

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554



APR - 7 2014
FCC Office of the Secretary

In re Applications of

EMMIS RADIO LICENSE, LLC	)	MB Docket No. _____
)	
WFNI(AM) (formerly WIBC)	)	File No. BR-20040401AOH
Indianapolis, Indiana	)	Facility ID # 19521
)	
WLHK(FM) (formerly WENS)	)	File No. BR-20040401ARD
Shelbyville, Indiana	)	Facility ID # 19522
)	
WYXB(FM)	)	File No. BR-20040401AOL
Indianapolis, Indiana	)	Facility ID # 51432
)	
WWVR(FM)	)	File No. BR-20040401AJ0
West Terre Haute, Indiana	)	Facility ID # 68824
)	
WTHI-FM	)	File No. BR-20040401AJH
Terre Haute, Indiana	)	Facility ID # 70652
)	
For Renewal of License)	
_____)	
)	
MERLIN MEDIA LICENSE, LLC,)	
Assignee of EMMIS RADIO)	
LICENSE, LLC	)	File No. BRH-20040802AQH
WKQX(FM), Chicago, Illinois	)	File No. BRH-20120801AJU
	)	Facility ID # 19525
For Renewal of License)	
_____)	

TO: Honorable Marlene H. Dortch
Office of the Secretary

ATTN: The Commission

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PETITION FOR RECONSIDERATION

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ILLINOIS CHAPTER OF THE

CONCERNED WOMEN FOR AMERICA

April 7, 2014

SUMMARY

Petitioners seek reconsideration of the Commission's March 7, 2014 "Memorandum Opinion and Order" denying their "Application for Review" of the staff decision granting the renewal applications captioned above.

Petitioners filed their "Application for Review" relative to WKQX(FM) on November 26, 2010, well over three years ago. Although the Commission would not conduct an investigation into the direct assault by Emmis and its key employee Mancow Mueller upon (a) the integrity of the Commission's processes and (b) Petitioners' right to contact federal law enforcement authorities (as well as their Amendment 1 right to petition the government for a redress of grievances) in apparent violation of 18 U.S.C. §§1505 and 1512, during the period between November 27, 2010 and the date hereof the FCC has conducted at least forty-one (41) separate investigations and/or forfeiture proceedings against Christian broadcasting organizations. We attach as Exhibit A hereto a list of these matters and citations to published documents or orders.

Petitioners assert that their federal constitutional right to equal protection under the law, guaranteed by Section 1 of the 14th Amendment, requires that the

Commission investigate Emmis to the same extent that they investigate various Christian broadcasting organizaqtions.

Petitioners request that the grants of the Emmis radio renewals be vacated or otherwise reversed, and that the Commission designate the above-captioned application for hearing issues.

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TO: Honorable Marlene H. Dortch
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ATTN: The Commission

PETITION FOR RECONSIDERATION

David Edward Smith (Smith), Peter LaBarbera (LaBarbera),
Kathy Valente (Valente), Illinois Family Institute, an Illinois

non-profit corporation (IFI), and the Illinois Chapter of Concerned Women for America (ICCWA) (collectively, "Petitioners"), by their attorney, and pursuant to 47 U.S.C. §405 and 47 CFR §1.106, hereby respectfully submits this Petition for Reconsideration of the **Memorandum Opinion and Order** in the above-captioned cases, FCC 14-23, released April 7, 2014, denying Petitioners' petitions and objections against the 2004 license renewal applications filed by Emmis Radio License, LLC (formerly Emmis Radio License Corporation) (Emmis). In support whereof, the following is shown:

I. PRELIMINARY STATEMENT

1. As this pleading is being filed on the first business day subsequent to the thirtieth day after the release of FCC 14-23 (Sunday, April 6, 2014), it is timely filed.

2. Section 1.106(b)(2)(i) of the Commission's Rules states that, after a ruling by the Commission en banc on an Application for Review, a Petition for Reconsideration will be entertained only where "The petition relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission".

II. NEW FACTS AND CIRCUMSTANCES

3. Petitioners filed their "Application for Review" relative to WKQX(FM) on November 26, 2010, well over three years ago. Although the Commission would not conduct an investigation into the direct assault by Emmis and its key employee Mancow

Mueller upon (a) the integrity of the Commission's processes and (b) Petitioners' right to contact federal law enforcement authorities¹ (as well as their Amendment 1 right to petition the government for a redress of grievances) in apparent violation of 18 U.S.C. §§1505 and 1512, during the period between November 27, 2010 and the date hereof the FCC has conducted at least forty-one (41) separate investigations and/or forfeiture proceedings against Christian broadcasting organizations. We attach as Exhibit A hereto a list of these matters and citations to published documents or orders.

4. Petitioners are Christian and seek to defend traditional Judeo-Christian morals and virtues. One of them, David Smith, tape recorded Emmis' radio programs hosted by Mancow Mueller and sent the tapes to FCC enforcement staff. The tapes contained evidence of violation after violation of 18 U.S.C. §1464 by Emmis and Mancow Mueller.

5. In retaliation against the lawful activities of Smith in informing law enforcement officials of the federal government (namely, the FCC's Enforcement Bureau) that federal crimes and violations of federal regulations may have occurred, Emmis' employee Mancow, and two Delaware limited liability companies, American Pride, LLC ("AmPride") and American Patriot, LLC ("AmPat"), apparently with the full support of Emmis, filed a civil lawsuit in the Circuit Court of Cook County, Illinois,

¹***In re Quarles and Butler***, 158 U.S. 532 (1895).

County Department-Chancery Division, Case No. 04CH05015, seeking (a) an injunction against Smith and Citizens for Community Values of Illinois, Inc. (CCVI) from *inter alia* "making spurious complaints to the FCC or any other governmental agencies concerning the aforesaid Plaintiff's rights" and (b) civil damages totaling THREE MILLION DOLLARS (\$3,000,000.00) plus legal fees and costs under the tort theories of (i) "interference with business expectancy", (ii) "conspiracy" and (iii) "malicious prosecution". This lawsuit was filed with the Cook County state court on March 23, 2004, and was actually served on Smith on or about April 9, 2004.

6. Subsequent to March 23, 2004, Mancow sought and received a considerable amount of publicity for his lawsuit, which was clearly and admittedly conceived and filed in order to corruptly harass, intimidate and frighten potential witnesses to violations of 18 U.S.C. §1464. Because of the considerable amount of publicity surrounding Mancow's suit, Emmis must be presumed to have at the very least tacitly approved of its filing, if not having outright encouraged its filing, since the FCC sanctions were directed at Emmis, not at Mancow.

III. ARGUMENT

7. Petitioners incorporate herein by reference all the legal arguments they have made in prior pleadings relative to the above-captioned applications. In light of the developments at

the Commission relative to the veritable plethora of investigations and/or forfeiture proceedings directed against Christian broadcasting organizations, while giving free passes to outfits like Emmis, Petitioners hereby assert that their right to equal protection under the law guaranteed by Section 1 of Amendment 14 to the federal Constitution has been violated. In other words, Petitioners assert that it was unconstitutional for the Commission not to investigate Emmis for its apparent violation of federal criminal statutes bearing on the integrity of Commission processes, while at the same time the Commission consciously investigated and/or imposed civil forfeitures upon Christian organizations for relatively minor violations of FCC rules largely pertaining to record keeping or the timely filing of renewal applications.

8. Where it appears that government investigations and/or prosecutions are "directed so exclusively against a particular class of persons ... with a mind so unequal and oppressive", such system of prosecution amounts to "a practical denial" of equal protection of the law. **Yick Wo v. Hopkins**, 118 U.S. 356, 373 (1886), cited with approval in **U.S. v. Armstrong**, 517 U.S. 456, 465 (1996). The Armstrong court cited **Bolling v. Sharpe**, 347 U.S. 497, 500 (1954) for the proposition that a decision by the government whether to prosecute may not be based on "an unjustifiable standard such as race, religion, or other arbitrary classification".

9. The events of the past forty months demonstrate that we have a serious "equal protection" situation here. Emmis is not investigated by the government for actions tending to persecute a Christian citizen activist and to deny him his right to petition the government for a redress of grievances, in violation of federal felony criminal statutes, while on the other hand the government investigates and/or imposes civil forfeitures on forty-one distinct Christian broadcasting organizations².

10. The grants of the above-entitled applications have not yet become final and, pursuant to *Kidd v. FCC*, 427 F.3d 1 (D. C. Cir. 2005), the Commission can vacate its prior orders and do the right thing, which is to investigate Emmis and Mancow Mueller.

IV. CONCLUSION AND PRAYER FOR RELIEF

David Edward Smith, Peter LaBarbera, Kathy Valente, Illinois Family Institute and the Illinois Chapter of Concerned Women for America urge that this Petition for Reconsideration **BE GRANTED**, that the grant of the above-captioned applications **BE REVERSED OR VACATED**, the above-captioned applications **BE DESIGNATED FOR**

²We would also point out that at the same time the FCC "throws the book" at Christian broadcasting organizations, they merely admonish full power television station licensees for exceeding commercial minute limits during children's TV hours, a violation of the Communications Act, 47 U.S.C. §303a(b). See e.g. *Baltimore (WNUV-TV) Licensee, Inc.*, DA 14-355, released March 18, 2014 (Video Division). So, a major market commercial TV station licensee "skates", while a smaller, often times non-profit Christian broadcaster gets "socked" with stiff civil monetary penalties.

HEARING upon at least the following issues, and that all petitioners **BE GRANTED STATUS AS INTERVENORS** in such hearing:

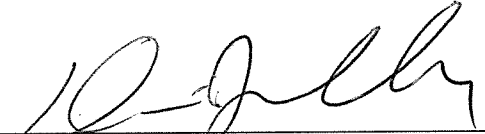
1. To determine the facts and circumstances relating to the motivation of Erich Muller et al in filing the civil damage suit against David Edward Smith, et al.; and what effect, if any, the foregoing facts and circumstances have upon the qualifications of Emmis to be a Commission licensee;
2. To determine the facts and circumstances of the supervision of Erich Muller and the "Mancow Morning Madhouse" program by Emmis Radio License Corporation; and what effect, if any, the foregoing facts and circumstances have upon the qualifications of Emmis to be a Commission licensee;
3. To determine whether Erich Muller, Emmis or any person or entity under their control or direction have violated 18 U.S.C. §§ 241, 1505 or 1512, and, if so, what effect that would have upon the qualifications of Emmis Radio License Corporation to be a Commission licensee;
4. To determine whether 47 U.S.C. §1.1208 was violated by Emmis in the negotiation and execution of a "Consent Decree" with FCC staff, and, if so, what effect that would have on Emmis' basic qualifications to be a Commission licensee
5. To determine what effect the recidivist violations of 18 U.S.C. §1464 by Emmis have upon its qualifications to be a Commission licensee; and
6. In light of the evidence adduced pursuant to the foregoing issues, whether the application for renewal of license of WKQX(FM) should be denied.

Petitioners demand that the Commission hold one or more field hearings to determine whether the above-captioned renewal of license applications can be granted, and that Petitioners be permitted to participate in that hearing as intervenors and parties respondent.

Respectfully submitted,

DAVID EDWARD SMITH
PETER LABARBERA
KATHY VALENTE
ILLINOIS FAMILY INSTITUTE
ILLINOIS CHAPTER OF CONCERNED
WOMEN FOR AMERICA

By

A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

Dennis J. Kelly
Their Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300

DATED: April 7, 2014

EXHIBIT A

1. **Glen Iris Baptist School (W15AZ, Alabaster, AL, and W49AY, Birmingham, AL)**, DA 14-425, 2014 WL 1284503 (Video Division, 3/31/14), \$20,800.00 forfeiture relative to Children's TV rule violations.

2. **Gospel American Network (KKVI-FM, Overland, TX)**, 2014 WL 1116946 (Dallas TX office Enforcement Bureau, 3/14/14) ("Notice of Violation" commencing investigation into EAS rule violations).

3. **Calvary Chapel of McMinnville, Inc. (KKJC-LP, McMinnville, OR)** 2014 WL 896903 (Portland OR office Enforcement Bureau, 2/27/14) ("Notice of Violation" commencing investigation into EAS rule violations).

4. **Unity Broadcasting, Inc. (W39CA, Adamsville, TN)**, DA 14-242, 2014 WL 717065 (Video Division, 2/24/14), \$15,000.00 forfeiture relative to Children's TV rule violations.

5. **Unity Broadcasting, Inc. (W34DV, Booneville, MS)**, DA 14-241, 2014 WL 717064 (Video Division, 2/24/14), \$15,000.00 forfeiture relative to Children's TV rule violations.

6. **Unity Broadcasting, Inc. (W18BL, Adamsville, TN)**, DA 14-218, 2014 WL 668233 (F.C.C.) (Video Division, 2/20/14), \$15,000.00 forfeiture relative to Children's TV rule violations.

7. **The Catholic, Apostolic & Roman Catholic Church in Puerto Rico (WKVM, San Juan, PR)**, DA 14-59, 2014 WL 198323 (Enforcement Bureau, 1/17/14), \$7,000.00 forfeiture relative to tower fence rule violation.

8. **Calvary Chapel of Costa Mesa, Inc. (K273CB, Bakersfield, CA)**, 2014 WL 293390 (Los Angeles CA office Enforcement Bureau, 1/16/14) ("Notice of Violation" commencing investigation into interference rule violations).

9. **Gospel to the Nations Ministries, Inc. (KWJP, Paola, KS)**, 2014 WL 293385 (F.C.C.) (Kansas City KS office Enforcement Bureau 1/16/14) ("Notice of Violation" commencing investigation into EAS rule violations).

10. **Catholic Radio Network of Loveland, Inc. (KPIO(AM), Loveland, CO)**, DA 14-18, 2014 WL 97145 (Enforcement Bureau, 1/9/14), \$3,200.00 forfeiture relative to failure to reduce power at sunset.

11. **Billy Ray Locklear Evangelical Association (WLPS-CD, Lumberton-Pembroke, NC)**, DA 13-2421, 2013 WL 6705808 (Video Division, 12/19/13), \$15,000.00 forfeiture relative to Children's TV rule violations.

12. **Campbellsville University (WLCU-CA, Campbellsville, KY)**, DA 13-2420, 2013 WL 6705806 (Video Division, 12/19/13), \$3,000.00 forfeiture relative to Children's TV rule violations.

13. **Central Ohio Association of Christian Broadcasters (WGCT-CD, Columbus, OH)**, DA 13-2419, 2013 WL 6705803 (Video Division, 12/19/13), \$3,000.00 forfeiture relative to Children's TV rule violations.

14. **Gospel Media Institute, Inc. (WLP979, Hunlock Creek, PA)**, 2013 WL 6780294 (Philadelphia PA office Enforcement Bureau, 12/16/13) ("Notice of Violation" commencing investigation into EAS rule violations).

15. **Christian Faith Broadcast, Inc. (WLLA(DT), Kalamazoo, MI)**, DA 13-2413 2013 WL 6314923 (Video Division, 12/04/13), \$13,000.00 forfeiture relative to Children's TV rule violations.

16. **Word of Life Ministries, Inc. (KADO-LP, Shreveport, LA)**, DA 13-2297, 2013 WL 6248547 (Video Division, 12/03/13), \$3,500.00 forfeiture relative to Children's TV rule violations.

17. **Teleadoration Christian Network, Inc. (WDWL, Bayamon, PR)**, DA 13-2074 2013 WL 5796004 (Video Division, 10/28/13), \$12,600.00 forfeiture relative to Children's TV rule violations.

18. **Idaho Conference of Seventh-Day Adventists, Inc. (WGSY, McCall, ID)**, 2013 WL 4068852 (F.C.C.) (Portland OR office Enforcement Bureau, 8/1/13) ("Notice of Violation" commencing investigation into public file rule violations).

19. **Idaho Conference of Seventh-Day Adventists, Inc. (KOAY, Middleton, ID)**, 2013 WL 4068854 (Portland OR office

Enforcement Bureau, 8/1/13) ("Notice of Violation" commencing investigation into public file rule violations).

20. **Idaho Conference of Seventh-Day Adventists, Inc. (KTSY, Caldwell, ID)**, 2013 WL 4068853 (Portland OR office Enforcement Bureau) 8/1/13 ("Notice of Violation" commencing investigation into public file rule violations).

21. **Inter-City Christian Youth Program, Inc. (KCYP-LP, Mission, TX)**, 28 FCC Rcd 2187, 2013 WL 864582 (2013), \$1,750.00 forfeiture relative to emergency alert system (EAS) rule violations.

22. **Toccoa Falls College (WTXR(FM), Toccoa Falls, GA)**, 27 FCC Rcd 8365, 2012 WL 3060126 (Audio Division, 7/27/12), \$10,000.00 forfeiture relative to EAS rule violations.

23. **Media Ministries, Inc. (KBMQ(FM) & KLIC(AM), Monroe, Louisiana)**, 27 FCC Rcd 5061, 2012 WL 1655604 (Enforcement Bureau, 5/10/12), consent decree calling for \$7,500.00 "voluntary contribution" relative to public file violations).

24. **St. Bonaventure University (WSBU(FM), St. Bonaventure, NY)**, 27 FCC Rcd 1608, 2012 WL 503698 (Audio Division, 2/15/12), \$7,000.00 forfeiture relative to renewal application timeliness violation.

25. **Hope Broadcasting, Inc. (WFGN(AM), Gaffney, SC),** 26
FCC Rcd 16370, 2011 WL 6002050 (Audio Division, 12/01/11),
\$10,000.00 forfeiture relative to timely renewal application
violation.

26. **Calvary Chapel of the Redwoods (KRDW-LP, Smith River,
CA),** 26 FCC Rcd 15197, 2011 WL 5114852 (Audio Division,
10/28/11), \$500.00 forfeiture relative to timely renewal
application violation.

27. **Aleluya Christian Broadcasting, Inc. (KBRZ, Missouri
City, TX),** 26 FCC Rcd 15079, 2011 WL 5088666 (Enforcement
Bureau, 10/25/11), \$4,000.00 forfeiture relative to operating
power rule violations.

28. **Saint Mary's College of Minnesota (K232CZ, Winona,
MN),** 26 FCC Rcd 13345, 2011 WL 4442341 (Audio Division,
9/26/11), \$500.00 forfeiture relative to timely renewal
application violation.

29. **Family Worship Center Church, Inc. (W208BC(FX),
Corning, NY),** 26 FCC Rcd 11439, 2011 WL 3679208 (Audio Division,
8/23/11), \$750.00 forfeiture relative to renewal application
timeliness violation.

30. **Faith Community Church (W261AE, Camden, DE),** 26 FCC
Rcd 11434, 2011 WL 3679207 (Audio Division, 8/23/11), \$500.00
forfeiture relative to timely renewal application violation.

31. **Southern Adventist University (WSMC-FM, Collegedale, TN)**, 26 FCC Rcd 11254, 2011 WL 3510577 (Audio Division, 8/23/11), \$8,000.00 forfeiture relative to public file violations.

32. **Faith Trinity Assemblies (WYZZ(FM), Spencer, TN)**, 26 FCC Rcd 7945, 2011 WL 2208287 (Audio Division, 6/17/11), \$1,500.00 forfeiture relative to timely renewal application violation.

33. **Mr. Dan Karbginsky, Bible Broadcast Church School (WMSD(FM), Rose Township, Michigan)**, 26 FCC Rcd 8554, 2011 WL 2433333 (Audio Division, 4/17/11), \$1,500.00 forfeiture relative to timely renewal application violation.

34. **Grace Baptist Church (WBLW(FM), Gaylord, MI)**, 26 FCC Rcd 5904, 2011 WL 1427616 (Audio Division, 4/14/11), \$1,700.00 forfeiture relative to timely renewal application violation.

35. **Eastern Illinois Christian Broadcasting, Inc. (WEIC(AM), Charleston, IL)**, 26 FCC Rcd 2336, 2011 WL 720859 (Audio Division, 3/2/11), \$1,300.00 forfeiture relative to operating power rule violations.

36. **Applied Life Ministries, Inc. (KALR(FM), Hot Springs, AR)**, 26 FCC Rcd 1197, 2011 WL 399108 (Audio Division, 3/2/11), \$5,600.00 forfeiture relative to renewal application timeliness violation.

37. **Bible Broadcasting Network, Inc. (W201BW, Hopkinsville, KY)** 26 FCC Rcd 2259, 2011 WL 704382 (Audio Division, 3/1/11), \$250.00 forfeiture relative to timely renewal application violation.

38. **International Church of the Foursquare Gospel (KFSG(FM), Los Angeles, CA)**, 26 FCC Rcd 1724, 2011 WL 496566 (Enforcement Bureau 2/14/11), \$10,000.00 forfeiture relative to antenna structure registration violations.

39. **Faith Baptist Church (KCAS(FM), McCook, TX)**, 26 FCC Rcd. 1391, 2011 WL 466768 (F.C.C.) Audio Division, 2/10/11), \$8,000.00 forfeiture relative to public file violations.

40. **Trinity Church of the Nazarene (KRQZ(FM) Lompoc, CA)**, 25 FCC Rcd 17384, 2010 WL 5136998, (Audio Division, 12/17/10), \$7,000.00 forfeiture relative to timely renewal application violation.

41. **Victory & Power Ministries (WPFC(AM), Baton Rouge, LA)**, 25 FCC Rcd. 17098, 2010 WL 4974651 (Audio Division, 12/08/10), \$7,000.00 forfeiture relative to timely renewal application violation.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Petition for Reconsideration" was served by first-class United States mail, postage prepaid, on this 7th day of April, 2014 upon the following:

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