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

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Federal Communications Commission
Office of the Secretary

In the Matter of Broadcast Station **KTTV-TV**
Broadcasting on Channel 11 in Los Angeles
Los Angeles, CA, Facility ID 22208, FCC Reg # 0005795067
Licensee, 1999 South Bundy Drive, Los Angeles, CA
Fox TV, 400 N Capitol St., NW, Wash, DC 20001

PRELIMINARY* FORMAL PETITION TO DENY RENEWAL OF STATION'S FCC BROADCAST LICENSE PURSUANT TO 47 U.S.C.A. § 309(d), PRIMARILY BECAUSE OF ITS DELIBERATE, CONTINUED, AND UNNECESSARY BROADCASTING, DURING PRIME TIME, OF A RACIST DEROGATORY WORD

Petitioner, Larry W. Smith, a proud Native American and viewer of KTTV-TV, respectfully requests on behalf of himself and others similarly situated, and who are like himself adversely affected or aggrieved, that the agency deny the renewal of this station's license because it deliberately, repeatedly, and unnecessarily broadcasts the word "R*dskins" frequently during many of its broadcasting days, and especially in prime time where its well documented adverse impact on impressionable young Native American as well as non-Native American children is greatest. It is important to note that "the greatest concentration of urban Native Americans, about 60,000, are found in the Los Angeles - Long Beach area of California." American Indians Today.

More specifically, it is preliminary suggested, both cumulatively, and in the alternative, that:

I. It is clearly contrary to the public interest, convenience, and necessity **[p.2]**;

II. As suggested by former FCC Chairman Reed Hundt, former FCC Commissioners Nicholas Johnson and Jonathan Adelstein, and other leading members of the bar, repeated and unnecessary use of the R-word is contrary to current law and akin to broadcasting obscenity **[p.5]**;

III. Additionally, it constitutes "profanity" (which includes "curse words") **[p.7]**;

IV. Additionally, it constitutes "fighting words" which enjoy no legal protection **[p.14]**

V. Additionally, it constitutes "hate speech" **[p.16]**

VI. Additionally, a "hostile work environment" **[p. 18]**;

VII. The agency would never countenance stations broadcasting words like "N*gg*rs, Sp*cs, W*tb*acks, Ch*nks, K*kes, C*nts, F*gs, etc., even as the name of a team or musical group. If repeated and unnecessary use of the N-word (like all the others) is contrary to the public interest because it offends many (but not all) African Americans, the repeated and unnecessary use of the R-word should also be because it similarly offends many (but not all)Native Americans. **[p. 20]**

* Petitioner respectfully seeks to reserve the right to supplement and otherwise amplify upon this petition as may in the future become necessary and appropriate, and to aid the FCC.

I. IT IS CONTRARY TO THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

In 1954, at a time when most people (especially in the affected areas) acquiesced in - or at least did not actively oppose - racial segregation in schools, the U.S. Supreme Court unanimously ordered an end to this form of racism - not because the schools for each race had been proven not to be "equal" as in "Equal Protection," but rather in large part because doll experiments suggested that school segregation by race caused psychological harm to both black and white children.

There is now an overwhelming body of evidence - evidence it appears the FCC may never have formally considered, much less examined - proving even more strongly than the doll experiments that repeated and unnecessary exposure to the word "Redskins" causes at least as serious psychological harm, not only to Native American and non-Native American children, but also to Native American adults. [See APA RESOLUTION, APPENDIX A and APPENDIX B infra, and the dozens of documents cited therein are incorporated by reference].[1] This certainly cannot be consistent with the legal mandate, imposed upon stations because they receive an incredibly valuable artificial government-created monopoly on the use of their broadcast frequency - to operate in the public "interest, convenience, and necessity."

To give effect to all of the words in the FCC's statute, as one must if possible, it is well to note that on-air discussion of many very sensitive topics may likewise tend to cause some psychological harm to members of certain groups. But news or information about affirmative action or police shootings of black youths (affecting sensitive African Americans), or date rape and sexual harassment (which can affect women), or the problems between Arabs and residents of Israel (which may be hurtful to both Jews and Arabs) is "necessary" in a democracy. Likewise, many would argue that even ads for products which could have adverse psychological effects on some (e.g., those suffering from erectile dysfunction, urinary incontinence, or morbid obesity) are also "necessary."

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[1] Note that although some of the studies refer to other Native American names and to mascots, there appears to be universal agreement that "R*dskins" - often referred to as the R-Word because it is as offensive to Native Americans as the N-word is to African Americans - is far more offensive, and far more universally recognized as offensive. In other words, any action taken regarding "R*dskins" need not necessarily apply to other sports teams or other entities such as "Chiefs," "Braves," "Indians," "Blackhawks," etc. not shown in dictionaries nor found in numerous legal proceedings as racial slurs, racially derogatory, etc.

See also, "Redskins Are Denied Trademarks" at http://wapo.st/1ufYmIf - "Because yesterday's decision focused very sharply on the term "redskin" and its linguistic history, it does not necessarily make other teams with Native American names vulnerable to similar challenges, lawyers said. The same survey that showed nearly half of respondents consider "redskin" offensive found that only 10 percent of those surveyed felt the same way about the word 'braves.'"

But even the most rabid D.C. football fans must admit that they could receive all of the latest information and analysis about their favorite team - e.g., injuries, trades, prospects, statistics, etc. - without the use of a word which has been found in so many formal legal proceedings, and by so many organizations and influential Americans, to be a derogatory racial slur. In other words, it is both very harmful and in no way "necessary" for broadcasters to repeatedly use the word "Redskins" - e.g.,"DC beat Dallas 21-0," "DC's quarterback is cut," etc. provides the same news without in any way limiting the free flow of information - free speech - which is being provided.

The use of broad and general words like "public interest, convenience, and necessity" in the FCC's statute was obviously designed to give the agency a great deal of discretion and flexibility in determining its scope of regulatory powers and statutory standards, especially as conditions change over time. Moreover, under the **Chevron** rule, unless Congress has "DIRECTLY spoken to the PRECISE question at issue" (which it hasn't here), courts must accept whatever reasonable definition the agency provides based upon any permissible construction of the statute.

Thus, whether or not racist derogatory slurs fits neatly into existing categories of regulated content such as obscenity, indecency, or profanity, the U.S. Supreme Court and other courts have recognized that the agency has power to take appropriate actions regarding other problems and situations affecting the "public interest" as they may from time to time develop, and that the agency may from time to time quite properly and legally change its viewpoints. Otherwise, it's functions would be largely restricted to only insuring conformity with existing technical rules.

For example, although the agency had previously determined that the word "indecency" is "language . . . that, in context, DEPICTS or DESCRIBES . . . sexual . . . activities," [emphasis added] and considering "whether the material dwells on or repeats at length," it nevertheless determined that it applied in two situations in which the words obviously neither depicted nor described any sexual activities, and were fleeting rather than dwelling on or repeating at length. [2] In short, the FCC can expand the meaning of existing regulated categories.

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[2] Although the U.S. Supreme Court refused to uphold fines by the agency on these grounds based upon the totally unrelated legal issue of "notice," and reserved consideration of whether the First Amendment would permit regulation of such fleeting and unanticipated utterances, it did not question the agency's right to so expand the definition of "indecency." The statements were:

"Cher exclaimed during an unscripted acceptance speech: "I've also had my critics for the last 40 years saying that I was on my way out every year. Right. So f * * * 'em." AND

"Nicole Richie made the following unscripted remark while presenting an award: "Have you ever tried to get cow s* * * out of a Prada purse? It's not so f * * *ing simple."

FCC v. Fox, 132 S.Ct. 2307 (2012).

Likewise, the FCC, proceeding under the more flexible "public interest" standard, held that licensees are responsible for the possible (even if not probable) harms allegedly caused by song lyrics which might "promote or glorify the use of illegal drugs." That interpretation, which seemingly is based upon a very broad reading of their statutory "public interest" standard - since there appeared to be little if any evidence that teens hearing, for example, "Lucy in the Sky With Diamonds" would be induced to run out and try LSD - nevertheless was upheld. **Yale Broadcasting Co v FCC**, 155 U.S.App.D.C. 390 (1973).

In a much more analogous situation, the Court of Appeals for the D.C. Circuit not only ordered the FCC to consider a challenge to the license renewal of a station [WLBT-TV] based in large part on allegations of racism, but ordered that citizen-listeners be given standing to raise those important issues. **Office of Communication v. FCC**, 359 F.2d 994 (1966). Also, that same court said that the evidence did not sustain the grant of license renewal, in part because it omitted disparaging remarks related to "Negroes." **Office of Communication v. FCC**, 425 F.2d 543 (1969)

If a mere few disparaging remarks based upon race (about "Negros") can provide some grounds for denying a license renewal, it would certainly seem that repeated and unnecessary use of the most disparaging racially derogatory slur - including one condemned so broadly and almost universally as "R*dskins" - would likewise at the very least raise substantial and material questions of fact which require an evidentiary hearing, much less a denial of license renewal itself.

As a final example, in a similar challenge, the renewal of the license of WMAL-TV in Washington D.C., was challenged by a coalition of black organizations who alleged various deficiencies in station performance related to race and arguably to racism. More specifically, they alleged that the employment of African Americans was seriously deficient and evidence of racism, as was the station's refusal to use African Americans as on-air reporters. Both deficiencies were corrected before the license was ultimately renewed. Although the FCC did renew that license, and the court refused to overturn that grant, both occurred only because, once the license challenge was filed, the station made major changes in response to the complaints made by the petitioners. **Stone v. FCC**, 466 F.2d 316 (DC Cir 1972).

In other words, the petitioners largely achieved their goals of changing what they alleged were racist policies - i.e., having few black employees in executive roles, having no black reporters appear on the air, etc. - by opposing the renewal of the station's license. Indeed, as the court noted in ruling per curiam upon petitioners' request for a rehearing: "The participation of petitioners in this case was effective in **forcing WMAL to conform** its prospective ascertainment to current FCC standards, and in pointing out that **future deviation will not be tolerated**. We do **NOT view this as defeat for pe**titioners, but as **SUCCESSFUL PUBLIC INTERVENTION** which this **court has consistently welcomed as serving the public interest**." [emphasis added]

In short, Petitioners respectfully suggest that it is long since time for the FCC to determine whether the repeated, continued, and totally unnecessary use of the most racially derogatory word which can be used in connection with America's first citizens can possibly be consistent with a broadcaster's mandatory legal obligations to operate in the public interest.

Such a proceeding would also respond, at least in small part, to the many organizations which have petitioned the agency to at very least begin considering these issues which have become increasingly important over the past few years.[3] In alleging in the petition, and by stating under oath in the accompanying affidavit that the repeated and unnecessary use of this racial slur causes and exacerbates harm - including physical violence - to Native Americans, Petitioner has created a material issue of fact which by law requires a hearing.

II. AS SUGGESTED BY FORMER FCC CHAIRMAN REED HUNDT, FORMER FCC COMMISSIONERS NICHOLAS JOHNSON AND JONATHAN ADELSTEIN, AND OTHER LEADING MEMBERS OF THE BAR, REPEATED AND UNNECESSARY ON-AIR USE OF THE R-WORD IS CONTRARY TO CURRENT LAW AND AKIN TO BROADCASTING OBSCENITY

As previously noted, the agency had no trouble greatly expanding its previous definition of "indecency" to include broadcasting material which neither "depicts" nor "describes" sexual activities - and which clearly did not "dwell[s] on or repeats [it] at length" - to include fleeting use of so-called "Dirty Words" by nationally-recognizes artists receiving major awards; a re-interpretation so far accepted by the U.S. Supreme Court. This strongly suggests that the agency has the legal authority, and the will where appropriate to meet situations which require it, to expand the definitions of words in its statute even beyond their previously understood meanings.

In that context, recently a former Chairman of the FCC, Reed Hundt, two former commissioners of the FCC, Jonathan Adelstein and Nicholas Johnson, and almost a dozen other distinguished broadcasting law experts,[4] wrote in a public letter that the repeated and unnecessary on-air use of the word "R*dskins" [SEE NOTE NEXT PAGE] is contrary to current law and akin to broadcasting obscenity. In part they wrote to corporate licensee Dan Snyder:

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[3] See, e.g., ■ THE HILL - Al Sharpton amplifies calls for FCC to regulate racism in broadcasting, http://bit.ly/1vXt226 ; ■ Homophobia in Spanish-Language Media: GLAAD Files FCC Complaint, http://bit.ly/1pWmGiZ ; ■ Hispanic Coalition Demands FCC Monitor Fox News, Talk Radio for Racist Bias, http://bit.ly/1qrd6mP

[4] Andrew Schwartzman, Henry Geller, Sonny Skyhawk, Dan Gonzalez, Erwin Krasnow, Gigi Sohn, David Honig, Blair Levin, and Brent Wilkes.

We are writing as longtime participants in the FCC regulatory process to respectfully encourage you to change the archaic and ***racially stereotyped*** *name of the Washington XXXskins football team. It is* ***impermissible under law*** *that the* ***FCC would condone****, or that broadcasters would use,* ***obscene pornographic language*** *on live television. . . . Similarly, it is inappropriate for broadcasters to use* ***racial epithets*** *as part of normal, everyday reporting. . . . "XXXskin" is the* ***most derogatory name a Native American can be called****. It is an* ***unequivocal racial slur****. . . . It is especially unseemly for our nation's capital to be represented by a football team whose name and mascot keep alive the spirit of inhumanity, subjugation and genocide that nearly wiped out the Native American population.* [emphasis added. The entire letter is attached, and hereby made a part of this petition.

Given the backgrounds of the authors of this letter, the agency should seriously consider their suggestion that "R*dskins" is akin to obscenity and pornography, and that its on-air use should be limited even more strictly; i.e., unlike "indecent" and "profane" language which may be broadcast except when children are most likely to be in the audience and affected [i.e. 6:00 AM - 10:00 PM].

NOTE: The concerns voiced by Petitioner and so many others regarding the on-air use of the word "R*dskins" are focused primarily on situations where it is used repeatedly and unnecessarily. These are, of course, the same factors the FCC focused on when it recognized that "fleeting expletives" are different in kind from those where a word is "dwell[s] on or repeats at length." .

Thus it would seem that when a station uses the word only a few times a day while reading sports scores, or where it is suddenly and unexpectedly used during a live interview, the harm - while in some sense cumulative - is much less than in situations where it is used repeatedly on sports talk radio and other similar situations where it may be used repeatedly more than 100 times in an hour.

In this context it should not noted that, contrary to many media broadcasts, no one is seeking to totally and completely ban the use of word"R*dskins" on the air. By way of comparison, it appears, for example, that the FCC has no rule, regulation, or controlling precedent which would prevent broadcasters from using even the N-word on the air, provided it is used in appropriate circumstances which are not contrary to the public interest.

For example, one assumes that the FCC would not refuse to renew the license of a station which used the word appropriately: e.g., as part of discussion of Mark Twain's works (where a famous character has the N-word as part of his name), the oral traditions of the South prior to the Civil Rights Act, of even whether it is appropriate for rap artists to use it in their works today.

But, although there is no express prohibition, broadcasters virtually never use the word because they recognize that in many cases its use - especially unnecessarily and repetitively - would not be consistent with the public interest standard. A simple example illustrates this.

The complete and proper name of the former musical group "Niggaz Wit Attitudes" was virtually never said on the air, even by black stations, and even though the N-word was used here to refer to a group and not in a racial or derogatory sense, and the group was made up of African Americans who freely chose the word "Niggaz" to describe and express themselves. In contrast, Indians are not on Snyder's football team, and did not choose the name "Redskins" for themselves.

When music from this group was played on the air, the group was referred to as the NWA - to avoid any chance that it could understood (or misunderstood) as a racial slur. Similarly, when rap songs which use the word "n*gger" in the lyrics are played on the air, the stations almost always use censored or "sanitized" versions of the song from which the word has been omitted or bleeped because record companies know that broadcasting the word "n*gger" is likely to be seen as contrary to the public interest. This is true even though the word is being used by members of the very racial group likely to be offended, and it is being played often to African Americans who are much less likely to find the word offensive when it is used by African American rappers.

Thus, petitioners respectfully suggest that stations can and should remain free to tell viewers or listeners whatever they wish to know about the team - including, statistics, injuries, standings, etc - but by using a different word. Announcing that "Washington Beat Dallas," or that "New York Sacked DC 20-7" conveys the same information while avoiding a harmful racial slur. The fact the many sports commentators - and now even NPR - are voluntarily refraining frm using the racist word proves that it can be done, it isn't unreasonable, and that many in the broadcasting industry themselves recognize that its use is inconsistent with the public interest.

III. ADDITIONALLY, IT CONSTITUTES "PROFANITY"

The FCC says on its website that: "The FCC has defined profanity as 'including [and therefore not necessarily limited to] language so grossly offensive to members of the public who actually hear it as to amount to a nuisance. Like indecency, profane speech is prohibited on broadcast radio and television between the hours of 6 a.m. and 10 p.m." Petitioner respectfully suggests that the repeated and unnecessary use of the word "R*dskins" fits not only within this definition of "profanity,"[5] but also within other common definitions and understandings.

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[5] Indeed, at one point the FCC reportedly included within the definition of "profanity": "certain of those personally reviling epithets naturally tending to provoke violent resentment."

For example, Dictionary.com says that a synonym for "profanity" is "swearing," and few would hesitate to conclude that using words like "N*gg*er," "K*ke," "W*tb*ck," "C*nt," "F*g, or "R*dskins" would constitute swearing. Merriam Webster defines it even more precisely as: noun - "offensive language" or "offensive word," and lists "swearing" as a synonym.

Despite whatever the origins of the word "R*dskins"may be, or the original intent of the owner who first gave the team its name,[6] the evidence is now overwhelming that the current meaning is an offensive demeaning racial swear word, not only to many Native Americans, but also to others. Morever, it's well recognized that the impact of words can change. "N*gg*r (in common use in Mark Twain's time) and "colored people" are now considered derogatory.

For example, in 1999, the U.S. Trademark Trial and Appeal Board ordered the cancellation of the federal registration of seven "R*dskin" trademarks, including the team's name and the helmet logo showing an Indian's head in profile. The three judges unanimously ruled that "a substantial composite of the general public finds the word 'redskin(s)' to be a derogatory term of reference for Native Americans . . . [and] the derogatory connotation of the word . . . extends to the term 'Redskins' as used in [the football team's] marks." The judges ruled that the term was disparaging to Native Americans and tended to bring them "into contempt or disrepute."

They relied upon survey evidence showing 46% of the general public considered the word "offensive," as did a very substantial number of Native Americans. The Board also relied on testimony from linguists and historians that the term "r*dskin" has long been used in a pejorative sense to refer to Native Americans, and quoted testimony to the effect that using the "R word" to refer to Native Americans is on a par with using the "N word" to refer to African Americans.

Of particular note to broadcasters, the panel found that the media frequently plays on the team's name in a manner "that often portrays Native Americans as either aggressive, savages or

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Such a definition would rather clearly include both the N-word and the R-word.

Whether and to what extent this definition remains in effect, the fact that the agency adopted it at one point surely suggests that it has the power to do so again if it wishes, and that it is free to change its interpretation in the light of changed circumstances.

Moreover, under the **Chevron** rule, unless Congress has "DIRECTLY spoken to the PRECISE question at issue" (which it hasn't here), courts must accept whatever reasonable definition the agency provides based upon any permissible construction of the statute.

[6] It is now clear that the name was not given by the original owner in an attempt to honor one of more Indians. See, e.g., The 81-Year-Old Newspaper Article That Destroys The Redskins' Justification For Their Name, http://bit.ly/1hknaNN ; Defense of "Redskins" Name Shattered - Pressure to Now Change "Racist" Name Grows, http://bit.ly/1gDH0CQ

buffoons." [http://bit.ly/W0cMQN] Although the trademark ruling was subsequently reversed on unrelated legal grounds [latches], the factual conclusion is very well documented.

Much more recently, in their own words, the same body, but based upon new and updated evidence, "determined, based on the evidence presented by the parties and on applicable law, that the ***Blackhorse*** petitioners carried their burden of proof.

By a preponderance of the evidence, the petitioners established that the term 'Redskins' was disparaging of Native Americans, when used in relation to professional football services." [http://1.usa.gov/UaR9Nm] Both documents and their factual findings are incorporated by reference. [actual decision at: http://1.usa.gov/1oFCJ5s]

In addition, several states have determined that automobile owners may not use license plates with the word "R*dskins," or anything even pertaining to "R*dskins," because such a display would be contrary to the public interest and expose the public to a swear word, even though such an exposure to any passing motorist - in sharp contrast to the viewers of the instant station -would be so fleeting as to almost go unnoticed.

For example, many years ago, the California Department of Motor Vehicles made a finding that the word "R*dskins" is "an offensive, disparaging term" [http://bit.ly/1nfgAW6]. More recently, the state denied a vanity license plate request because it was remotely related to the word - the plate RDSN57 which represented Washington [R-skins] 1957. [http://aol.it/1ufXbZi], Closer to home, the District of Columbia has outlawed the word "R*dskins" on vanity license plates [http://aol.it/1ufXbZi].

Very similar findings and statements have also been made by other official and/or governmental bodies, including the U.S. Commission on Civil Rights [http://bit.ly/1tQptet], the District of Columbia City Council, American Psychological Association [http://bit.ly/1nfz0G5], the D.C. Metropolitan Washington Council of Governments [which called the Redskins name "demeaning and dehumanizing]," the Governing Council of the American Counseling Association [http://bit.ly/1Cg9ASn], a resolution adopted by many major civil rights organizations [http://wapo.st/1ph3lDH], a coalition of more than 60 religious leaders [http://usat.ly/1nN7a3U], black and Latino organizations [Redskins name condemned by black and Latino groups outside FedEx Field, http://wapo.st/1qgFhGf], and many others too numerous to list separately.

Of perhaps even greater relevance, all of the following Native American organizations - virtually a Who's Who of Indian groups - signed on to a court brief opposing the word "R*dskins":

National Congress of American Indians (NCAI), United South and Eastern Tribes (USET), National Indian Education Association, American Indian Sports Team Mascots.org, Advocates for American Indian Children (California), The Affiliated Tribes of Northwest Indians, American Indian Mental Health Association (Minnesota), American Indian Movement, American Indian Opportunities Industrialization Center of San Bernardino County, American Indian Student Services at the Ohio State University, American Indian High Education Consortium, American Indian College Fund, Americans for Indian Opportunity, Association on American Indian Affairs, Buncombe County Native American Inter-tribal Association (North Carolina), Capitol Area Indian Resources, Cherokee Nation of Oklahoma, Comanche Nation of Oklahoma, Concerned American Indian Parents (Minnesota), Council for Indigenous North Americans (University of Southern Maine), Eagle and Condor Indigenous Peoples' Alliance, First Peoples Worldwide, Fontana Native American Indian Center, Inc., Fort Peck Tribal Executive Board (Assiniboine and Sioux Tribes of Fort Peck Reservation), Governor's Interstate Indian Council, Grand Traverse Band of Ottawa and Chippewa Indians (Michigan), Greater Tulsa Area Indian Affairs Commission, Great Lakes Inter-Tribal Council, Gun Lake Band of Potawatomi Indians (Michigan), HONOR – Honor Our Neighbors Origins and Rights, Inter-Tribal Council of the Five Civilized Tribes (Composed of the Choctaw, Chickasaw, Muskogee (Creek), Cherokee, and Seminole Nations), Inter Tribal Council of Arizona, Juaneño Band of Mission Indians, Kansas Association for Native American Education, Little River Band of Ottawa Indians (Michigan), Maryland Commission on Indian Affairs, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Gun Lake Tribe, Medicine Wheel Inter-tribal Association (Louisiana), Menominee Tribe of Indians (Wisconsin), Minnesota Indian Education Association, National Indian Gaming Association, National Indian Youth Council, National Indian Child Welfare Association, National Native American Law Student Association, Native American Finance Officers Association (NAFOA), Native American Rights Fund (NARF), Native American Caucus of the California Democratic Party, Native American Indian Center of Central Ohio, Native American Contractors Association, Native American Journalists Association, Native Voice Network, Nebraska Commission on Indian Affairs, Nottawaseppi Huron Band of Potawatomi (Michigan), North Carolina Commission of Indian Affairs, North Dakota Indian Education Association, Office of Native American Ministry, Diocese of Grand Rapids (Michigan), Ohio Center for Native American Affairs, Oneida Tribe of Indians of Wisconsin, Oneida Indian Nation, Poarch Band of Creek Indians, San Bernardino/Riverside Counties Native American Community Council, Seminole Nation of Oklahoma, Society of Indian Psychologists of the Americas, Society of American Indian Government Employees, Southern California Indian Center, St. Cloud State University – American Indian Center, Sault Ste. Marie Tribe of Chippewa Indians (Michigan), Standing Rock Sioux Tribe (North Dakota), Tennessee Chapter of the National Coalition for the Preservation of Indigenous Cultures, Tennessee Commission of Indian Affairs, Tennessee Native Veterans Society, Tulsa Indian Coaltion Against Racism, The Confederated Tribes of the Colville Reservation, The Three Affiliated Tribes of the Fort Berthold Indian Reservation, Unified Coalition for American Indian Concerns, Virginia, The United Indian Nations of Oklahoma, Virginia American Indian Cultural Resource Center, Wisconsin Indian Education Association, WIEA "Indian" Mascot and Logo Taskforce (Wisconsin), Woodland Indian Community Center-Lansing (Michigan), and Youth "Indian" Mascot and Logo Task force.

Similarly, the following groups have reportedly passed resolutions or issued statements regarding their opposition to the name of the Washington NFL team:

Affiliated Tribes of Northwest Indians, Cherokee Nation of Oklahoma, Comanche Nation of Oklahoma, The Confederated Tribes of the Colville Reservation (Washington), Grand Traverse Band of Ottawa and Chippewa Indians (Michigan), Hoh Indian Tribe, Inter Tribal Council of Arizona, Inter-Tribal Council of the Five Civilized Tribes, Juaneño Band of Mission Indians (California), Little River Band of Ottawa Indians (Michigan), Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, Gun Lake Tribe (Michigan), Menominee Tribe of Indians (Wisconsin), Oneida Indian Nation (New York), Oneida Tribe of Indians of Wisconsin, Navajo Nation Council, Penobscot Nation, Poarch Band of Creek Indians, Samish Indian Nation (Washington), Sault Ste. Marie Tribe of Chippewa Indians (Michigan), Shoshone-Bannock Tribes (Idaho), Standing Rock Sioux Tribe (North Dakota), The Three Affiliated Tribes of the Fort Berthold Indian Reservation (North Dakota), United South and Eastern Tribes (USET), Advocates for American Indian Children (California), American Indian Mental Health Association (Minnesota), American Indian Movement[152], American Indian Opportunities Industrialization Center of San Bernardino County, American Indian Student Services at the Ohio State University, American Indian High Education Consortium, American Indian College Fund, Association on American Indian Affairs, Buncombe County Native American Inter-tribal Association (North Carolina), Capitol Area Indian Resources (Sacramento, CA), Concerned American Indian Parents (Minnesota), Council for Indigenous North Americans (University of Southern Maine), Eagle and Condor Indigenous Peoples' Alliance, First Peoples Worldwide, Fontana Native American Indian Center, Inc. (California), Governor's Interstate Indian Council, Greater Tulsa Area Indian Affairs Commission, Great Lakes Inter-Tribal Council (Wisconsin), HONOR – Honor Our Neighbors Origins and Rights, Kansas Association for Native American Education, Maryland Commission on Indian Affairs, Medicine Wheel Inter-tribal Association (Louisiana), Minnesota Indian Education Association, National Congress of American Indians (NCAI), National Indian Child Welfare Association, National Indian Education Association, National Indian Youth Council, National Native American Law Student Association, Native American Caucus of the California Democratic Party, Native American Finance Officers Association (NAFOA), Native American Journalists Association, Native American Indian Center of Central Ohio, Native American Journalists Association, Native American Rights Fund (NARF), Nebraska Commission on Indian Affairs, Nottawaseppi Huron Band of Potawatomi (Michigan), North Carolina Commission of Indian Affairs, North Dakota Indian Education Association, Office of Native American Ministry, Diocese of Grand Rapids (Michigan), Ohio Center for Native American Affairs, San Bernardino/Riverside Counties Native American Community Council, Seminole Nation of Oklahoma, Society of Indian Psychologists of the Americas, Southern California Indian Center, St. Cloud State University – American Indian Center, Tennessee Chapter of the National Coalition for the Preservation of Indigenous Cultures, Tennessee Commission of Indian Affairs, Tennessee Native Veterans Society, Tulsa Indian Coalition Against Racism, The Confederated Tribes of the Colville Reservation, Unified Coalition for American Indian Concerns, Virginia, The United Indian Nations of Oklahoma, Virginia American Indian Cultural Resource Center, Wisconsin Indian Education Association, WIEA "Indian" Mascot and Logo Taskforce (Wisconsin), Woodland Indian Community Center-Lansing (Michigan), Youth "Indian" Mascot and Logo Task force (Wisconsin)

In short, virtually every major American Indian tribe or nation, as well as virtually all major Native American organizations, have publicly expressed their view that the word "R*dskins"

is not only an insulting racially disparaging term, but that it is uniquely harmful - far more than any other slang word sometime used to ridicule American Indians, and certainly far more than other common Indian-related team names such as "Chiefs," "Braves," "Indians," "Blackhawks," "Warriers " etc. which haven't been defined in dictionaries or legal proceedings as racist slurs.

To this ever growing caucus of serious concern about the continued use of the word "R*dskins," one must of course add the President of the United States, fifty U.S. Senators, dozens of members of the House, many in the print as well as broadcast media who believe that the word "R*dskins" is so harmful it will no longer be used on the air [See, e.g., NFL media voices likely not to use 'Redskins' on TV, http://bit.ly/1sT4V2q], the even the editorial page of the Washington Post and the entire New York Daily News newspaper.

It is respectfully submitted that if the use of the word is so profane that it should not be used on the editorial page - where the need for its use may occur only one or two times a month, and where it will virtually never be seen by a child or even an impressionable teen - and a major champion of free speech like the Post would voluntarily agree to such self censorship, the word has no place being used unnecessarily and repeatedly on the air during prime time where impressionable teens and even pre-teens are exposed to it hundreds of times in as little as an hour.

While some broadcasters may seek to argue that they, like the Washington Post, should be able to decide the issue for themselves, they overlook a vital distinction. While there may be more outlets for opinion that in the past, broadcaster still enjoy a very valuable government-created monopoly. Those who wish to print and distribute a competing paper in Washington DC are free to do so, whereas no one else can broadcast on Channel 11 in Los Angeles without a permit from the FCC. Similarly, cable TV stations are free to broadcast profanity which conventional TV stations cannot, because anyone can start a cable TV station, but conventional TV stations can only be operated on a very limited number of frequencies, and are therefore regulated by the FCC.

Moreover, broadcasters recognize that it is clearly inappropriate, and perhaps in violation of federal broadcast law, to permit racial slurs on the air, even momentarily and without any preplanning. "Banzhaf points out that Jimmy 'The Greek' Snyder, Don Imus, Juan Williams, Pat Buchanon, and others, have been suspended or fired for their use of racial slurs" [Banzhaf Right On With Attack on Washington Redskins Name, http://bit.ly/1ugv5wN], while Chef Paula Dean lost her show for just saying the word, in private, dozens of years ago when it was common in the South.

Surely by now, with growing concern over racial harassment, the FCC would not tolerate any station which repeatedly and unnecessarily used the word "N*gg*r on the air, since it is so clearly a hateful racist "swear word" that its use goes beyond being a mere "nuisance" in the agency's current definition of profanity. Likewise, in view of the very strong consensus by so many

people and organizations that the word "R*dskins" is also so clearly a hateful racist "swear word" as noted in this section, the R-word should be treated no less seriously than the N-word.

Since the FCC's own existing definition of "profanity" provides that it includes language "so grossly offensive . . . as to amount to a nuisance," it is appropriate to note that most definitions of the word "nuisance" would include swear words such as "N*gg*r" and "R*dskins."

For example, Dictionary.com says "nuisance" includes an "annoying . . .thing," and under "Law" says it is "something offensive or annoying to individuals or to the community."

Merriam Webster defines it to include something which is "annoying, unpleasant, or obnoxious," and the Oxford Dictionary definition includes a "thing . . causing inconvenience or annoyance." In view of the large number of organizations as well as individuals which have complained about the repeated use of the word "Redskins," it is obviously something they regard as annoying and offensive.

Moreover, many statutes prohibit the use of swear words in public places where they can be heard by others, and some even refer to such situations as a "nuisance" because people - including impressionable young children - are involuntarily subjected to such offensive language. In many other situations, such public use of swear words and other ethnic slurs is considered a nuisance but is simply prosecuted as disturbing the peace.

But no matter what it is called, it is probably true that in most cities a speaker on a soapbox shouting out words like "N*gger," "R*dskins," "W*tbacks," etc. would be arrested, whereas a speaker expressing in non-racist language the same controversial or even hateful views about African Americans, Native Americans, Hispanics, etc. would be allowed to continue because his views regarding such groups - whether racist or not - are protected.

For example, it should be noted that limiting the use of swear words, especially those regarded as most highly offensive, does not inhibit the ability of a person, including a broadcaster, to express opinions related to the group referred to. Thus any individual who wished to share his view that "n*gg*s are all thieves or liars or lazy" or that "n*gg*rs" should go back to Africa can express the same sentiments simply by substituting the word "black" or "African American" for the totally unnecessary racial slur.

Similarly, a broadcaster who wanted to say anything on the air, good or bad, about Indians - e.g., "R*dskins are drunks and savages" or that "R*dskins know how to live close to the land" can likewise say exactly the same thing by substituting the word "Indian" or "American Indian" or "Native American" for a word repeatedly held to be a derogatory racist slur. In short, profanity

is entitled to little if any protection as free speech because it adds nothing to - and is unnecessary for - the conveyance of any thoughts or ideas, hateful or otherwise.

In short, the FCC clearly has the authority to define the word "profane" in 18 U.S.C.A. § 1464 to include grossly offensive derogatory racial slurs. This would be consistent with the definition of "profanity" and/or "profane" in many dictionaries. It would also be consistent with dictionary definitions of the word "nuisance" which is included in the existing FCC definition.

Finally, the many complaints by Indian and non-Indian organizations, determinations by governmental bodies, and the growing number of people - including many in the media who will no longer use the term - make it abundantly clear that the word "R*dskins," whether used as a team name or not, is "grossly offensive to members of the public" - the essence of the FCC's definition.

IV. ADDITIONALLY, IT CONSTITUTES "FIGHTING WORDS" WHICH ENJOY NO LEGAL PROTECTION

Words like "N*gg*rs, Sp*cs, W*tb*acks, Ch*nks, K*kes, C*nts, F*gs, etc., are all quintessent examples of fighting words which the courts have repeatedly held are entitled to no constitutional or other legal protection because they aren't necessary for - and add nothing to - the expression of viewpoints and ideas, and because they tend to incite violence. At the very least, those broadcasters which use them repeatedly and unnecessarily during prime time can have their license renewal requests denied, just as those who utter them on the street can be punished.

`For example, the North Dakota Supreme Court recently held that the word "n*gger" was a fighting word.[7] Indeed, even the ACLU has admitted that racial epithets can constitute "fighting words," using as an example a white student who stops a black student on campus and utters a racial slur.[8] Also, citing instances in Spokane, Los Angeles, Florida, and in Cincinnati (involving Cincinnati Reds owner Marge Schott) where speakers used racial slurs, the Seattle Times wrote: "In all of these cases, experts classify the stigmatizing language as 'fighting words.'"[9]

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[7] See, e.g., In the Interest of H.K., a Child v. H.K,, 778 N.W.2d 764 (2010); In the Interest of A.R., a Child v. A.R., 781 N.W.2d 644 (2010).

[8] See Hate Speech [https://www.aclu.org/free-speech/hate-speech-campus]

[9] See Fighting Words -- No Matter Who Uses Them, Racial Slurs Ultimately Serve To Denigrate And Divide [3/19/93]
[http://community.seattletimes.nwsource.com/archive/?date=19930319&slug=1691293e]

"Fighting words" are defined as "those that by their very utterance inflict injury or tend to incite an immediate breach of the peace" - which is exactly what these Native American petitioners are contending, and as to which they have sworn under oath in the attached affidavit.

Rather clearly a racial slur is more likely to trigger violence than most other general purpose insults. For example, calling an African American a "n*gger" or even a "sp*de s more likely to trigger a breach of the peace than calling him an "*sshole" or a "dumb*ss." Moreover, the same is true when the words are used in expressing a viewpoint.

For example, saying that "African Americans are dirty and stupid" may enjoy considerable constitutional protection even though offensive and even hateful, but saying that "n*ggers are dirty and stupid" is entitled to little if any protection because the addition of the fighting word "n*gger" is designed only to inflame and not to inform, and adds nothing to the expression of the ideas the speaker - for example, a broadcaster - might wish to convey.

In this connection, it might be well to note the letter that public interest law professor John Banzhaf wrote to FCC Chairman Tom Wheeler, responding to a letter to the Chairman from the organization "National Religious Broadcasters." That letter opposed a possible hearing on "hate speech" on our nation's airwaves by suggesting that any such investigation might "expunge opposing viewpoints [presumably from religious broadcasters] from the marketplace of ideas." In reply Banzhaf wrote:

As a attorney who actively defends the First Amendment, I do not share the Mr. Johnson's concern that the FCC reviewing the many studies which show that the repetitive and unnecessary on-air use of the word "R*dskins" causes harm to many American Indians, and to take any such finding into account as one factor in determining whether a station - which repeatedly and unnecessarily used a word found in many legal proceedings to be a "racial slur" - is in fact operating in the "public interest"as the law requires, would either violate the Constitution or "expunge opposing viewpoints from the marketplace of ideas."

For example, my petition would have no impact on religions or religious leaders who may wish to express strong feelings about homosexuality, homosexual acts, the homosexual lifestyle, etc. - even if some would regard such views as "hateful" views - provided they did not deliberately and repeatedly and unnecessarily use words on the air like "f*g," "f*ggot," "f*iry, etc. which most people would regard as hateful.

For example, one can easily preach that homosexuals are sinning without using the word "f*ggots," - a word which adds nothing to the weight of the assertion itself. Similarly, in the area of policy rather than religion, one can argue against what some call the "homosexual agenda" without saying that "f*gs" have an agenda, or that it is a "f*g agenda."

In short, one can express and debate religious or other ideas without repeatedly and unnecessarily using the words which are most derogatory if not hateful regarding those one wishes to condemn, no matter how strongly. Thus the "marketplace of ideas" can and should remains open and vibrant, even if those participating on the public's airwaves may be somewhat limited in repeatedly and unnecessarily hurling degrading racist epithets at each other.

It is well to remember that not all speech is completely insulated by the Constitution. For example, a public employee making statements pursuant to his official duties containing words like "n*gger" or "r*dskin can constitutionally be disciplined and even fired. Someone shouting those same words in a crowded theater, or even on the street, would probably be arrested. A cereal ad claiming that "it gives you energy to beat up n*ggers, r*dskins, and f*gs" would probably prompt a cease and desist order from the FTC. And, as repeatedly noted, a station which repeatedly and unnecessarily used on the air words like "N*gg*rs, Sp*cs, W*tb*acks, Ch*nks, K*kes, C*nts, F*gs, etc. no doubt face at very least a hearing, and much more likely to loss of its broadcast license. Petitioners seek no more - but also no less - here.

V. ADDITIONALLY, IT CONSTITUTES "HATE SPEECH"

In addition to clearly being a "nuisance," a "swear word," "profanity," and a "fighting word," the repeated and unnecessary use of the word "R*dskins" arguably also constitutes "hate speech" - hate speech which, upon information and belief, and based upon the evidence cited herein, causes, contributes to, and /or exacerbates beatings, bullying, intimidation, and other attacks and forms of violence upon Native American children and adults.

A rough definition of "hate speech" found on Wikipedia is: "Hate speech is, **outside the law**, speech that **attacks** a person or **group on the basis of e.g. race**, religion, gender, disability, or sexual orientation. In law, hate speech is any speech, gesture or conduct, writing, or display which is forbidden because it **may incite violence or prejudicial action** against or by a protected individual or group, **or** because it **disparages** or intimidates a protected individual or group." [emphasis added]. Other standard dictionary definitions generally agree.

As previously noted, several governmental or other authoritative bodies have found that the word "R*dskins" does disparage American Indians on the basis of their race. More importantly, many of the studies previously cited, including some included as an Appendix, provide evidence that such disparagement can and does lead to violence against Indians either directly or indirectly. Also Petitioner has alleged under oath in the attached affidavit that "I have experienced and/or witnessed and/or other Native Americans which I believed was caused by the frequent repetitive use of the use of the word 'R*dskins' on the air."

In this context, it should be noted that more than 30 organizations have already petitioned the FCC to, at the very least, investigate the extent to which hate speech on radio and TV causes, contributes to, or even exacerbates physical and/or other hate crimes - including bullying and/or other violence - against disparaged individuals. These organizations include:

National Hispanic Media Coalition ("Nhmc"), Benton Foundation, Center for Media Justice, Center for Rural Strategies, Center on Latino and Latina Rights and Equality of the City University of New York School of Law, Common Cause, Esperanza Peace and Justice Center, Free Press, Hispanic / Latino, Anti-defamation Coalition Sf, Industry Ears, Joint Center for Political and Economic Studies, La Asamblea De Derechos Civiles, League of Rural Voters, League of United Latin American Citizens ("Lulac"), Main Street Project, Media Action Grassroots Network ("Mag-net"), Media Alliance, Media Justice League, Media Literacy Project, Media Mobilizing Project, Mountain Area Information Network, National Alliance for Media Arts and Culture, National Association of Latino Independent Producers ("Nalip"), Nosotros, Office of Communication, United Church of Christ, Inc., Peoples Production House, Praxis Project, Prometheus Radio Project, Rainbow Push Coalition, Reclaim the Media, Transmission Project, and the United States Hispanic Leadership Institute

In a related development, Congress is now considering The Hate Crime Reporting Act of 2014 (S.2219 and HR. 3878) which relates to the role of media, including radio and TV, "in encouraging hate crimes based on gender, race, religion, ethnicity, or sexual orientation." This issue should, of course, be of particular importance to the FCC because it appears, under current law, to be the only agency capable of taking any action, since **non-broadcast media are generally unregulated.** That's why more and more people appear to be asking, **"Why Won't the FCC Treat Hate Speech the Same As Foul Language?,"** http://www.laprogressive.com/fcc-hate-speech/ .

While the general topic of "hate speech" is so broad and complex, potentially covering many different types of words and statements, and many different types of harm as to which the causal connection may be vague if not nonexistent, the instant petition provides an opportunity for the FCC to at least take some initial action related to this issue in a manageable format and scope. A petition seeking to deny a license renewal pursuant to 47 U.S.C.A. § 309(d) - unlike a general petition to the agency - does by law require a response. More specifically, unless there are absolutely no "substantial and material questions of fact," an investigation and a hearing are called for.

Here petitioner has alleged that the applicant has repeatedly and totally unnecessarily broadcast a word which constitutes "hate speech" because it disparages Native Americans on the basis of their race. It also alleges, based upon numerous studies cited herein, and others which may well be presented shortly, that such "hate speech" has and does lead to, contribute to, and /or exacerbate violence against Indians either directly or indirectly.

Since broadcasts leading to violence would obviously be relevant in deciding whether the license should be renewed - and the allegedly harmful broadcasting conduct be allowed to

continue - it would appear that a hearing would be required. By holding such a hearing - at which both sides can present to the agency the evidence available on this important issue - the agency would be taking, at the very least, a step in the direction of responding to the many calls for an even broader investigation, and to some extent to the concerns behind The Hate Crime Reporting Act. Indeed, because of its regulatory authority over the broadcasting industry, including the power to require both disclosure and reports related to the broadcast of alleged "hate speech" and its effects, the FCC may well be the agency in the best position to conduct such a thorough inquiry.

Petitioner therefore respectfully suggests that, in addition to addressing this petition on the basis of the more traditional grounds which have already been discussed the FCC also consider it as a request to investigate, through a hearing and/or other appropriate means: **[1]** whether words like "N*gg*r" and "R*dskins" can be said to constitute "hate speech," **[2]** to what extent is it appropriate if not necessary for the FCC to consider if not oversee such "hate speech" at least to some extent, and **[3]** to what extent can the FCC reasonably conclude that such "hate speech' causes, contributes to, and/or exacerbates violence against those singled our for disparagement.

VI. ADDITIONALLY, IT CREATES A "HOSTILE WORK ENVIRONMENT"

Repeatedly and unnecessarily using the word "R*dskins" on the air forces all on-air talent, as well as others who work at the station, to regularly use a racist word - creating work environment where employees must use and be exposed to words like "N*gg*r," "Sp*c," "R*dskin."

While issues of "hostile environment," racial and gender discrimination, etc., are normally handled by one or more other federal agencies, this in no way relieves the FCC of its specific legal obligation to insure that broadcasters operate in the public interest. Thus, where the problem is alleged to occur with a broadcaster, the FCC should take action in accordance with the principles which would ordinarily be applied by those agencies to non-broadcast entities

For example, assume that an African American male working for a newspaper is required to daily read, write, and review newspaper copy. If such copy repeatedly and unnecessarily uses the words "N*gger," "J*gaboo," "Sp*de," "S*mbo," etc., forcing him work with such copy might well constitute to be a clear case of racial harassment.[10]

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[10] Far more than a "mere offensive utterance," the word "nigger" is pure anathema to African-Americans. "Perhaps no single act can more quickly alter the conditions of employment and create an abusive working environment than the use of an unambiguously racial epithet such as 'nigger' by a supervisor in the presence of his subordinates." Rodgers v. Western-Southern Life Ins. Co., 12 F.3d 668, 675 (7th Cir. 1993) (citation and internal quotation marks omitted). White v. BFI Waste Servs., LLC, 375 F.3d 288, 298 (4th Cir., 2004) Some words are so offensive that,

This would be true even though newspapers are not required to operate in the public interest, there is no federal or other agency to oversee them, they require no licenses to operate, and they enjoy the very highest level (sometimes call "core") of protection under the First Amendment.

Thus, if exactly the same conduct occurred at a radio or TV station, one would assume that it would no less constitute a racially hostile workplace environment subject to corrective action by the FCC as well as other agencies, regardless of any First Amendment considerations.

Similarly, requiring a female employee to read scripts which regularly and unnecessarily used highly offensive language related to women generally (e.g., "C*nt," "B*tch," "Wh*ore" or "H*," "Sl*t," etc.) or to females and sex ("T*ts," "P*ssy," "L*sbo," etc.) on a cable television station would likewise constitute a hostile work environment and subject the broadcaster to appropriate sanctions or other legal actions, even though cable broadcasters are not required to have licenses subject to review by the FCC.

Thus, similarly, if exactly the same conduct occurred at a radio or TV station, one would assume that it would no less constitute a hostile workplace environment based on sex and subject to corrective action, regardless of any First Amendment considerations.[11]

In this connection, it should be noted that use of racial, ethnic, and other slurs can create a hostile work environment for any employee, even if he or she is not a member of the group being disparaged by the slur. For example, a white employee who is concerned about race relations and discrimination, has many African American friends or even an African American spouse or child, etc., may be very offended and made to feel uncomfortable by a station which regularly and unnecessarily uses the word "n*gger" on the air.

Similarly, a male employee dedicated to issues of sexual equality may be made to feel very uncomfortable by office place derogatory jokes about women and their anatomy, or by the constant use of words like "C*nt," "B*tch," "Wh*ore," "H*," "Sl*t," "T*ts," "P*ssy," "L*sbo," etc.

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when uttered repeatedly, they can foster "an abusive working environment" even if they are not accompanied by threat of physical injury. Spriggs, 242 F.3d at 185. The presence of race-based physical threats undeniably strengthens a hostile work environment claim. The absence of such, however, is in no way dispositive, when there is sufficient evidence from which a reasonable jury could conclude that allegedly harassing conduct was otherwise "humiliating." See Harris v. Forklift Sys., Inc., 510 U.S. 17, 23, 126 L. Ed. 2d 295, 114 S. Ct. 367 (1993). Summary of Hostile Work Environment [emphasis added]

[11] The law is clear that an employee need not necessarily complaint that a workplace is hostile if the hostility is so clear that it would affect a reasonable person in a similar situation.

Thus, he would have a valid complaint of a hostile work environment based upon the repeated and unnecessary use of derogatory slur words aimed at or related to women.

Needless to say, any Native American even thinking of working at the instant station would face and feel a very hostile work environment by the constant use of the most derogatory people of his ethnic background. For that reason alone, it is quite possible that many are forced not to even apply.

But members of other minority groups - e.g., African American, Asians, Hispanics, etc. - might likewise experience a hostile work environment in a workplace where even one racially derogatory word is constantly used, especially if he or she must read or handle copy containing that racist word and/or is one of the few minority employees at the station.

And, just like the man who experiences a hostile work environment based upon the constant use of words derogatory to women, European American workers may likewise be made to feel very uncomfortable by the repetitive and unnecessary use of any words derogatory to his neighbors and friends, whether the words are "n*gger," "sp*c," "redskin," or c*nt."

VII. The agency would never countenance stations repeatedly and unnecessarily broadcasting words like "N*gg*rs, Sp*cs, W*tb*acks, Ch*nks, K*kes, C*nts, F*gs, etc., even as the name of a team or musical group. If the N-word (like all the others) is impermissible because it offends many (although clearly not all) blacks, the repeated and unnecessary use of the R-word should also be because it similarly offends many (although clearly not all) Native Americans.

Putting aside the specific legal theory under which this matter should best be addressed - i.e., under the general "public interest" standard, as akin to "obscenity," as "profanity," 'fighting words," "hostile work environment," and/or as "hate speech" - all discussions of this topic in the media start with the very reasonable assumption and belief that the FCC would not continue to permit - and certainly would not renew the license of - any station which unnecessarily and repeatedly used words like "N*gg*rs, Sp*cs, W*tb*acks, Ch*nks, K*kes, C*nts, F*gs, etc. This is the view not only of laymen including editorial writers and commentators, as well as legislators, but also those who practice broadcast law. For example:

> America wouldn't stand for a team called the Blackskins — or the Mandingos, the Brothers, the Yellowskins, insert your ethnic minority here. Wise, ***Washington Post***, [3/10/13] - Cited in the letter by former FCC Chairman Reed Hundt, former FCC Commissioners Nicholas Johnson and Jonathan Adelstein, and other experts

> We'd never allow, for example, nor should we allow, a Washington Blackskins or a Washington Yellowskins. Nor would we allow a baseball team to be called the Cleveland Jews. And yet, thanks to this prejudicial pecking order, we somehow justify keeping Native Americans at the bottom of societal barrel, treating them in ways that we'd never tolerate for another race and religion. Washington Redskins, Blackskins or Yellowskins? http://huff.to/1uh1006

So why this strangely disparate treatment. Some have suggested that use of this racist name is excusable because owner Dan Snyder doesn't intend to disparage Native Americans. But at least with regard to trademarks, that is not a valid legal defense.

That's why, for example, trademarks have been denied for "Redskins Pork Rinds" [http://bit.ly/1vYTQ1R] with no proof of intent to disparage. Indeed, when an Asian-American dance rock band sought to trademark the word "Slants," the application was rejected. Similarly, a Jewish magazine which wanted to name itself "Heeb" could not obtain a trademark because the word - whatever the intentions of the Jewish publishers - is racist and derogatory.

Whatever the merits of those particular decisions, the instant situation is very different. Dan Snyder is not a Native American; there are apparently no American Indians on the team who want the name to refer to themselves (like the Slants, or Heeb magazine), and Dan Snyder's historical arguments have all been debunked.[12]

Even if true, they do not protect Native American children from being beaten up or otherwise picked on or bullied by classmates who call them "R*dskins" after hearing the word so often on the radio.

Perhaps the closest analogy to the current issue - whether it is permissible to repeatedly and unnecessarily use on the air a word defined by dictionaries and many others as racially disparaging because it is the name of an entity - is a group whose name was virtually never used on the air simply because it sounded like the N-word.

This argument was addressed in Banzhaf, Paula Deen's N****rs vs. Dan Snyder's R*****ns: What's the Difference? http://bit.ly/1tmogNb]

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[12] It is now clear that the name was not given by the original owner in an attempt to honor one of more Indians. See, e.g., The 81-Year-Old Newspaper Article That Destroys The Redskins' Justification For Their Name, http://bit.ly/1hknaNN ; Defense of "Redskins" Name Shattered - Pressure to Now Change "Racist" Name Grows, http://bit.ly/1gDH0CQ

> Some defenders of the name have argued that, while the term "redskins" may be racist and derogatory when addressed to or used to refer to persons of a specific heritage, it is not racist or derogatory – and therefore may properly be used on the air by broadcasters – when it refers to the name of an entity such as a team, group, or organization.
>
> But, for example, the complete and proper name of the former musical group Niggaz Wit Attitudes was never said on the air, even by black stations, and even though the N-word was used here to refer to a group and not in any racial or derogatory sense, and the group was made up of African Americans who freely chose the word "Niggaz" to describe and express themselves. In contrast, Indians are not on Snyder's football team, and did not choose the name "Redskins" for themselves.

There can of course be situations in which words like "R*dskins" and "N*ggers" may legitimately be used on the air. Fox example, when CNN host Don Lemon aired an hour-long discussion program entitled The N-Word," he himself used the word several times. But arguably, when used by a black person on an adult program centered around the very use of the word, it should not be objectionable.

However, it should be noted that even when it was used on the air as part of discussion about the proper use of the word, it can be controversial - especially when used repeatedly and unnecessary - by a white. Dr. Laura's N-Word Rant: Radio Host Apologizes For Offensive Language, http://huff.to/1tmZv3v

In short, the occasional use of racially derogatory words like "N*gg*rs, Sp*cs, W*tb*acks, Ch*nks, K*kes, C*nts, F*gs, or "R*dskins," as part of a discussion about the use of such words, and/or racism or discrimination or hatred and hate crimes in general - especially when clearly intended for an adult audience which can consider it in context - may be acceptable.

But when the word is bandied about hundreds of times in a broadcast hour during discussions of topics completely unrelated to Native Americans or race - e.g., where the discussion about the team's chances, injuries, statistics, etc. can easily be conducted without using a racist word - and it is done during prime time when teens and pre-teams who largely lack the sophistication to evaluate words in context are listening and being affected, it is respectfully suggested that the FCC must at least investigate to be sure that such uses serve the public interest as federal law requires.

This agency, its chairmen, and its commissioners have always demonstrated in the past that they can deal, one way or the other, with new and emerging problems and situations as they from time to time arise, even where some of their actions may be controversial. The agency's decision applying the "Fairness Doctrine" to cigarette commercials, though highly controversial to broadcasters, the tobacco industry, and to many members of Congress at the time, nevertheless led

to the first significant decline in cigarette consumption in the U.S.- something even the Surgeon General's report a few years earlier could not do - and to the eventual ban on cigarette commercials.

Looking back now, most people would say that such action by the government was long overdue, and the FCC can claim credit for saving millions of lives, including those of many innocent children who would otherwise have taken up the deadly habit of smoking.

With all due respect, many are saying the same thing here. Taking appropriate action to deal with the repetitive and unnecessary use on the air of a word which - despite the possible intentions of the team's owner, and/or the dedication of many long time fans - is the most derogatory word in the English language for our first citizens, is long overdue.

If the agency would not stand idly by if a station repeatedly and unnecessarily used the word "n*gger" on the air - regardless of the justifications and excuses and public relations defenses offered up by the owner - it should not do so here.

Congress gave it an incredible broad mandate for good with words "public interest, convenience, and necessity" as its statutory guide, and the U.S. Supreme Court with its Chevron decision has insured that it has ample leeway to define and if necessary redefine the terms of the statutes under which it operates.

It should not hesitate to take appropriate action regarding a problem which at least three commissioners - as well as the President, half the Senate, many in the House, virtually all Native American organizations, and most civil rights groups - have all acknowledged.

Petitioner also respectfully suggests and alleges that the station's programming lacks diversity, especially regarding and relating to the interests of Native Americans.

SUMMARY, CONCLUSION, AND PRAYER FOR RELIEF

Petitioner, in support of his formal petition to deny renewal of KTTV-TVs broadcast license, pursuant to 47 U.S.C.A. § 309(d), has alleged that he is a viewer of the station, that he and others similarly situated are adversely affected or aggrieved by the actions of the station, especially its practice of repeatedly and unnecessarily using on the air an offensive derogatory racial slur referring to Native Americans - indeed, the most derogatory racist slur referring to them. He asserts that such actions are inconsistent with the station's obligations under federal broadcast law to operate in the public interest, that it akin to broadcasting obscenity, that it also amounts to profanity, fighting words, and that such words amount to hate speech.

Petitioner has also alleged, upon information and belief, and based upon the numerous scientific and other studies cited herein and included by reference, that the repeated broadcasting of this racial slur causes, contributes to, or exacerbates physical harm, bullying, and other adverse effects. He also alleges that the station's policy forces most of its employees to be involuntarily exposed to this racist word, and forces many to use it on the air, even though Indians or even others sensitive to the use of racist slang might find this very objectionable, upsetting, and/or contrary to their religious, ethical, or moral views, in short, a hostile work environment - e.g., like expecting black employees to work at a station where they are constantly exposed to the word "N*gg*er," and even required to use it on the air.

Unless the FCC can conclude, as a matter of law, and giving Petitioner's allegations - and all inferences which can reasonably be drawn from them - a broad reading, that:
[1] repeatedly and unnecessarily using a word found by so many to be a highly derogatory racial slur is entirely consistent with a broadcast licensee's legal obligation to operate in the public interest;
[2] that it is not akin to obscenity as has been suggested by so many broadcasting law experts;
[3] that it cannot possibly constitute profanity under the existing or possibly an expanded definition;
[4] that it does no harm whatsoever to Indian children and adults, and other children and adults; and
[5] that forcing employees to be exposed to - and to use on the air - a racial slur, is permissible;
it should, by law, require a hearing as to those substantial and material questions of fact which require an evidentiary hearing to resolve, much less before renewing this broadcast license itself.

Needless to say, granting the license, especially without holding a hearing of any disputed issues of fact, will undoubtedly by interpreted by many - including groups representing African Americans and Hispanics - as opening the door wide for all broadcasters across the country to freely and repeatedly use terms which are highly offensive slurs to blacks, Latinos, and others.

PETITIONER'S NAME Larry W. Smith
ADDRESS 2187 E.21st. Street Apt. H, Signal Hill, CA 90755

Appendix A

Primary References

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APPENDIX B - SELECTED ARTICLES WITH LINKS SHOWING HARM TO NATIVE AMERICANS

Friedman, The Harmful Psychological Effects of Washington's Redskins Mascot, http://banzhaf.net/HarmIndians/HARMThe%20Harmful%20Psychological%20Effects%20of%20Washington%27s%20Redskins%20Mascot.PDF

MISSING THE POINT - The Real Impact of Native Mascots and Team Names on American Indian and Alaska Native Youth, http://cdn.americanprogress.org/wp-content/uploads/2014/07/StegmanAIANmascots-reportv2.pdf

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American Indians and Bullying in Schools, http://banzhaf.net/HarmIndians/HARMBullying.pdf

Trauma Exposure in American Indian/Alaska Native Children, http://banzhaf.net/HarmIndians/HARMTrauma.pdf

AMERICAN INDIAN ISSUES - Indian Mascots, Symbols, and Names in Sports: A Brief History of the Controversy, http://americanindiantah.com/lesson_plans/ml_mascots.html

VIDEO - Michael Friedman, "Change The Mascot Symposium Remarks by Dr. Michael Friedman," http://indiancountrytodaymedianetwork.com/2013/09/27/harmful-psychological-effects-washingtons-redskins-mascot

Fryberg, Of Warrior Chiefs and Indian Princesses: The Psychological Consequences of American Indian Mascots, http://banzhaf.net/HarmIndians/HARMfrybergmarkusoysermanstone2008.pdf

Huben, The American Indian Mascot, http://banzhaf.net/HarmIndians/HARMscholarworks.PDF

Kim-Prieto, Effect of Exposure to an American Indian Mascot on the Tendency to Stereotype a Different Minority Group, http://banzhaf.net/HarmIndians/HARMkim-prieto_-_web_etal_effec.pdf

Locklear, Native American Mascot Controversy and Mass Media Involvement: How the Media Play a Role in Promoting Racism Through Native American Athletic Imagery, http://banzhaf.net/HarmIndians/HARMElizabethLocklearXX.pdf

See Generally, **Hirschfelder et al., American Indian Stereotypes in the World of Children: A Reader and Bibliography**

APA Resolution Recommending the Immediate Retirement of American Indian Mascots, Symbols, Images, and Personalities by Schools, Colleges, Universities, Athletic Teams, and Organizations

WHEREAS the American Psychological Association has recognized that racism and racial discrimination are attitudes and behavior that are learned and that threaten human development (American Psychological Association, June 2001);

WHEREAS the American Psychological Association has resolved to denounce racism in all its forms and to call upon all psychologists to speak out against racism, and take proactive steps to prevent the occurrence of intolerant or racist acts (American Psychological Association, June 2001);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities undermines the educational experiences of members of all communities-especially those who have had little or no contact with indigenous peoples (Connolly, 2000; U.S. Commission on Civil Rights, 2001; Society of Indian Psychologists, 1999; Webester, Loudbear, Corn, & Vigue, 1971);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities establishes an unwelcome and often times hostile learning environment for American Indian students that affirms negative images/stereotypes that are promoted in mainstream society (Clark & Witko, in press; Fryberg, 2003; Fryberg & Markus, 2003; Fryberg, 2004a; Munson, 2001; Society of Indian Psychologists, 1999; Staurowsky, 1999);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities by school systems appears to have a negative impact on the self-esteem of American Indian children (Chamberlin, 1999; Eagle and Condor Indigenous People's Alliance, 2003; Fryberg, 2004b; Fryberg & Markus, 2003; Maryland Commission on Indian Affairs, 2001; Society of Indian Psychologists, 1999; The Inter-Tribal Council of the Five Civilized Tribes, 2001; Vanderford, 1996);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities undermines the ability of American Indian Nations to portray accurate and respectful images of their culture, spirituality, and traditions (Clark & Witko, in press; Davis, 1993; Gone, 2002; Rodriquez, 1998; Witko, 2005);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities presents stereotypical images of American Indian communities, that may be a violation of the civil rights of American Indian people (Dolley, 2003; King, 2001; King & Springwood, 2001; Pewewardy, 1991; Springwood & King, 2000; U. S. Commission on Civil Rights, 2001);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities is a form of discrimination against Indigenous Nations that can lead to negative relations between groups (Cook-Lynn, 2001; Coombe, 1999; U. S. Commission on Civil Rights, 2001; Witko, 2005);

WHEREAS the continued use of American Indian symbols, mascots, images, and personalities is a detrimental manner of illustrating the cultural identity of American Indian people through negative displays and/or interpretations of spiritual and traditional practices (Adams, 1995; Banks, 1993; Nuessel; 1994; Staurowsky, 1999; Witko, 2005);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities is disrespectful of the spiritual beliefs and values of American Indian nations (Churchill, 1994; Gone, 2002; Sheppard, 2004; Staurowsky, 1998);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities is an offensive and intolerable practice to American Indian Nations that must be eradicated (U.S. Commission on Civil Rights, 2001; Society of Indian Psychologists, 1999);

WHEREAS the continued use of American Indian mascots, symbols, images, and personalities has a negative impact on other communities by allowing for the perpetuation of stereotypes and

stigmatization of another cultural group (Fryberg, 2004b; Gone, 2002; Staurowsky, 1999; U.S. Commission on Civil Rights, 2001);

THEREFORE BE IT RESOLVED that the American Psychological Association recognizes the potential negative impact the use of American Indian mascots, symbols, images, and personalities have on the mental health and psychological behavior of American Indian people;

THEREFORE BE IT RESOLVED that the American Psychological Association encourages continued research on the psychological effects American Indian mascots, symbols, images, and personalities have on American Indian communities and others;

THEREFORE BE IT RESOLVED that the American Psychological Association encourages the development of programs for the public, psychologists, and students in psychology to increase awareness of the psychological effects that American Indian mascots, symbols, images, and personalities have on American Indian communities and others;

AND

THEREFORE BE IT RESOLVED that the American Psychological Association supports and recommends the immediate retirement of American Indian mascots, symbols, images, and personalities by schools, colleges, universities, athletic teams, and organizations.

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April 5, 2013

Daniel Snyder
Owner
Washington XXXSkins Football Team
21300 XXXSkins Park Drive
Ashburn, VA 20147

Dear Mr. Snyder:

We are writing as longtime participants in the FCC regulatory process to respectfully encourage you to change the archaic and racially stereotyped name of the Washington XXXskins football team.

It is impermissible under law that the FCC would condone, or that broadcasters would use, obscene pornographic language on live television. This medium uses government owned airwaves in exchange for an understanding that it will promote the public interest. Similarly, it is inappropriate for broadcasters to use racial epithets as part of normal, everyday reporting. Thankfully, one does not hear the "n" word on nightly newscasts. Yet, doubtlessly because long habit has bred unawareness, as opposed to some conscious act of insult, it is routine for broadcasters to use "XXXskins" in normal, everyday reporting. In this context, we ask you to help broadcasters and the public achieve a higher consciousness by leading the name change.

"XXXskin" is the most derogatory name a Native American can be called. It is an unequivocal racial slur. As the Washington Post's Mike Wise pointed out, "America wouldn't stand for a team called the Blackskins — or the Mandingos, the Brothers, the Yellowskins, insert your ethnic minority here." http://m.washingtonpost.com/sports/redskins/redskins-name-goes-before-federal-trademark-board-but-for-this-writer-theres-no-debate/2013/03/10/6e64c508-8906-11e2-9d71-f0feafdd1394_story.html

The demeaning characterization of a "XXXskin" originated from the blood shed during the eradication of millions of Native Americans after European arrival in the New World. For three centuries, government-sanctioned bounties were issued for the dead bodies of Native Americans. As it became increasingly difficult for trappers to transport masses of rotting corpses, colonial governors agreed to pay for Native Americans' scalps and skins. Trappers subsequently began using the term "redskin" to symbolize the bloody skin and scalps they collected.

It is especially unseemly for our nation's capital to be represented by a football team whose name and mascot keep alive the spirit of inhumanity, subjugation and genocide that nearly wiped out the Native American population.

We sincerely request that you exercise leadership by changing the team's name so that it promotes an image that positively reflects the cultural and ethnic diversity and mutual respect that defines our great Nation.

Sincerely,

Jonathan Adelstein
Henry Geller
Dan Gonzalez
David Honig
Reed Hundt
Nicholas Johnson
Erwin Krasnow
Blair Levin
Andrew Schwartzman
Sonny Skyhawk
Gigi Sohn
Brent Wilkes

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

In the Matter of Broadcast Station **KTTV-TV**)
Broadcasting on Channel 11 in Los Angeles)
Los Angeles, CA, Facility ID 22208, FCC Reg # 0005795067)
Licensee, 1999 South Bundy Drive, Los Angeles, CA)
Fox TV, 400 N Capitol St., NW, Wash, DC 20001)

AFFIDAVIT OF PETITIONER FURTHER IDENTIFIED BELOW IN SUPPORT OF HIS PRELIMINARY FORMAL PETITION TO DENY RENEWAL OF STATION'S FCC BROADCAST LICENSE PURSUANT TO 47 U.S.C.A. § 309(d)

1. My name is Larry W. Smith, and I am a proud Native American.

2. My address is 2187 E. 21st. Street Apt. H, Signal Hill, CA 90755.

3. I watch station KTTV-FM, and I am somewhat familiar with its broadcasting. Based upon that listening, it appears that the station uses the word "R*dskins" unnecessarily and very frequently, probably much more frequently than most other stations. It also advertises businesses in the metropolitan area in which I reside and/or work.

4. I am adversely affected or aggrieved by the broadcasting of this station.

5. Upon information and belief, I affirm the correctness of the allegations of fact contained in the petition.

6. I also certify that I caused a copy of this document to mailed to 1999 South Bundy Drive, Los Angeles, CA.

7. I have experienced and/or witnessed harm to myself and/or to other Native Americans which I believe was caused by the frequent repetitive use of the word "R*dskins" on the air.

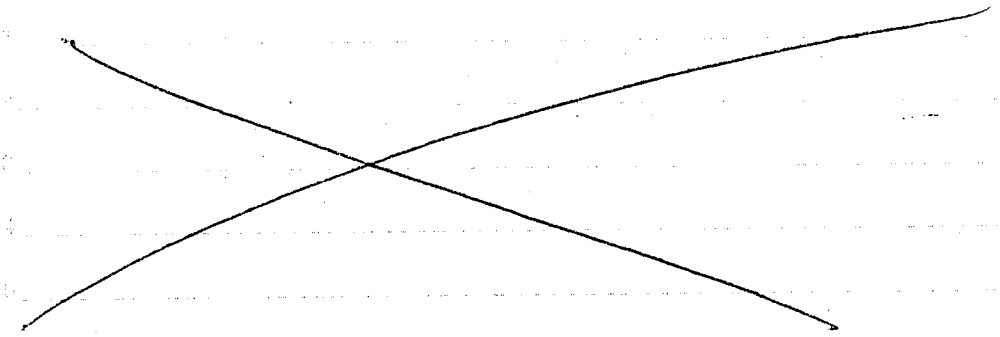
PETITIONER'S SIGNATURE

SWORN TO BEFORE ME THIS _____ DAY OF _____, 2014.

please see attached

CALIFORNIA JURAT WITH AFFIANT STATEMENT
GOVERNMENT CODE § 8202

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)



Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 24th day of October, 2014
Date *Month* *Year*

by

(1) Larry W. Smith

(2) _____

Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

LADONNA MARIE TROULLIER
Commission # 2024376
Notary Public - California
Los Angeles County
My Comm. Expires May 12, 2017

Place Notary Seal Above

Signature _____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

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Signer(s) Other Than Named Above: _____