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

In the Matter of Broadcast Station WWXX, 94.3 FM	)
	)
7900 Sudley Rd, Buckland, Virginia 20109	)
Facility ID 15819, File BTCH-20060831AAZ	)
	)
Licensee Red Zebra Broadcasting, 1801 Rockville Pike, Rockville MD	)

PRELIMINARY* FORMAL PETITION TO DENY RENEWAL OF STATION'S FCC BROADCAST LICENSE PURSUANT TO 47 U.S.C.A. § 309(d), AS WELL AS ANY OTHER APPLICATIONS, MOTIONS, OR REQUESTS OR, IN THE ALTERNATIVE, AN INFORMAL OBJECTION TO ALL OF THE ABOVE, PRIMARILY BECAUSE OF ITS DELIBERATE, CONTINUED, AND UNNECESSARY BROADCAST, DURING PRIME TIME, OF A RACIST RACIALLY DEROGATORY WORD, AND ITS DELIBERATE PROMOTION OF THAT TERM BY OTHER BROADCASTERS

Petitioner John F. Banzhaf III, ["Petitioner"], a listener to station WWXX-FM, 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 and any other requests because it deliberately, repeatedly, and unnecessarily broadcasts the word "R*dskins" during most of its broadcasting day, and especially in prime time where its well documented adverse impact on impressionable young Indian as well as non-Indian children is greatest, and also because, through its licensee and controlling owner Dan Snyder, also actively encourages or indeed forces many other broadcasters to likewise broadcast a derogatory racial and ethnic slur contrary to the public interest. More specifically, it is preliminary suggested 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 on-air use of the R-word is contrary to current law and akin to broadcasting obscenity **[p.5]**;

III. Alternatively it constitutes profanity **[p.6]**;

IV. Alternatively, it constitutes hate speech and may cause hate crimes against Indians **[p. 12]**;

V. 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 the N-word (like all the others) is impermissible because it offends many blacks, the repeated and unnecessary use of the R-word should also be because it similarly offends many Indians. **[p. 14]**

VI. The station's owner, Dan Snyder, in the words of former FCC Chairman Reed Hundt, uses this station to broadcast "an ethnic slur," and through his other actions encourages or even forces other radio and TV stations to do the same. **[p. 16]**

* 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 were not "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 Indian and non-Indian children, but also to Indian adults. [See APA RESOLUTION, APPENDIX A and APPENDIX B infra, 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 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."

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,

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[1] Note that although some of the studies refer to other Indian 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 Indians 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 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.'"

and by so many organizations and influential Americans, to be a derogatory racial slur. In other words, it is very harmful and in no way "necessary" for broadcasters to repeatedly use the word "Redskins" - "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 words 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.

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 sexual activities, and were fleeting rather than dwelling on or repeating at length. [2]

Likewise, the FCC, proceeding under the more flexible "public interest" standard, held that licensees are responsible for the possible harms 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).

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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 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).

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 racism allegations, but ordered that citizen groups be given standing to raise those very issues. **Office of Communication v. FCC**, 359 F.2d 994 (1966). Subsequently, 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 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.

Finally, in a proceeding in which Petitioner participated, the renewal of the license of a television station in Washington D.C., was challenged by a coalition of black organizations and individuals who alleged various deficiencies in station performance related to race and perhaps to racism. 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 regarded as 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 continued and 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. 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]

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[3] ■ 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,

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 did not "dwell[s] on or repeats at length" - to include fleeting use of so-called "Dirty Words" by nationally-recognizes artists receiving major awards; a re-interpretation not struck down 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 normally 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 media-savvy public figures,[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:

*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].

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.

NOTE: The concerns voiced by Petitioner and so many others regarding the on-air use of the word "R*dskins" is 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.

III. ALTERNATIVELY 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," but also within other common definitions and understandings.

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,[5] the evidence is now overwhelming that the current meaning is an offensive demeaning racial swear word, not only to many Indians, 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), "colored people," and perhaps even "Negro," 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 "Redskin" 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

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[5] 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

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 "redskin" 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 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 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 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 Indian 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 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 American Indian 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,” etc.

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], and even the editorial page of the Washington Post.

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 94.3 FM anywhere near Buckland, VA.

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 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 definition of profanity. Likewise, in view of the very strong consensus by so many people and organizations 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 subjects to such offensive language. In many other situations, such public use of swear words and other ethnic slur is considered a nuisance but is simply prosecuted as disturbing the peace.

It should be noted that limiting the use of swear word, 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, 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. ALTERNATIVELY, IT CONSTITUTES HATE SPEECH AND MAY CAUSE HATE CRIMES AGAINST INDIANS

In addition to clearly being a "nuisance" and a "swear 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 on American Indian 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].

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 lead to violence against Indians either directly or indirectly.

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 - 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 indeed nonexistent, the instant petition provides an opportunity for the FCC to at least take some action related to this issue in a manageable format and scope. A formal petition seeking to deny a license renewal pursuant to 47 U.S.C.A. § 309(d) - unlike a general petition to the agency - does require some 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 American Indians 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. At the very least, it forces on-air talent and others who work at the station to use a racist word - arguably equivalent to a work environment where employees must use and be exposed to words like "N*gg*r," "Sp*c," "R*dskin."

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 47 U.S.C.A. § 309(d) petition on the basis of the more traditional grounds which have already been discussed - i.e., as generally contrary to the "public interest," as akin to "obscenity," and as "profanity" - 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," 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.

V. 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 the N-word (like all the others) is impermissible because it offends many blacks, the repeated and unnecessary use of the R-word should also be because it similarly offends many Indians.

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," 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 American Indians. 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 their intentions - is racist and derogatory.

Whatever the merits of those particular decisions, the instant situation is very different. Snyder is not an Indian; there are apparently no Indians on the team who want the name to refer to themselves (like the Slants, or Heeb magazine), and Dan Synder's historical arguments have all been debunked. Even if true, they do not protect Indian 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 OK to 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 because it sounded like the N-word. This argument was addressed in Paula Deen's N****rs vs. Dan Snyder's R*****ns: What's the Difference? [written by Petitioner. http://bit.ly/1tmogNb]

> 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 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 Indians 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.

VI. The station's owner, Dan Snyder, in the words of former FCC Chairman Reed Hundt, uses this station to broadcast "an ethnic slur," and through his other actions encourages or even forces other radio and TV stations to do the same.

It is uniquely appropriate that this station be denied a renewal of its broadcast license, or at very least that it be required to show that its actions serve the public interest, because it appears to devote more of its broadcasting time than other stations to needless repetition of the racist and derogatory term "R*dskins," and because the owner (through corporate control) Dan Snyder, is ultimately responsible for other stations being forced to likewise repeatedly use this ethnic slur.

Petitioner notes, and respectfully brings to the FCC's attention, the following observations and suggestions of former FCC Chairman Reed Hundt, who is working with former FCC Commissioners Nicholas Johnson and Jonathan Adelstein, and other leading members of the broadcast bar,[6] to encourage broadcasters not to use what they have jointly described as the "racially stereotyped name," a "racial epithet," the "most derogatory name a Native American can be called," an "unequivocal racial slur," and something "especially unseemly" because it "keeps alive the spirit of inhumanity, subjugation, and genocide."

Here's what he said in arguing that: "the FCC should reevaluate whether or not Snyder is 'fit' to have licenses from the FCC. By 'fit,' Hundt said he means 'a person of appropriate character.'"

> "The FCC should consider whether Mr. Snyder is fit to own radio station licenses given that he uses radio stations to broadcast an ethnic slur," he said. "These licenses are owned by the public and they are given to individuals for the purpose of serving the public interest. The FCC does not give radio station licenses to felons; it doesn't give radio station licenses to people of bad character. Historically, [the FCC] has been reluctant to give broadcast licenses to people who advocate racially intolerant positions." NCAI, Former FCC Commissioners Call on FedEx to Cut Ties With 'Redskins,' http://bit.ly/1tRcb1h

Because he has corporate control and ownership of this station, he is responsible for its programming which repeatedly and unnecessarily uses the racist term "R*dskins," perhaps more than any other, largely in prime time where teen and pre-teen Indian and non-Indian children are exposed and adversely affected. But the additional reason he is unfit - as Hundt and the others have suggested - to be rewarded with a valuable government-created monopoly goes much further.

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

Most radio and TV stations, whether they simply read sports scores several times a day, or - especially in the DC metro area - devote large amounts of broadcast time to Washington's NFL football team, probably assume that they have no choice but to use the name Snyder has promoted the team with. Thus, if Snyder were to change the team's name - as, for example, Abe Pollin changed the Washington Bullets into the Washington Wizards - all other broadcasting stations, both in the DC area and across the country, would suddenly no longer be repeatedly broadcasting a name which has been found to be a racist and racially derogatory slur.

In short, one man, Dan Snyder, the corporate owner of WWXX-FM, is directly responsible not only for this station's repeated and unnecessary use of a racist slur, but responsible also for similar conduct by thousands of other stations around the country. Thus there is all the more reason for the FCC to investigate, as Hundt recently said, whether Snyder is "fit" to be awarded a renewal of his broadcast license- i.e., whether he is "a person of appropriate character."

Another related issue is raised by Snyder's often repeated claim or boast that he would NEVER change the team's name - and he insisted upon the underlining. However, federal broadcast law requires station owners not only to ascertain community needs and interests, but also to seek to accommodate these community needs and interests in their programming and other operations.

But, in saying that he will NEVER change the team's name, Snyder is declaring that he will ignore community needs and interests. In other words, even if irrefutable evidence were to establish beyond any reasonable doubt that the overwhelming percentage of WWXX-FM listeners regard "R*dskins" as a deplorable racial slur, and do not want to hear that word while listening to the station, Snyder out of apparent stubbornness has said he would not yield, apparently even if this meant that he would be violating FCC requirements. This may not be a person of "appropriate character."

Finally, to the extent that the corporate owner's character is or does become relevant in this proceeding, and if any doubt remains, the agency may wish to consider, as additional factors likewise relevant to his character, the many allegations at least suggesting a lack of character and of sufficient integrity to be awarded a government monopoly. For example, in a widely publicized article which led to a law suit by Snyder, it was alleged that "Dan Snyder [who] got caught forging names as a telemarketer with Snyder Communications, made a great view of the Potomac River for himself by going all Agent Orange on federally protected lands, and lost over $121 million of Bill Gates' money while selling an "official mattress" while in charge of Six Flags. [http://bit.ly/1k4dg3z].

Petitioner respectfully suggests that the agency should think long and hard before awarding a valuable broadcast license to someone who has done so much harm nationally, and is in a position to immediately stop the harm if the renewal of his radio license is threatened.

SUMMARY, CONCLUSION, AND PRAYER FOR RELIEF

Petitioner, in support of his formal petition to deny renewal of WWXX, 94.3 FM's broadcast license, pursuant to 47 U.S.C.A. § 309(d), has alleged that he is a listener 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 American Indians - 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, 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 and others sensitive to the use of racist slang might find this very objectionable, upsetting, and/or contrary to their religious, ethical, or moral views - 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 organizations representing African Americans and Hispanics - as opening the door wide to all broadcasters across the country to freely and repeatedly use terms which are highly offensive slurs to blacks, Latinos, and others.

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