



Federal Communications Commission  
Washington, D.C. 20554

February 19, 2008

**DA 08-408**

*In Reply Refer To:*

1800B3-MJW

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Re: KFC(D)AM Farmersville, TX  
Facility ID No. 43757  
File No. BAL-20070216ABA

KHSE(AM), Wylie, TX  
Facility ID No. 133464  
File No. BAL-20070216ABB

**Applications for  
Assignment of License**

**Petition to Deny  
Informal Objection**

Dear Counsel:

We have before us the captioned applications (the "Applications") for consent to assign the license of Station KFC(D)AM, Farmerville, TX ("KFC(D)"), and the construction permit of Station KHSE(AM), Wylie, TX ("KHSE") (collectively, the "Station Authorizations") from Bernard Dallas, LLC ("Bernard") to Principle Broadcasting Network – Dallas, LLC. Also before us are a Petition to Deny ("Petition") the Applications filed by David A. Schum *et al.* ("Petitioners")<sup>1</sup> and an Informal Objection

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<sup>1</sup> In addition to Mr. Schum, Petitioners include J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders and Richard J. Drendel. The

("Objection") to the Applications filed by Joy Crain Johns ("Johns").<sup>2</sup> We also have before us an Opposition to Petition to Deny ("Opposition") filed by Bernard,<sup>3</sup> a Response to Informal Objection ("Response") filed by Bernard,<sup>4</sup> and a Consolidated Reply ("Reply") filed by Petitioners.<sup>5</sup> For the reasons stated below, we deny the Petition and Objection and grant the assignment applications.

**Background.** Simultaneously with the release of this letter decision we are releasing a related decision that denies reconsideration of our December 28, 2006, action denying Petitioners' Petition to Deny and granting applications to assign the Station Authorizations from DFW Radio License, LLC ("DFW"), to Bernard, the proposed assignor here.<sup>6</sup> We found that the reconsideration petition was without merit to the extent it raised new matters and otherwise procedurally defective because it merely repeated Petitioners' already-rejected allegations of prohibited foreign ownership and unauthorized transfer of control.<sup>7</sup>

The instant Petition and Objection reiterate the same allegations that were rejected in the *Letter Decision Denying Petition to Deny the DFW-to-Bernard Assignment*. Petitioners and Ms. Johns also submit articles from Bloomberg.com and the New York Post concerning: (1) the discharge of a former employee of D.B. Zwirn & Co., one of Bernard's principal investors; (2) hearsay statements of accounting irregularities at D.B. Zwirn & Co.; (3) the withdrawal of a Securities and Exchange Commission ("SEC") registration by D.B. Zwirn & Co.,<sup>8</sup> and (4) the Connecticut Attorney General's

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Petition was filed March 29, 2007. Petitioners are equity owners of The Watch, the parent company of DFW Radio, a former licensee of KFCD(AM) and former permittee of KHSE(AM). *See Letter to David A. Schum et al. re KFCD(AM) and KHSE(AM)*, 21 FCC Rcd 14996 (MB 2006) ("*Letter Decision Denying Petition to Deny the DFW-to-Bernard Assignment*").

<sup>2</sup> Ms. Johns filed "individually and as Executrix of the Estate of Albert L. Crain, deceased." Objection at 1. She filed the Objection on May 1, 2007, and supplemented it on May 25, 2007 (the "Supplement").

<sup>3</sup> The Opposition was filed on April 11, 2007.

<sup>4</sup> The Response was filed on June 21, 2007. Bernard represents that counsel for Principle Broadcasting Network LLC - Dallas, the proposed assignee, joins in the Response. *Id.* at 5 n.9.

<sup>5</sup> The Reply was filed on April 23, 2007.

<sup>6</sup> *Letter to David A. Schum, et al. re KFCD(AM) and KHSE(AM)*, DA-08-409, (MB, rel. Feb 19, 2008). ("*Letter Decision Denying the DFW-to-Bernard Petition for Reconsideration*") (released simultaneously herewith).

<sup>7</sup> The Commission will not revisit issues "on which the tribunal has once deliberated and spoken." *Chapman S. Root Revocable Trust*, Memorandum Opinion and Order, 8 FCC Rcd 4223, 4224 (1993), quoting *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967, *rehearing denied*, 384 U.S. 947, *petition to reopen denied*, 4 FCC 2d 608 (1966). ("*WWIZ*") *See also, Pacific Broadcasting of Missouri*, Memorandum Opinion and Order, 19 FCC Rcd 10950, 10952 (2004). The allegations respecting violations of Section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, ("Section 310"), unauthorized transfer of control and other matters were fully considered and rejected in the DFW-Bernard Reconsideration Order. Bernard characterizes the Objection and Supplement as "woefully belated." Opposition at 3. We agree. Pursuant to 47 C.F.R. § 73.3584 ("Section 73.3584") such "untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration." Section 73.3584, however, is discretionary. Thus, given our disposition of this matter, and to forestall repetitious requests for reconsideration, we have addressed Ms. Johns' allegations herein.

<sup>8</sup> Petitioners request we take official notice of the withdrawal of the SEC registration by D.B. Zwirn & Co. Petition at 11. Bernard has not disputed that the registration was withdrawn. *See Fed. R. Evid.*, Rule 201. Nonetheless, Petitioners' request for official notice is moot because the withdrawal of the registration, taken as true, does not support Petitioners' claim of undisclosed foreign ownership of Bernard. *See text accompanying n.14 infra.*

statements on disclosures made by hedge funds, generally.<sup>9</sup> Ms. Johns also supplies a copy of a motion filed in an unrelated case in which D.B. Zwirn investors have been characterized as “citizen[s] of New York.”<sup>10</sup> The “evidence” respecting unauthorized transfer of control is a statement by Bernard’s Texas counsel, in a bankruptcy hearing, that “the debtors [the Petitioners here] no longer own these stations.”<sup>11</sup> For the reasons set forth below, we find that neither the Petition nor Objection has raised a substantial and material fact warranting further consideration.<sup>12</sup>

**Discussion.** Petitioners imply that D.B. Zwirn and Co. withdrew its SEC registration because the company was concerned that the registration would disclose foreign ownership of DBZ. We reject this speculative inference because, as disclosed in the submitted news articles, over a hundred other companies also withdrew their registrations when a court invalidated an SEC regulation that had imposed a registration requirement. Moreover, we find: (1) that the Connecticut Attorney General’s remarks about hedge fund disclosure do not relate to foreign ownership interests by those funds; (2) the hearsay accounts of accounting irregularities at D.B. Zwirn and Co. are unconnected to foreign investment interests; (3) Petitioners have not established that D.B. Zwirn’s former employee’s criminal conviction is relevant to a Section 310 violation and; (4) there is no nexus between Petitioners’ claim of foreign ownership interests by Bernard and a motion filed in the unrelated U.S. District Court proceeding where D.B. Zwirn & Co. characterized its investors as “citizens of New York.”<sup>13</sup>

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<sup>9</sup> See Petition at 3, Objection at 2-3.

<sup>10</sup> See Supplement at 3. Ms. Johns states that a Notice of Removal filed by D.B. Zwirn & Co. in an unrelated case, *Wright Capital Corp. v. D.B. Zwirn & Co. and Brin Investment Corp.*, Case No. 1-07CV-105-C (N.D. Tex.), characterized D.B. Zwirn & Co.’s investors as being “domiciled” in New York, and “citizen[s] of New York” but made no reference to the investors being U.S. citizens. Objection at 3. This, Ms. Johns asserts, raises an issue of whether the “individual investors of D.B. Zwirn are citizens of the United States as opposed to aliens.” *Id.*

<sup>11</sup> The Bankruptcy Court hearing concerned Petitioners’ refusal to execute applications for assignment of the KFCD license and the KHSE construction permit from DFW to Bernard. The Bankruptcy Judge directed Bernard’s counsel to draft an order allowing counsel to sign the applications on DFW’s behalf. See Objection, Exhibit A at 32.

<sup>12</sup> We note Bernard’s claim that Petitioners and Ms. Johns filings “border on abusive,” and are “wasteful of Commission resources.” Response at 1, 5. Although our denial of the Petition makes it unnecessary to address that claim at this juncture, we remain mindful that petitions to deny “are specifically intended to enable interested parties to provide factual information to the Commission as to whether grant of an application would serve the public interest. To the extent that they are used for other than their intended purpose, e.g., for private financial gain, to settle personal claims, or as an emotional outlet, the public interest is disserved. Beyond the costs to licensees and the public, consideration of meritless challenges wastes Commission resources.” *Amendment of Sections 1.420 and 73.3584 of the Commission’s Rules Concerning Abuses of the Commission’s Processes*, Report and Order, 5 FCC Rcd 3911, 3912 (1990), *recon. denied*, 6 FCC Rcd 3380 (1991).

<sup>13</sup> See *supra* n.9. The statement that D.B. Zwirn & Co. investors are “citizens of New York” was made to support diversity jurisdiction pursuant to 28 U.S.C. § 1332 which provides, *inter alia*, that U.S. District Courts have original jurisdiction over civil actions brought by “citizens of different states.” Hence, the reference does not imply that the investors are not also citizens of the United States.

In sum, as in the *Letter Decision Denying the DFW-to-Bernard Petition for Reconsideration*, (released simultaneously herewith) we find nothing here that rebuts the sworn statement by a DBZ principal that “[t]here is no direct or indirect foreign equity ownership in Bernard Dallas LLC.”<sup>14</sup> Moreover, as to Petitioners’ assertions of unauthorized transfer of control, we agree with Bernard<sup>15</sup> that the statement to the bankruptcy judge that Petitioners “no longer own the stations” reflected only that the bankruptcy court had approved Bernard’s purchase of the stations, not that Bernard prematurely had assumed control.<sup>16</sup>

We also decline to consider Petitioners’ and Ms. Johns’ other allegations concerning unauthorized transfer of control and abuse of process.<sup>17</sup> With the exception of the material discussed *supra*, their allegations here merely replicate those we rejected in connection with the DFW-to-Bernard assignment.<sup>18</sup> We thus agree with Bernard that Petitioners’ and Ms. Johns’ attempts to reprise arguments already made and rejected is improper.<sup>19</sup> The Commission will not grant reconsideration “merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken.”<sup>20</sup>

**Decision.** Accordingly, IT IS ORDERED that the Petition to Deny filed March 29, 2007 by David A. Schum, J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders and Richard J. Drendel, and the Informal Opposition filed May 1, 2007, as supplemented May 25, 2007, by Joy Crain Johns ARE DENIED. IT IS FURTHER ORDERED, that the Applications for Assignment of License, File No. BAL-20070216ABA and File No. BAL-20070216ABB, ARE GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>14</sup> See *DFW-to-Bernard Letter*, 21 FCC Rcd at 15003.

<sup>15</sup> See Opposition at 2-3, citing *WWIZ*, 37 FCC at 686; *WAIT Radio*, 46 RR 2d 1556 (1980).

<sup>16</sup> See *Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395, 397 (D.C. Cir. 1985). (A hearing is required only if “the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.” *Id.* at 395, citing *Columbus Broadcasting Coalition*, 505 F.2d 320, 330, (D.C. Cir. 1974).

<sup>17</sup> See Petition at 12-16.

<sup>18</sup> See *DFW-to-Bernard Letter* at 5-6.

<sup>19</sup> See Opposition to Petition for Reconsideration filed by Bernard, Feb. 12, 2007, at 2-3. (The cited Opposition to Petition for Reconsideration was filed in response to Petitioners’ Petition for Reconsideration of the *DFW-to-Bernard Letter*. See *supra* n.1.).

<sup>20</sup> *WWIZ*, 37 FCC at 686.