

Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of	)	
	)	
<b>Golden Gulf Coast Broadcasting, Inc.,</b>	)	File No. BALH-20031125ALX
<b>Assignor</b>	)	Facility ID No. 24513
	)	
and	)	
	)	
<b>Capstar TX Limited Partnership,</b>	)	
<b>Assignee</b>	)	
	)	
Application for Assignment of License of	)	
WQYZ(FM), Ocean Springs, Mississippi	)	
	)	
<b>Golden Gulf Coast Broadcasting, Inc.</b>	)	File No. BRH-20040202AHI
	)	Facility ID No. 24513
Application for Renewal of License of	)	
WQYZ(FM), Ocean Springs, Mississippi	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 20, 2014**

**Released: February 20, 2014**

By the Commission:

1. The Commission has before it an Application for Review filed by WJZD, Inc. (“WJZD”). WJZD seeks review of a March 12, 2007, action by the Media Bureau (“Bureau”) (“*Reconsideration Decision*”)<sup>1</sup> dismissing WJZD’s Petition for Reconsideration of the Bureau’s May 26, 2005, grant of the above-captioned applications (“Applications”) filed by Golden Gulf Coast Broadcasting, Inc. (“Golden”) for assignment and renewal of the license for station WQYZ(FM), Ocean Springs, Mississippi.<sup>2</sup> In the *Reconsideration Decision*, the Bureau affirmed its prior finding that WJZD had failed to raise a substantial or material question of fact whether Golden and the assignee, Capstar TX Limited Partnership (“Capstar”), had engaged in an unauthorized transfer of control of station WQYZ(FM).<sup>3</sup> The Bureau found on reconsideration that it had applied the correct legal standard by looking beyond the contractual terms of the parties’ local marketing agreement and examining which party had exercised actual operational control over the personnel, programming, and finances of the station, concluding that Golden had properly done so.

2. In the *Staff Decision* and *Reconsideration Decision*, the Bureau thoroughly addressed each of WJZD’s factual allegations regarding *de facto* control, including the relocation of the station’s

<sup>1</sup> *Lawrence E. Steelman*, Letter, 22 FCC Rcd 4866 (MB 2007).

<sup>2</sup> *WJZD, Inc.*, Letter, 20 FCC Rcd 9941 (MB 2005) (“*Staff Decision*”). To the extent that the Application for Review purports to seek review of the *Staff Decision*, it is untimely and is hereby dismissed. See 47 C.F.R. §§ 1.115(d), 1.4(b)(2); Application for Review at 1-2.

<sup>3</sup> See 47 U.S.C. § 310(d).

main studio, understaffing of its main studio, identity of its program director, its use of an unauthorized studio transmitter link and *ex parte* rule violations. The Bureau held that these various allegations, taken together with all the facts on record, did not raise a substantial and material question of fact such as would require an evidentiary hearing.<sup>4</sup> In so holding, the Bureau rejected WJZD's contention that the *Staff Decision* was deficient because the Bureau did not distinguish the instant facts from those present in the cases string-cited by WJZD in its Petition to Deny, noting that, applying the Commission's appropriate analysis regarding transfer of control allegations, WJZD had failed to demonstrate that Capstar had ultimate control over WQYZ's programming, finances or personnel.<sup>5</sup> We agree with the Bureau's analysis.<sup>6</sup>

3. We also agree with the Bureau's rejection of WJZD's allegation that, WJZD having raised the issue of whether Clear Channel Communications and its subsidiaries, including Capstar, have the requisite character to become Commission licensees as a result of their alleged broadcast of indecent material, Clear Channel violated the *ex parte* rules in subsequently negotiating a consent decree with the Commission resolving those matters without allowing WJZD to be present.<sup>7</sup> In rejecting that contention, the Bureau noted that the communications at issue had been requested by the Commission for the purpose of resolving settlement issues and therefore were exempt from the general prohibition on *ex parte* communications.<sup>8</sup>

4. Upon review of the Application for Review and the entire record, we conclude that WJZD has not demonstrated that the Bureau erred. The Bureau, in the *Reconsideration Decision*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>9</sup> and Section 1.115(g) of the Commission's rules,<sup>10</sup> the Application for Review IS DISMISSED for the reasons stated in note 2 above and IS otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>4</sup> The Bureau did, however, propose a forfeiture, which Golden has paid, for Golden's failure to maintain a "meaningful presence" at the main studio, including managerial and staff level employees, in violation of 47 C.F.R. § 73.1125. The Bureau determined that, contrary to WJZD's contention, this violation did not establish that an unauthorized transfer of control of the station had occurred. *Reconsideration Decision*, 22 FCC Rcd at 4870. We agree with this conclusion.

<sup>5</sup> *Reconsideration Decision*, 22 FCC Rcd at 4869.

<sup>6</sup> WJZD failed to discuss the operative facts in any of those cases, much less demonstrate that the precedent mandates designation for hearing here, falling far short of the requirement that it "specify, with particularity," why the Bureau's grant of the applications was in conflict with that precedent. *See* 47 C.F.R. § 1.115(b)(2)(i).

<sup>7</sup> Application for Review at 13-15.

<sup>8</sup> *Reconsideration Decision*, 22 FCC Rcd at 4871 (citing 47 C.F.R. § 1.1204(a)(10)).

<sup>9</sup> 47 U.S.C. § 155(c)(5).

<sup>10</sup> 47 C.F.R. § 1.115(g).