

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of:)	Facility ID No. 173648
)	
THE COMMUNITY PRESBYTERIAN)	BNPED No. 20071018ACY
CHURCH OF WALDPORT)	MX Group No. 401
)	
For an Original NCE Construction)	
Permit to Serve Toledo, Oregon)	
)	
_____)	

To Chief, Audio Division, Media Bureau

PETITION TO DENY OF FIREBARE, INC.

Respectfully submitted,

**Alan Korn
Law Office of Alan Korn
1840 Woolsey Street
Berkeley, California 94703
(510) 548-7300**

Dated: August 30, 2010

INTRODUCTION

This Petition to Deny is filed on behalf of Firebare, Inc. against the application of The Community Presbyterian Church of Waldport ("CPCW), which filed an application to operate a new NCE FM station to serve the community of Toledo, Oregon (BNPED-20071018ACY; Facility ID 173648).

CPCW is currently the tentative selectee in Group 401 pursuant to the FCC's Memorandum Opinion and Order released August 3, 2010. See *In the Matter of Comparative Consideration of 26 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations filed in the October 2007 Filing Window*, FCC 10-142 (released August 3, 2010) ("Selection Order"), paragraphs 17-18 and 82. Petitioner has standing to file this Petition because it made an application that is in the same group and mutually exclusive with that of the tentative selectee. (See Firebare, Inc., new NCE to serve Siletz, OR, BNPED-20071015AKI). This Petition is filed pursuant to 47 U.S.C. Section 309(d) and Section 73.7004(b) of the Commission's Rules and Regulations.

Four applicants in Group 401 made claims under Section 307(b) of the Act that were ruled comparable in population, so that these four proceeded to point system analysis. Selection Order at par. 17. CPCW was credited with three points for localism, two for diversity, and one for coverage for a total of six points, and was credited as the best proposal. All of CPCW's point system claims were decisionally significant because the second best application, Firebare, was credited with five points.

As will be shown by this petition, CPCW was not the real party in interest in its application. The real party was an individual, John M. Boyd, who could not have applied in his own right as a noncommercial licensee because he is not a noncommercial entity. CPCW entered into an improper "Construction Permit Transfer Agreement" with John M. Boyd immediately prior or subsequent to the filing of its NCE application in October 2007.

The legal implications of this evidence are far reaching. To begin with, CPCW was credited with five points for diversity and localism, based on its representations that it would continue to operate consistently with these pledges on a permanent basis. See Sections

73.7005 and 73.1150(d). An attempted assignment, even though not reported to the Commission and not capable of effectuation under Federal law, negates those pledges so that CPCW's point system claims must be reduced, from six points to only one point or possibly zero. Second, the assignment or transfer of a pending application (or a major change) by rule extinguishes its cut-off protection, Sec. 73.3573(b)(3). Because noncommercial FM applications may be filed only during a published filing window, the practical effect is that CPCW's application, if the transfer was made, would be subject to dismissal. Finally, and most seriously, the concealed real party, the concealed unauthorized assignment and the continued maintenance of comparative claims to which it was not entitled depict a pattern of willful misrepresentation, making CPCW unfit to become a Commission licensee. Petitioner further contends that CPCW failed to make its public file available pursuant to Section 73.3527 and that it lacked sufficient financial assurance to certify its ability to build and operate the station.

ANALYSIS

1. THE CPCW APPLICATION SHOULD BE DENIED BECAUSE THE APPLICANT HAS UNLAWFULLY ASSIGNED AND RELINQUISHED CONTROL OF ITS APPLICATION TO A NON-ELIGIBLE PARTY.

CPCW entered into a Purchase Agreement in September 2007, and a revised Purchase Agreement in February 2008, transferring its interest in the Construction Permit to John M. Boyd, a non-eligible party. Section 73.503(a) of the Rules provides that a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program. Further, Form 340 makes it clear that eligibility for a Non-Commercial Educational FM license extends only to a non-commercial educational institution, a governmental entity other than a school, or some other nonprofit educational organization. See Form 340, Section II, question 2. Here, CPCW submitted its application on October 18, 2007. However, CPCW's November 2007 newsletter (aptly titled "The Window") reveals that the application was actually filed *on behalf of Mr. Boyd and that CPCW's interest in the application was transferred to him*. According to its November 2007

newsletter, CPCW was in negotiations with Mr. Boyd in September and October of 2007 concerning the assignment of its Construction Permit to him. That same newsletter documents that CPCW later entered into a Construction Permit purchase agreement.” See **Exhibit A** to the Declaration of Alan Korn (“Korn Decl”). CPCW’s newsletter summarizes the minutes of its October 2007 church Session as follows:

“Clerk shared letters from the presbytery concerning the Jesus Seminar, the City of Waldport planning meeting concerning parking for the new businesses in the old Masonic lodge, *and language to be added to the bylaws for the radio station license for John M. Boyd. An item by telephone poll taken on September 18 was approved to apply for a FCC license for a radio station that would be transferred to John M. Boyd (all costs involved would be paid by him). An action item by telephone poll taken on October 6 was approved to have a congregational meeting on October 14 after worship to amend church bylaws for ownership of radio station.* (Emphasis added) See Declaration of Alan Korn (“Korn Decl.”) at Exh. A-2.

The above reflects that a congregational meeting occurred on October 14, and bylaws “Amended October 14, 2007,” were later included as Attachment 12 (“governing Documents”) in the application. These amendments aver that the church is committed to maintaining its status as an “established local applicant” as well as its eligibility under the “local diversity of ownership.” These very pledges were the basis for the Commission crediting the full five points for localism and diversity. However, CPCW’s admission in its newsletter stands in shocking contradiction, revealing that the pledges were a sham:

“language to be added to the bylaws for the radio station license for John M. Boyd.”¹

CPCW’s April 2008 newsletter reveals that discussions concerning the transfer of CPCW’s license to Mr. Boyd continued even after the filing of its application. On or about February 12, 2008 (approximately four months after filing its application), CPCW met with Mr. Boyd to negotiate a revised Construction Permit purchase agreement which contained a different signatory on behalf of CPCW. The April 2008 newsletter summarizes CPCW’s February 12, 2008 church Session as follows:

¹. At the time of application, CPCW was represented by experienced communications counsel, who presumably advised and assisted in the preparation of the October 14 bylaws amendments which were effective in obtaining the credit sought. There is no indication that counsel was aware that the church at the same time was blatantly and publicly dishonoring these representations and pursuing an entirely different course from the one advised.

An informational discussion with John M. Boyd concerning the purchase of a Construction Permit for new radio station occurred. The revised purchase agreement dated February 12, 2008 was presented. The elders were satisfied that all changes to the original agreement signed in September 2007 were minor and primarily removed Pastor Jim Howe as the seller's signatory with replacement by Clerk of Session Janice Merry. Action: MSP to approve signing of revised Construction Permit purchase agreement between Community Presbyterian Church and John M. Boyd. John M. Boyd then left the meeting.
(Emphasis added). (Korn Decl., Exh. B-1).

Under Commission Rules, petitions such as this “must contain allegations of fact supported by affidavit of a person with personal knowledge thereof” 47 C.F.R. Section 73.7002b. While it could be objected that these periodic newsletter reports are no more than hearsay, such objection would be without merit. The Commission here is conducting a “paper hearing” under its powers of adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. Sec. 554. It must receive into evidence all matter that is relevant if the proponent of the evidence can establish its reliability. Although Petitioner does not have court assisted powers of discovery, the church newsletters constitute admissible evidence regardless of whether a declarant (newsletter writer or other) is available, because they are published by and for the applicant, and contain statements against interest pursuant to Federal Rules of Evidence, Rule 804(c).² These facts are simply irreconcilable with the applicant's continuing, unchanged representation in response to Section II, Question 6(b): “Applicant certifies that equity and financial interests not set forth above are non-attributable pursuant to 47 C.F.R. Section 73.3555 *and that there are no agreements or understandings with any non-party that would give influence over the applicant's programming, personnel, or finances to that non-party.*” (emphasis added)

2. THE CPCW APPLICATION SHOULD ALSO BE DENIED BECAUSE CPCW DOES NOT INTEND TO CONSTRUCT AND OPERATE THE FACILITIES AS PROPOSED.

². 3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. See also Rule 803(6), hearsay exception for records of regularly conducted activity.

Any applicant receiving a decisive preference under Section 307(b) must construct and operate technical facilities substantially as proposed for a period of four (4) years, and not downgrade service to the area on which the preference was based. Sections 73.7002(c); 73.7005(c); 73.1150(d). Applicants such as this, receiving a point system preference, must build and operate for four years, or assign to an entity able to claim an equal number of points. Here, CPCW does not and cannot argue it is in a position to build or operate the station as proposed for four years, as it purportedly entered into a Construction Permit Purchase Agreement with Mr. Boyd even before it adopted the sham bylaws change and submitted its application. It later revised the Purchase Agreement in or about February 2008. At a minimum, the purported transfer of CPCW's "license" to Mr. Boyd demonstrates a lack of intent to build or operate the station as proposed, and negates all basis for comparative preference.

3. CPCW'S FAILURE TO AMEND ITS APPLICATION OR ADVISE THE COMMISSION ABOUT ITS TRANSFER OF THE CONSTRUCTION PERMIT TO A NON-ELIGIBLE PARTY DEMONSTRATES SUCH A GRAVE LACK OF MORAL CHARACTER THAT ISSUANCE OF A CONSTRUCTION PERMIT IS NOT IN THE PUBLIC INTEREST.

The central comparative predicates of the CPCW application appear to have been false from the outset, and the certification on October 17, 2007 by Jim Howe, CPCW's pastor, was fraudulent through-and-through. Moreover, every applicant is under a continuing obligation to advise the Commission, through amendments, of any substantial and material changes in the information furnished in its application pursuant to 47 C.F.R. Section 1.65 until FCC action on the application is no longer subject to reconsideration by the Commission or review by any court. *See* Instructions For Form 340, Section J. In addition, Section 6 of FCC Form 340 requires each applicant to disclose all parties to the application, including all parties retaining an attributable interest in the application. There is no record of an amendment regarding the September 2007 or February 2008 "Construction Permit Purchase Agreement" with Mr. Boyd.

The Commission's Broadcast Character Policy Statement³ provides that violations of the Communications Act or the Commission's rules are predictive of licensee behavior and directly relevant to the function of the Commission's regulatory mission. *See e.g. In the Matter of Radio Moultrie, Inc.*, DA 03-3513 (EB, rel. on November 4, 2003) ("*Moultrie*"). The Commission's ruling in that matter is instructive. In *Moultrie*, the Enforcement Bureau found a violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's rules and revoked the license of Radio Moultrie, Inc. ("RMI") after finding it transferred control of the station to one entity (Dixie Broadcasting, Inc.), and then to several individuals without the Commission's prior authorization. By failing to file either a Form 314 (regarding assignment of its license) or Form 315 (regarding transfer of control) before transferring station operations to third parties, the Bureau concluded that RMI lacked the proper qualifications to be or remain a licensee. *See also In the Matter of Bear Valley Broadcasting, Inc.*, DA 00-2844 (EB, rel. on Dec. 20, 2000) (Forfeiture of \$8,000 based on licensee's transfer of *de facto* control of station to third party without prior Commission approval). As CPCW was untruthful in central and decisionally significant matters involving its initial filing, and as it failed to amend or modify its application, it too lacks the proper moral character to be a licensee. While an episodic error or omission often will not be disqualifying, CPCW's conduct reflects a pattern of willful concealment, including the concealment of Mr. Boyd's identity as a real party to the application, the bylaws changes cynically done for his benefit, the unauthorized assignment of the construction permit and its continued maintenance of comparative claims to which it was not entitled.

4. CPCW'S FAILURE TO ADHERE TO BASIC PUBLIC FILE RULES PURSUANT TO SECTION 73.3527 ALSO DEMONSTRATES A LACK OF FITNESS SUCH THAT THE CPCW APPLICATION SHOULD BE DENIED

Applicants for a construction permit for a new NCE broadcast station are required to maintain a public inspection file that includes a copy of the application tendered for filing with the FCC along with all related materials, including supporting documentation of any

³. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986), *on recon.*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Circ. 1987). *See also Policy Regarding Character Qualifications in Broadcast Licensing*, 5 FCC Rcd 3252 (1990) *on recon.*, 6 FCC Rcd 3448 (1991), modified, 7 FCC Rcd 6564 (1999)

points claimed in the application under Section 73.700. *See* Section 73.3527. Applications are to remain in the public inspection file until final action is taken on the application, and applicants are to maintain the public inspection file at an accessible place in the proposed community of license or at its proposed main studio. *Id.* Instructions for FCC Form 340 further state at Paragraph H that “The applicant must make a copy of this completed application and all related documents available to the public in the applicant’s public inspection file located in the community of license, pursuant to 47 C.F.R. Section 73.3527.” Form 340, page 2.

Here, CPCW failed to make its public inspection file available pursuant to Section 73.3527 for a substantial period of time after the application was filed. While CPCW’s public file was initially available for viewing at the Toledo Public Library in November 2007, the public file was missing by early February 2008 when Firebare representatives checked to see if CPCW filed any amendments after Mr. Boyd contacted Firebare’s attorney regarding possible settlement. (*See* Declaration of John Crawford and Declaration of Bridget Wolfe, attached hereto). Firebare representatives were advised in July 2008 by Peter Rayment, Director of the Toledo Public Library, that John M. Boyd submitted the public file and asked for its return after a certain amount of time. Mr. Rayment later informed Firebare representatives that he returned CPCW’s public file to Mr. Boyd (located in Winchester, California) in approximately Spring 2008. On March 6, 2009 Firebare representatives again checked the Toledo Public Library but could not locate a copy of CPCW’s public file. On a subsequent visit to the Toledo Public Library on August 12, 2010, Firebare representatives located CPCW’s public file, containing a transmittal memo dated *April 29, 2009* signed by John M. Boyd. *See* Crawford Decl., Exh. A.

CPCW’s abdication of its public file responsibilities also reveals a complete disregard for the Commission’s rules. By delegating these responsibilities to Mr. Boyd CPCW demonstrates that it had no interest in adhering to those rules or otherwise taking the necessary steps to qualify as a Commission licensee.

5. CPCW'S LACK OF FINANCIAL RESOURCES FURTHER DEMONSTRATES AN INABILITY TO BUILD OR OPERATE THE STATION AS PROPOSED

According to the attached Affirmation of radio engineer Michael Brown of Brown Broadcast Services, Inc., it would cost approximately \$332,813 for CPCW to build and operate its proposed 100KW station on an existing tower. However, CPCW's newsletters reflect a history of serious financial shortfalls since at least June 2007, raising questions as to whether it has the financial ability to build and operate the station as proposed.⁴ For instance, CPCW's most recent financial report up to the certification and submission of its Application on October 18, 2007 reflects a June 2007 budget shortfall of \$2,865. (See September 2007 Newsletter, Korn Decl. at Exh. C-2). Other newsletters reflect similar shortfalls, as follows:

1. November 2007 Newsletter – Financial Report: “Budget shortage to date is \$2619.” (Korn Decl., Exh. A-2).
2. January 2008 Newsletter (Financial Report from November Session): “Budget Shortage to date is \$2010. (Korn Decl., Exh. C-6).
3. January 2008 Newsletter (Financial Report from December Session): “Budget Shortage to date is \$3618.” (Korn Decl., Exh. C-6).
4. April 2008 Newsletter – Financial Report: “Budget Shortage to date is \$2158.” (Korn Decl., Exh. B-1).
5. May 2009 Newsletter – Financial Report: “Budget Shortage to date is \$3254.” (Korn Decl., Exh. C-10).
6. June 2009 Newsletter – Financial Report: “Budget Shortage to date is \$4083.” (Korn Decl., Exh. C-13).
7. July 2009 Newsletter – Financial Report: “Budget Shortage to date is \$5959.” (Korn Decl., Exh. C-16).

⁴ In fact, CPCW filed for Administrative Dissolution with the Oregon Secretary of State on *May 23, 2008* approximately 7 months after the Application was filed after receiving notice of its late annual report payment. CPCW did not file for reinstatement until *March 17, 2010*, almost 2 years later. See Korn Decl., Exh. D-2.

8. August 2009 Newsletter – Financial Report: “Budget Shortage year-to-date is \$7815.” (Korn Decl., Exh. C-20).
9. September 2009 Newsletter – Financial Report: “Budget Shortage to date is \$9595.” (Korn Decl., Exh. C-24).
10. October 2009 Newsletter – Financial Report: “Budget Shortage to date is \$9611.” (Korn Decl., Exh. C-28).
11. December 2009 Newsletter - Financial Report: “Operating income for September 2009 was \$5714. Operating expenses for September 2009 were \$5631.” (Korn Decl., Exh. C-32)
12. February 2010 Newsletter (November 2009 Financial Report): “Operating income for October 2009 was \$4439. October operating expenses were \$4825.” (Korn Decl., Exh. C-36).
13. February 2010 Newsletter (December 2009 Financial Report): “November Operating Income was \$4397. November Operating Expenses were \$6555.” (Korn Decl., Exh. C-36).
14. March 2010 Newsletter - Financial Report: “Operating Income for December 2009 was \$5930. Operating Expenses for December 2009 was \$7784. Total Operating Income for 2009 was \$66890. Total Operating Expenses for 2009 were \$74,712.” (Korn Decl., Exh. C-40).
15. April 2010 Newsletter - Financial Report: “Operating Income for January 2010 was \$5830. Operating Expenses for January 2010 was \$6872.” (Korn Decl., Exh. C-44).
16. June 2010 Newsletter – Financial Report: “Operating Income for March 2010 was \$3099. Operating Expenses for March 2010 was \$9125.” (Korn Decl., Exh. C-48).

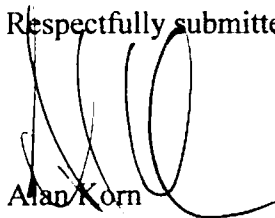
The above admissions in CPCW’s newsletter further confirm that it lacked financial wherewithal to build and operate a station as proposed when the application was submitted. The required certification affirmed that “The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.” Form No. 340, Section II, Question 15. The financial reports in the newsletter exclude even the possibility that sufficient net liquid assets were on hand.

The express promise of Mr. Boyd to pay all expenses also raises a number of questions. First, in view of the guaranty, is there any basis to assume that the applicant itself prepared cost estimates, as required, for the construction and three months' operating? Given that there was no need to identify sources other than Mr. Boyd, were there any other such sources? And finally, did the applicant obtain a balance sheet, a bank statement, or other quantitative data from Mr. Boyd that would assure his ability to meet a pledge for the construction and operating? Or was that step considered unneeded, as appears likely from the record of anticipatory transfer, because Mr. Boyd would construct the station and the applicant would not be on the hook for any costs. This financial dependency on Mr. Boyd reflects his status as a party actually or potentially in a position to control the licensee, the real party in interest. Financial dominance and control is at the heart of real-party concerns.

CONCLUSION

For the above reasons. Petitioner respectfully requests that the Commission reject CPCW's Application because it is not the real party in interest and not entitled to localism and diversity points under Section 307(b), because it has no intention of building and operating the facilities as proposed, because it failed to amend its application to identify its Construction Permit Purchase Agreement to John M. Boyd. because it failed to make available its public file available pursuant to Section 73.3527, because it lacks sufficient financial resources and because granting this Application would not be in the public interest.

Respectfully submitted,



Alan Korn

Law Office of Alan Korn
1840 Woolsey Street
Berkeley, California
Ph. 510/548-7300
Fax 510/540-4821

Attorney for Petitioner
Firebare, Inc.

DECLARATION OF JOHN CRAWFORD

I, John Crawford, declare as follows:

1. I am John Crawford, of the organization Firebare, Inc.

2. This declaration is submitted in support of the Petition to Deny of Firebare, Inc. against The Community Presbyterian Church of Waldport, BNPED-20071018ACY; Facility ID No. 173648.

3. In approximately November 2007 when the FCC published its list of applicants on their website, Bridget Wolfe and I went to the Toledo Public Library and asked to see the information on file for The Community Presbyterian Church of Waldport, Oregon ("CPCW"). CPCW's application was produced from behind the main counter of the Toledo Public Library, and I photocopied the entire contents for Firebare's records.

4. In early February 2008, after our attorney told us was contacted by John Boyd to see if Firebare wished to enter into settlement with CPCW, I returned to the Toledo Public Library to see if there had been any changes or additions to CPCW's public file. During that visit the librarian at the counter told me that she remembered the library having had the file, but that it was no longer there. The librarian stated she did not what had happened to CPCW's public file.

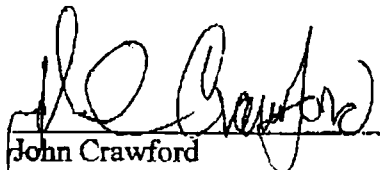
5. During the afternoon of March 6, 2009, Bridget Wolfe and I again went to the Toledo Public Library to see if, by any chance, the public file for CPCW had been returned. We were told by Lisa Miller, the librarian on duty at the counter, that she vaguely remembered seeing that file but that she did not think it was there. After conducting a search, she invited Bridget Wolfe and I behind the counter to look on the shelves that held special files the library was asked to hold. Neither Bridge Wolfe nor I were able to locate CPCW's public file. Lisa Miller then phoned another employee (whose name later discovered was Michelle Christensen) to ask her if she knew anything about the CPCW file. Following that conversation, we were told that Ms. Christensen did not know what happened to the file.

6. On August 10, 2010, I again visited the Toledo Public Library and asked the librarian on duty if the CPCW file had ever turned up. I was told the answer was no.

7. I returned to the Toledo Public Library two days later on August 12, 2010. At that time, the librarian informed me that ~~that~~ a Waldport Presbyterian Church was in fact on file with the library, and that it had shown upon in Spring 2009 with a cover letter from John Boyd dated April 29, 2009. During that visit I photocopied the entire CPCW file, including a copy of Mr. Boyd's April 29, 2009 letter which is attached hereto as "Exhibit A."

I hereby state under penalty of perjury that the foregoing is true and correct.

Executed on August __, 2010


John Crawford

April 29, 2009

Mr. Peter Rayment
Librarian
Toledo Library
173 NW 7th
Toledo, OR 97391

Dear Mr. Rayment,

It was nice to talk with you today. Thank you for all of your help in the past. I especially appreciate your willingness to help us now. I believe that a new radio station licensed to Toledo will be very good for the citizens of your town in the future.

Please find enclosed the application we talked about. Because of all of the time that has gone by, I don't believe there will be many inquiries, if any, regarding this application in the future although I don't know for sure.

Please contact me in the future if you have any questions about this. I can be reached at (951) 541-0456. My address is 34686 Foxberry Dr., Winchester, CA 92596.

Thank you again for your help. I will keep you advised when conditions change and we won't require the placement of this file in your library.

Thank You,



John M. Boyd
Consultant
The Community Presbyterian Church of Waldport, Oregon

EXHIBIT 

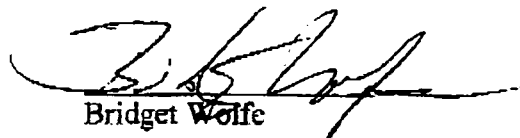
DECLARATION OF BRIDGET WOLFE

I, Bridget Wolfe, declare as follows:

1. I am Bridge Wolfe, of the organization Firebare, Inc.
2. This declaration is submitted in support of the Petition to Deny of Firebare, Inc. against The Community Presbyterian Church of Waldport, BNPED-20071018ACY; Facility ID No. 173648.
3. In approximately November 2007 when the FCC published its list of applicants on their website, John Crawford and I went to the Toledo Public Library and asked to see the information on file for The Community Presbyterian Church of Waldport, Oregon ("CPCW"). We were provided with a copy of the application from behind the library's main counter. During our visit John Crawford photocopied the entire contents of CPCW's public file for Firebare's records.
4. I returned to the Toledo Public Library in mid-July and again asked for a copy of CPCW's public file. I was told by Peter Rayment, the Library Director that when he was given CPCW's public file to keep at the library he was instructed to return it after a certain amount of time, and that he had returned the CPCW file shortly before Christmas 2007.
6. On March 6, 2009, John Crawford and I again visited the Toledo Public Library to see if the CPCW public file was available. We spoke with Lisa Miller, the librarian on duty, who said that she recalled such a file but did not think it was there. She was unable to locate CPCW's file and invited John Crawford and I to look at the shelves behind the main counter where special files were held. We were unable to locate CPCW's public file. Ms. Miller then spoke with an employee named Michelle Christensen to see if she knew about the CPCW file, and we were told afterwards that she did not know what had happened to it.
7. The following morning on March 7, 2009 I received a phone call from Peter Rayment, the Library Director of the Toledo Public Library. He told me that he had looked up the records on the CPCW file. He stated that he had been given the file containing CPCW's FCC license application by a John Boyd, who told him to keep it on file for a certain amount of time and then return it to him. Mr. Rayment then said that he had returned the file to John Boyd on December 5, 2007 at the address 34686 Foxberry Road, Winchester, California 92596.

I hereby state under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2010


Bridget Wolfe

Affirmation:

The attached document "Typical Construction and Operating Costs", was prepared by me. All representations contained herein are true to the best of my knowledge, and are based on the facts as evident at the time of preparation. I am the President/Owner/Principal Engineer for Brown Broadcast Services, Inc., Portland Oregon. I am an SBE Certified Senior Radio Broadcast Engineer with over 35 years experience, whose qualifications are a matter of record with the Federal Communications Commission.

A handwritten signature in black ink, appearing to read "Michael D. Brown", with a long horizontal flourish extending to the right.

Michael D. Brown
Brown Broadcast Services, Inc.
August 23, 2010

Brown Broadcast Services

I N C O R P O R A T E D

Michael D. Brown

3740 S.W. Comus St.

Portland, Oregon 97219-7418

503-245-6065

TYPICAL CONSTRUCTION AND OPERATING COSTS For 100KW ERP FM Radio Station on an Existing Tower

Prepared by Michael D. Brown, Brown Broadcast Services, Inc.
In support of Petition to Deny filed by Firebare, Inc., against Community Presbyterian
Church of Waldport – Application BNPED-20071018ACY, Toledo, OR

August 25, 2010

Community Presbyterian Church of Waldport (“CPCW”) proposes a new 100kw directional FM station on an existing 57 meter tower. Applicants must have sufficient liquid assets on hand, or from committed sources, to build the proposed facility and operate it for three months without additional funds. In this regard, typical low-to-midrange costs are shown below.

TRANSMITTER CONSTRUCTION COSTS:

New 20-25kw analog transmitter	73,000
8-bay antenna with directional pattern design & certification	40,000
Installation and tower crew costs	29,000
Electrical work	12,000
STL, coax, other hardware, etc	43,500
TOTAL TRANSMITTER	197,500

Notes: These costs are primarily based on the Radio Station Construction Costs lists provided by the Public Telecommunications Facilities Program (PTFP), of the National Telecommunications & Information Administration (NTIA), U.S. Department of Commerce.

The RF Exposure exhibit in the CPCW application showed calculations based on a 4 bay, 0.5 wavelength-spaced antenna. Such an antenna, even with the additional peak-gain provided by the directionalization, would require over 38kw TPO, requiring a much larger (and more expensive) transmitter. This would further increase the total project costs.

Brown Broadcast Services INCORPORATED

Michael D. Brown

3740 S.W. Comus St., Portland, Oregon 97219-7418

503-245-6065

STUDIO CONSTRUCTION COSTS:

Studio equipment	86,000
Studio installation	20,000
Minimal building remodeling	10,000
TOTAL STUDIO	116,000

Notes: These costs are based on actual small-market installations that we are currently building.

THREE-MONTHS OPERATING COSTS – 100% VOLUNTEER:

Electricity for transmitter	6,750
All other operating expenses	12,563
TOTAL OPERATING COSTS	19,313

Notes: This is for a minimal operation, using 100% volunteer labor. The operating expense estimates are based on a presentation before the 2010 convention of the National Federation of Community Broadcasters, with all salary costs removed.

Total typical costs: \$332,813

Brown Broadcast Services
I N C O R P O R A T E D

CERTIFICATE OF SERVICE

On August 30, 2010, the above PETITION TO DENY was served by United States Mail, postage prepaid, to the following:

David A. O'Connor
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006

The Community Presbyterian Church of Waldport, Oregon
485 NE Bay Street
Waldport, OR 97394


Scott Douglas Albright
Winds of Praise Broadcasting
P.O. Box 491
Newport, OR 97365

Oregon State Board of Higher Education
for the University of Oregon
Director of Broadcasting
75 Centennial Loop
Eugene, OR 97401-7905

Confederated Tribes of Siletz Indians of Oregon
Attn: Brenda Bremner
P.O. Box 549
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