau’s June 7, 2012 Order and Consent Decree.
- Petitioner requests his FOIA Request be granted providing him the Privilege Log.
- Petitioner requests the Commission consider the full scope of violations raised by Petitioners. The Petitions and the Motion that the Order dismissed shall be reinstated. The designation as “untimely” of Loren Dobson’s PTD should be reversed, fully reinstating that PTD and Dobson’s subsequent pleadings with respect to the LOI. The scope must not be limited to only PSOA-related issues nor shall other violations be swept under the rug or ignored.
- Petitioner requests that a proper hearing with limited rights by Petitioners for Discovery, taking depositions, etc. with the normal hallmarks of an adversarial process be set for schedule and conducted by the Commission.²³

The numerous deficiencies of the Consent Order and the process by which it originated within the Media Bureau also need careful consideration by the Commission. Petitioner’s search of prior consent orders by the FCC indicates that considerably more are issued by the Enforcement Bureau and relatively few by the Media Bureau. Lack of familiarity with consent orders by the Media Bureau may have been a contributing factor to the flawed process and decision, and more

²⁰ 47 C.F.R. § 1.1015, 47 C.F.3513

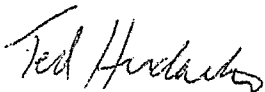
²¹ 47 C.F.R. § 1.115 (b)(3)

²² 47 C.F.R. § 1.115 (b)(4)

²³ 47 U.S.C. § 1.309 (e)

generally may represent a need for the Commission to address. Alternatively, referring the present matter to the Enforcement Bureau may be preferable because of the Enforcement Bureau's greater experience with consent orders and the process for such.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ted Hudacko".

Ted Hudacko

Dated July 2, 2012