

Lewitt, Hackman, Shapiro, Marshall & Harlan  
A Law Corporation

**DAVID GURNICK, ESQ. SBN 115723**  
**STEPHEN T. HOLZER, SBN 074561**  
**LEWITT HACKMAN SHAPIRO MARSHALL & HARLAN**  
 16633 Ventura Boulevard, 11<sup>th</sup> Floor  
 Encino, California 91436-1865  
 Telephone: (818) 990-2120  
 Telecopier: (818) 981-4764  
 dgurnick@lewiththackman.com  
[sholzer@lewiththackman.com](mailto:sholzer@lewiththackman.com)

Attorneys for **Defendants ALL TRIBAL NETWORKS, LLC; SPY EGO MEDIA, LLC; and JAMES GUSMAN**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

YOUR TOWN ONLINE, INC., a  
 California Corporation,

Plaintiff,

vs.

ALL TRIBAL NETWORKS, LLC, a  
 California limited liability company;  
 SPY EGO MEDIA, LLC a Nevada  
 limited liability company; JAMES  
 GUSMAN, an individual; ROUND  
 VALLEY INDIAN TRIBES, a federally  
 recognized Indian tribe; MICRONET  
 COMMUNICATIONS, INC., a Texas  
 Corporation; and, CMS HOLDINGS, an  
 Illinois limited liability company dba  
 IntelPath.,

Defendants.

**CASE NO: 3:21-cv-04442-JD**

**OPPOSITION TO**  
**APPLICATION FOR**  
**TEMPORARY RESTRAINING**  
**ORDER AND ORDER TO SHOW**  
**CAUSE RE PRELIMINARY**  
**INJUNCTION; MEMORANDUM**  
**OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF OPPOSITION**

**Judge James Donato**  
**Courtroom 11**  
**San Francisco Courthouse**

**HEARING:**

**Date:**

**Time:**

**Courtroom: 11**

Defendants, ALL TRIBAL NETWORKS, LLC; SPY EGO MEDIA, LLC;  
 and JAMES GUSMAN (collectively “Defendants”) submit their Opposition to the  
 issuance of a Temporary Restraining Order.

**INTRODUCTION**

As the following discussion will show:



If Plaintiff does join Round Valley in this TRO Application, Round Valley should have the opportunity to retain counsel and respond to the TRO application.

**B. Plaintiff is illegally broadcasting on the 6 GHz frequency from an unauthorized location**

In its Memorandum of Points and Authorities in support of its TRO Application (“Plaintiff’s P & A”), Plaintiff admits it is licensed to broadcast from the FCC at a different location than the one from which it is actually transmitting:

**IntelPath<sup>2</sup> obtained licenses for new frequency/channels at the proposed location for Your Town Online’s new project but, unbeknownst to Your Town Online, also changed the coordinates for the existing 6 GHz equipment to the yet unconstructed location. Exhibit B to Ireton Decl. is a Google Earth map depicting the transmitter and receiver locations set forth in Your Town Online’s WRBY237 license after the inadvertent coordinate change ....**

Plaintiff’s P & A, p. 5 ls.9-19. (emphasis added).

Plaintiff’s license authorizes Plaintiff to transmit from a specified location—but but not the location from which the Plaintiff is operating. There is, on the other hand, no claim by Plaintiffs that Round Valley or Defendants are broadcasting from a location other than the location authorized by Round Valley’s FCC license. If Plaintiff’s license were issued with mistakes, Plaintiff’s quarrel is properly with IntelPath<sup>3</sup>, not with Defendants.

**C. Plaintiff is suffering no irreparable injury**

Plaintiff admits it can still provide service to its customers despite the ongoing dispute with Defendants:

**To provide service to its customers since All Tribal Network’s interference began on June 11, 2021, Your Town Online has been utilizing a separate wireless transmission system which it hurriedly installed at considerable cost.**

Plaintiff’s P & A, p. 9, ls. 3-5 predicted.

<sup>2</sup> IntelPath is Plaintiff’s frequency coordinator responsible for obtaining Plaintiff’s license from the FCC.

<sup>3</sup> And an appeal to the FCC.

1 This claimed injury is not irreparable; the “considerable” cost for the separate  
2 transmission service is calculatable and compensable were Plaintiff to prevail in this  
3 litigation.

4 Moreover, the balance of hardships does not tip in Plaintiff’s favor. As  
5 Plaintiff’s P & A itself acknowledges:

6 **Not only does All Tribal Network’s transmissions cause**  
7 **interference with Your Town Online’s transmissions, but Your**  
8 **Town Online’s transmissions are predicted to cause major**  
9 **interference with All Tribal Network’s transmissions.**

Plaintiff’s P & A, p. 13, ls. 13-17 (emphasis added).

10 Therefore, Round Valley and Defendants—who are properly operating in  
11 conformity with Round Valley’s license—are subject to irreparable injury just as  
12 much as Plaintiff, which admits it is not operating in conformity with its FCC  
13 license.

14 Plaintiff’s argument that Defendants do not need the 6 GHz frequency since  
15 they have a second frequency at 11 GHz is misplaced, for at least two reasons. First,  
16 as a practical matter, which Defendants explain, the 6 GHz frequency is essential in  
17 times of bad weather. See Plaintiff’s P & A, p. 11, l. 28-p. 12, l. 3. Second, as a legal  
18 matter, Round Valley and Defendants have a valid FCC license to broadcast on both  
19 frequencies at the locations where Round Valley and Defendants are operating.

20 **D. Plaintiff has not exhausted its administrative remedies and should be**  
21 **required to do so before pursuing this case**

22 Plaintiff has known about the alleged interference issue since at least January  
23 12, 2021 (Plaintiff’s P & A, p. 3, l. 25-p. 4, l. 3). Yet its P & A lacks any evidence  
24 that Plaintiff approached the FCC about resolving the issues presented to this Court.  
25 The FCC is the expert and sole agency responsible for licensing spectrum and  
26 resolving cases of interference. More specifically, the FCC’s Enforcement Bureau  
27 has primary responsibility for the FCC’s enforcement of the Communications Act of  
28 1934, as amended, other statutes, and the FCC’s rules, orders, and terms and

conditions of licenses and other authorizations. Plaintiff should have sought, and should seek, relief from that administrative agency before seeking this Court's intervention.

**E. The proposed TRO is vague and overbroad; the proposed TRO unduly impinges speech; it would be Unfair to Bar One Side's Speech, Leaving the Other Side Free to Continue Its Public Communication .**

The relief sought by Plaintiff is vague, overbroad and unduly impinges speech. The first relief sought by Plaintiff is to enjoining transmission "in the vicinity" of Plaintiff's "current path" between two mountains. "Vicinity" is an unfairly, undefinable standard. The next relief sought is "any other transmission that interferes" with Plaintiff's "reception of its transmissions" on a two "frequency pair." The words "any" and "interferes" is an unfair, undefinable standard. Interference can be measured so many ways, and is subjective.

The third relief sought is "any communication indicating or implying" that Plaintiff "is or will be unable to provide service to its current or prospective customers." This is a wide impingement of speech. The relief is sought without any showing in Plaintiff's P & A, that any false or misleading statement was made. The proposed injunction gives no heed to whether any statement by Defendant was true; and the proposed injunction bars such statements even though they are or at least may be true.

Plaintiff has been actively communicating in the community – on Facebook, email blasts, and telephone auto attendant -- and is well able to communicate ahead of Defendants and in response to Defendants -- its contrary views. These are matters of interest in the community being served. It would be unfair to bar speech by Defendants, while Plaintiff is actively able to communicate without restriction.

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**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's application for a Temporary Restraining Order.

**DATED:** June 30, 2021

**LEWITT, HACKMAN, SHAPIRO,  
MARSHALL & HARLAN**

By: *Stephen T. Holzer*  
**DAVID GURNICK**  
**STEPHEN T. HOLZER**  
Attorneys for Defendants

Lewitt, Hackman, Shapiro, Marshall & Harlan  
A Law Corporation

# EXHIBIT 1





# Federal Communications Commission

## Public Safety and Homeland Security Bureau

### RADIO STATION AUTHORIZATION

LICENSEE: Round Valley Indian Tribes

ATTN: JAMES RUSS  
ROUND VALLEY INDIAN TRIBES  
77826 COVELO ROAD  
COVELO, CA 95428

<b>Call Sign</b> WRMD894	
<b>File Number</b> 0009379099	
<b>Radio Service</b> MW - Microwave Public Safety Pool	
<b>SMSA</b>	<b>Station Class</b> FXO

FCC Registration Number (FRN): 0008557555

<b>Grant Date</b> 03-25-2021	<b>Effective Date</b> 03-25-2021	<b>Expiration Date</b> 03-25-2031	<b>Print Date</b> 03-26-2021
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### LOCATION

**Fixed Location Address or Area of Operation:**

ATOP BIG SIGNAL PEAK 6.8 MI ENE OF

City: HEARST County: MENDOCINO State: CA

Loc No.	Location Name	Latitude	Longitude	Elevation	Antenna Structure Registration No.
001	BIG SIGNAL PEAK 01	39-30-58.5 N	123-05-24.7 W	1843.3	
002	COVELO 03	39-47-19.6 N	123-14-41.9 W	423.1	
003	WILLITS 01	39-24-11.1 N	123-20-55.6 W	416.8	

### FREQUENCY PATHS

Frequency (MHz)	Tol (%)	Emission Desig	EIRP (dBm)	Constr Date	Path No	Seg	Emit Loc No	Ant Hgt (m)	Gain (dBi)	Beam Reflector Ht(m)xWd(m)	POL	AZIM (deg)	Rec Loc No	Rec Call Sign
10995.0	0.00050	80M0D7W	70.500	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	69.500	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	73.000	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	73.000	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	73.000	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	73.000	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	

**Conditions:**

Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.



Licensee Name: ROUND VALLEY INDIAN TRIBES

Call Sign: WRMD894

File Number: 0009379099

Print Date: 03-26-2021

Frequency (MHz)	Tol (%)	Emission Desig	EIRP (dBm)	Constr Date	Path No	Seg	Emit Loc No	Ant Hgt (m)	Gain (dBi)	Beam (deg)	POL	AZIM (deg)	Rec Loc No	Rec Call Sign
Reflector Ht(m)xWd(m)														
10995.0	0.00050	80M0D7W	73.000	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	73.000	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	72.500	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
10995.0	0.00050	80M0D7W	71.500	09-25-2022	001	1	001	4.3	44.0	1.0	S	336.3	002	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.700	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	69.200	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	68.200	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	67.200	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
11075.0	0.00050	80M0D7W	66.200	09-25-2022	002	1	001	4.3	40.7	1.6	S	240.6	003	
6019.325	0.00050	60M0D7W	70.500	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	70.000	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	70.000	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	69.000	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	68.500	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	68.000	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	67.500	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	66.500	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	65.500	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
6019.325	0.00050	60M0D7W	64.500	09-25-2022	003	1	001	4.3	39.0	1.8	S	336.3	002	
5960.025	0.00050	60M0D7W	65.000	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	64.500	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	64.000	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	63.000	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	62.000	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	61.000	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	67.000	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	66.500	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	66.500	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	
5960.025	0.00050	60M0D7W	65.500	09-25-2022	004	1	001	4.3	35.5	2.9	S	240.6	003	

## Waivers/Conditions:

NONE



# Federal Communications Commission

Public Safety and Homeland Security Bureau

## RADIO STATION AUTHORIZATION

LICENSEE: Round Valley Indian Tribes

ATTN: JAMES RUSS  
ROUND VALLEY INDIAN TRIBES  
77826 COVELO ROAD  
COVELO, CA 95428

<b>Call Sign</b> WRMD895	
<b>File Number</b> 0009379101	
<b>Radio Service</b> MW - Microwave Public Safety Pool	
<b>SMSA</b>	<b>Station Class</b> FXO

FCC Registration Number (FRN): 0008557555

<b>Grant Date</b> 03-25-2021	<b>Effective Date</b> 03-25-2021 <sup>1</sup>	<b>Expiration Date</b> 03-25-2031	<b>Print Date</b> 03-26-2021
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### LOCATION

#### Fixed Location Address or Area of Operation:

100 Kawi Pl

City: Willits

County: MENDOCINO

State: CA

Loc No.	Location Name	Latitude	Longitude	Elevation	Antenna Structure Registration No.
001	WILLITS 01	39-24-11.1 N	123-20-55.6 W	416.8	
002	BIG SIGNAL PEAK 01	39-30-58.5 N	123-05-24.7 W	1843.3	

### FREQUENCY PATHS

Frequency (MHz)	Tol (%)	Emission Desig	EIRP (dBm)	Constr Date	Path No	Seg	Emit Loc No	Ant Hgt (m)	Gain (dBi)	Beam (deg)	POL	AZIM (deg)	Rec Loc No	Rec Call Sign
									Reflector Ht(m)xWd(m)					
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.700	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	69.200	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	

#### Conditions:

Pursuant to §309(h) of the Communications Act of 1934, as amended, 47 U.S.C. §309(h), this license is subject to the following conditions: This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized herein. Neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934, as amended. See 47 U.S.C. § 310(d). This license is subject in terms to the right of use or control conferred by §706 of the Communications Act of 1934, as amended. See 47 U.S.C. §606.

Licensee Name: ROUND VALLEY INDIAN TRIBES

Call Sign: WRMD895

File Number: 0009379101

Print Date: 03-26-2021

Frequency (MHz)	Tol (%)	Emission Desig	EIRP (dBm)	Constr Date	Path No	Seg	Emit Loc No	Ant Hgt (m)	Gain (dBi)	Beam (deg)	POL	AZIM (deg)	Rec Loc No	Rec Call Sign
Reflector Ht(m)xWd(m)														
11565.0	0.00050	80M0D7W	68.200	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	67.200	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
11565.0	0.00050	80M0D7W	66.200	09-25-2022	001	1	001	4.3	40.7	1.6	S	60.5	002	
6212.065	0.00050	60M0D7W	66.500	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	65.500	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	65.000	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	64.500	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	64.000	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	63.000	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	62.000	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	61.000	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	67.000	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	
6212.065	0.00050	60M0D7W	66.500	09-25-2022	002	1	001	4.3	35.5	2.9	S	60.5	002	

## Waivers/Conditions:

NONE

## PROOF OF SERVICE

[illegible]

I am employed in the County of Los Angeles, State of California. I am over 18 years of age and am not a party to the within action or proceeding. My business address is 16633 Ventura Boulevard, 11<sup>th</sup> Floor, Encino, California 91436-1865.

On **June 30, 2021**, I served the foregoing document(s) described as:

**OPPOSITION TO APPLICATION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF OPPOSITION**

on the Designated Recipients on the Electronic Mail Notice List Maintained on the NEF System as of the Date and Time of this Filing:

- **Anthony Gabriel Bentivegna**  
abentivegna@bhplaw.com
- **Richard Charles O'Hare**  
rohare@johnstonthomas.com, jschaap@johnstonthomas.com, calendaring@johnstonthomas.com
- **Ryan Fenton Thomas**  
rthomas@johnstonthomas.com, smontgomery@johnstonthomas.com, lgiovanetti@johnstonthomas.com

☒ **(BY NEF)** To be served by the Court via Notice of Electronic Filing (“NEF”) – Pursuant to controlling General Order(s), the foregoing document will be served by the court via NEF and hyperlink to the document on the recipients designated on the Electronic Mail Notice List.

EXECUTED on **June 30, 2021**, at Encino, California.

☐ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Kathy L. Evans

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KATHY L. EVANS