

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

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| In re Applications of                 | ) |                            |
|                                       | ) |                            |
| <b>BUSTOS MEDIA HOLDINGS, LLC</b>     | ) | File No. BNPFT-20180418ABI |
| New FX, Auburn, Washington            | ) | Facility ID # 202942       |
|                                       | ) |                            |
| <b>BUSTOS MEDIA HOLDINGS, LLC</b>     | ) | File No. BNPFT-20180418ABJ |
| New FX, Dallas, Texas                 | ) | Facility ID # 202941       |
|                                       | ) |                            |
| <b>BUSTOS MEDIA HOLDINGS, LLC</b>     | ) | File No. BNPFT-20180427ABY |
| New FX, Beaverton, Oregon             | ) | Facility ID # 202943       |
|                                       | ) |                            |
| <b>BUSTOS MEDIA HOLDINGS, LLC</b>     | ) | File No. BNPFT-20180427ABZ |
| New FX, Beaverton, Oregon             | ) | Facility ID # 202944       |
|                                       | ) |                            |
| <b>CARLOS A. DUHARTE</b>              | ) | File No. BNPFT-20180430AAM |
| K225CX, Palo Alto, California         | ) | Facility ID # 202945       |
|                                       | ) |                            |
| <b>EL SEMBRADOR MINISTRIES</b>        | ) | File No. BNPFT-20180418AHZ |
| K258DR, Moreno Valley, California     | ) | Facility ID # 203234       |
|                                       | ) |                            |
| <b>HOLY FAMILY COMMUNICATIONS</b>     | ) | File No. BNPFT-20180507ACC |
| W283DM, Chili, New York               | ) | Facility ID # 202250       |
|                                       | ) |                            |
| <b>PUNJABI AMERICAN MEDIA, LLC</b>    | ) | File No. BNPFT-20180502ABP |
| K283CY, Fresno, California            | ) | Facility ID # 202953       |
|                                       | ) |                            |
| <b>REAL PRESENCE RADIO</b>            | ) | File No. BNPFT-20180501AAE |
| K232FY, Austin, Minnesota             | ) | Facility ID # 202969       |
|                                       | ) |                            |
| <b>REAL PRESENCE RADIO</b>            | ) | File No. BNPFT-20180503AAD |
| K254DJ, Bemidji, Minnesota            | ) | Facility ID # 202081       |
|                                       | ) |                            |
| <b>REAL PRESENCE RADIO</b>            | ) | File No. BNPFT-20180502ABI |
| K252GC, Fargo, North Dakota           | ) | Facility ID # 202080       |
|                                       | ) |                            |
| <b>REDEMPTION STRATEGIES</b>          | ) | File No. BNPFT-20180502AAV |
| <b>BROADCASTING, LLC</b>              | ) | Facility ID # 203048       |
| W221EK, Greenville, South Carolina    | ) |                            |
|                                       | ) |                            |
| <b>SILVER STATE BROADCASTING, LLC</b> | ) | File No. BNPFT-20180502ACM |
| K284CW, Winchester, Nevada            | ) | Facility ID # 203222       |
|                                       | ) |                            |
| <b>STECKLINE COMMUNICATIONS, INC.</b> | ) | File No. BNPFT-20180430AAL |
| New FX, Liberal, Kansas               | ) | Facility ID # 202811       |
|                                       | ) |                            |

For Construction Permit for  
New FM Translator Stations

TO: Honorable Marlene H. Dortch  
Secretary of the Commission

ATTN: The Commission

**OPPOSITION TO  
APPLICATION FOR REVIEW**

Bustos Media Holdings, LLC, Carlos A. Duharte, El Sembrador Ministries, Holy Family Communications, Punjabi American Media, LLC, Real Presence Radio, Redemption Strategies Broadcasting, LLC, Silver State Broadcasting, LLC, and Steckline Communications, Inc., by their attorney, hereby respectfully and jointly submit their Opposition to the Application for Review ("AFR") filed August 13, 2018 by Common Frequency, Inc. and Prometheus Radio Project ("Petitioners"). Said AFR is procedurally defective and must be dismissed or denied. In support whereof, the following is shown:

**AFR Fails to Comply with 47 CFR §1.115(b)**

1. Petitioners' AFR utterly fails to even mention Section 1.115(b) of the Commission's Rules, let alone attempt to comply with it.

2. Section 1.115(b) states as follows:

**(b)**

**(1)** The application for review shall concisely and plainly state the questions presented for review with reference, where appropriate, to the findings of fact or conclusions of law.

**(2)** The application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

**(i)** The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

**(ii)** The action involves a question of law or policy which has not previously been resolved by the Commission.

**(iii)** The action involves application of a precedent or policy which should be overturned or revised.

**(iv)** An erroneous finding as to an important or material question of fact.

**(v)** Prejudicial procedural error.

**(3)** The application for review shall state with particularity the respects in which the action taken by the designated authority should be changed.

**(4)** The application for review shall state the form of relief sought and, subject to this requirement, may contain alternative requests.

3. Petitioners' AFR does not contain a concise and plain list of questions presented for review, as required by Section 1.115(b)(1). Likewise, the AFR does not specify with particularity any of the five factors stated in Section 1.115(b)(2) which would warrant en banc Commission consideration. Further, the "prayer for relief" on page 21 of the AFR does not state with particularity what specific relief the Petitioners want. Petitioners do not state in their AFR a request the dismissal of the above-captioned pending applications or the rescission of any of the above-captioned granted construction permits.

4. The Commission has repeatedly ruled that where an AFR does not comply with Section 1.115(b), it must be dismissed.

**NTCH, Inc.**, 33 FCC Rcd --, FCC 18-122, 2018 WL 3955597, at ¶11 (August 16, 2018); **Meredith Corporation**, 32 FCC Rcd 7229, ¶49 (2017); **DFW Radio License, LLC**, 29 FCC Rcd 804, ¶15 (2014); **Union Theological Seminary in Virginia**, 2 FCC Rcd 7401 (1987).

5. Since Petitioners failed to treat Section 1.115(b) in their AFR, it must be dismissed.

**AFR Signatures Fail to Comply With 47 CFR §1.52**

6. The signature block on pages 21 and 22 of Petitioners' AFR is:

Respectfully Submitted by,  
*/s/*  
Todd Urick  
for Common Frequency, Inc  
*/s/*  
Paul Bame  
for Prometheus Radio Project

August 10, 2018  
P.O. Box 42158  
Philadelphia, PA 19101  
215-727-9620

7. Section 1.52 of the Commission's Rules states in pertinent part:

The original of all petitions, motions, pleadings, briefs, and other documents filed by any party represented by counsel shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify the document and state his address.

8. Section 73.3513(a)(3) of the FCC's Rules states that applications, amendments and related statements of fact filed on behalf of a corporation must be signed by "an officer, if the applicant is a corporation".

9. Neither Todd Urick nor Paul Bame represent themselves to be either attorneys or an officer of their respective entities. Furthermore, as we read the AFR, we do not see any kind of a "verification" statement by its non-attorney signers.

10. Therefore, pursuant to a combined reading of Sections 1.52 and 73.3513(a)(3) of the FCC's Rules, Petitioners' AFR was not validly executed. See ***FM Table of Allotments, Provincetown, Massachusetts et al***, 8 FCC Rcd 19, 20 (Media Bur., 1992) (non-attorney consultant signature violated Section 1.52 and required dismissal), citing ***Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes***, 5 FCC Rcd 3911 (1990). Therefore, Petitioners' AFR is procedurally defective and must be dismissed forthwith.

**Petitioners Lack Standing**

11. Common Frequency, Inc. is headquartered in Davis, California, in the Sacramento, California radio market (see Exhibit A). Prometheus Radio Project is headquartered in Philadelphia, Pennsylvania, in the eponymous radio market (Exhibit B). Neither Davis nor Philadelphia are located anywhere near any of the above-captioned communities, none of which are located in the Sacramento or Philadelphia radio markets.

12. Neither Petitioner alleges that it is located within the same radio market as any of the above-captioned applications or construction permits. Neither Petitioner alleges that it is a listener to the parent AM stations of any of the above-captioned

applications or construction permits<sup>1</sup>. None of the Objectors allege that electrical interference would be caused by the station which will result from a grant of any the above-captioned applications<sup>2</sup>. None of the Objectors allege a concrete economic injury to themselves that would be caused by the FCC grant of the above-captioned applications<sup>3</sup>. Therefore, none of the Objectors can claim either administrative or Article III standing to challenge the above-captioned application.

**Petitioners Arguments Belong in a  
Notice and Comment Rulemaking Proceeding**

13. Official notice can be taken by the Commission that at least Common Frequency and Prometheus Radio Project have participated in MB Docket 13-249, pursuant to which the approximately 328 pending FM translator long form 349 applications they object to were filed. Objectors should have filed for either an administrative or judicial stay of the various filing windows pursuant to Docket 13-249. That is where the relief they seek could have been adjudicated. They are not entitled to the relief they seek with respect to individual applications such as those captioned above, where they have not alleged any specific issues relative to the basic qualifications of any of the above-captioned applications, nor have they alleged any violations of FCC rules or policies by the facilities

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<sup>1</sup>*Office of Communications of United Church of Christ v. FCC*, 359 F.2d 994 (D. C. Cir. 1966).

<sup>2</sup>*FCC v. National Broadcasting Company (KOA)*, 319 U.S. 239 (1943).

<sup>3</sup>*FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940).

proposed in the above-captioned application. Therefore, Petitioners have failed to state a claim upon which relief can be granted.

14. In **KGAN Licensee, LLC**, 30 FCC Rcd 7664, n. 18 (2015), the Commission *en banc* wrote:

See, e.g., *Sunburst Media L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368 ¶ 6 (2002) (making decisions that alter fundamental components of broadly applicable regulatory schemes is appropriate in the context of rulemaking proceedings, not adjudications); see also *Great Empire Broad., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 11145, 11148 ¶ 8 (1999) (stating it is generally inappropriate to address arguments for a change in rules in an adjudicatory proceeding “where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record”) (citing *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888 ¶ 87(1996)); *Cnty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 511 (1983) (“[R]ulemaking is generally a ‘better, fairer, and more effective’ method of implementing a new industry-wide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings.”).

15. See also **Ketchikan TV, LLC**, 29 FCC Rcd 5183, n. 28 (Bureau, 2014) citing **Affiliated Media, Inc., FCC Trust, et al**, 28 FCC Rcd 14873, 14877 (Bureau, 2013) for the proposition that an application is to be granted where it does “not propose a transaction that would violate any Commission’s rule or policy” and where the objections raised by opponents to the application “are more appropriate for industry-wide proceedings, are unsupported, or are otherwise speculative with regard to future harms”.

**Conclusion**

16. Petitioners' AFR fails to comply with the procedural requirements for Applications for Review mandated by Section 1.115(b) of the Commission's Rules. Said AFR violates the signature requirements of Section 1.52 of the Commission's Rules. Neither Common Frequency, Inc. nor Prometheus Radio Project have either Article III or administrative standing to contest any of the above-captioned pending applications or granted construction permits. Finally, the arguments put forth by Petitioners fail to state a claim upon which relief can be granted, and in any event should have been made in a notice and comment rulemaking proceeding, not against individual applications for construction permits for new FM translator stations.

**WHEREFORE**, the parties hereto collectively urge that the Application for Review jointly filed by Common Frequency, Inc. and Prometheus Radio Project **BE DISMISSED OR DENIED**.



Respectfully submitted,

BUSTOS MEDIA HOLDINGS, LLC  
CARLOS A. DUHARTE  
EL SEMBRADOR MINISTRIES  
HOLY FAMILY COMMUNICATIONS  
PUNJABI AMERICAN MEDIA, LLC  
REAL PRESENCE RADIO  
REDEMPTION STRATEGIES BROADCASTING, LLC  
SILVER STATE BROADCASTING, LLC  
STECKLINE COMMUNICATIONS, INC.

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

By \_\_\_\_\_  
Dennis J. Kelly  
Their Attorney

LAW OFFICE OF DENNIS J. KELLY  
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DATED AND FILED: August 27, 2018





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## Our History

The Prometheus Radio Project was founded in 1998 by activists working within social change movements such as housing, environmentalism, health care, anti-war, and criminal justice reform. The success of these movements was limited by corporations' ownership and control of media, who used their power to suppress debate on vital issues.

The pirate station, Radio Mutiny, was formed in West Philadelphia to serve as a local outlet for diverse voices, community news, and cultural expression. Radio Mutiny joined with hundreds of pirate stations across the country to pressure the Federal Communications Commission (FCC) to create a legal option for community broadcasting. In response, the FCC introduced the Low Power FM radio service—the first time opportunity for small community radio licenses in twenty years. Members of Radio Mutiny, together with other pirates from around the country, hung up their eye patches and founded the Prometheus Radio Project to build and advocate on behalf of these new stations.

The creation of the Low Power FM radio service stands as one of the greatest successes in recent efforts for grassroots media reform. As a result, hundreds of new low power community stations are broadcasting that otherwise would not be—operated by civil rights groups, schools, farmworker organizations, environmentalists, cultural organizations, and others. Low power radio has allowed nonprofits in the United States to re-imagine and revitalize their relationship with media; and this has set the stage for a dramatic expansion of civil society into the world of radio station operations.

Prometheus supported hundreds of community organizations to apply for licenses and build their stations, touring the country to reach out to community groups and spread the word about Low Power FM radio. Prometheus organized 12 "radio barnraisings," where hundreds of volunteers gather to build a radio station in three days. These radio barnraisings have helped groups build their base while training a new generation of media organizers across the country.

Prometheus continues to support dozens of low power stations with their day-to-day operations. We have helped over a hundred groups to apply for full power radio licenses in the 2007 filing opportunity, and assisted dozens in the 2010 application window. Over 120 interns and volunteers have worked with Prometheus over the past 10 years, emerging as community leaders and activists in the fight for participatory media.


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[@prometheusradio](#)


Prometheus Thwarts FM Translator Processing Once Again [rbr.com/prometheus-thw...](#)

Prometheu...

Philadelphia...  
rbr.com

Aug 18, 2018

Prometheus Radio Retweeted


**Christopher Terry**  
[@ChristopherTerr](#)

1 more time for the historical record: Sinclair's viewpoints are irrelevant. The issues w/ Trib merger were always the 1.) Size of the merger 2.)The market power Sinclair would have had 3.) The fact the [@FCC](#) was

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**Prometheus Radio Project** | P.O. Box 42158 | Philadelphia, PA 19101 | 215.727.9620 | [info \[at\] prometheusradio.org](mailto:info@prometheusradio.org)

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing  
"Opposition, etc." was served by first-class United States  
mail, postage prepaid, on this 27<sup>th</sup> day of August, 2018 upon  
the following:

Todd Urick  
Common Frequency, Inc.  
Paul Bame  
Prometheus Radio Project  
Post Office Box 42158  
Philadelphia, PA 19101

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

Dennis J. Kelly