

Stamp and Return

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

FILED/ACCEPTED

APR 26 2007

Federal Communications Commission  
Office of the Secretary

In re Application of

Golden Gulf Coast Broadcasting, Inc.  
Assignor

and

Capstar TX Limited Partnership  
Assignee

For Assignment of License of  
FM Broadcast Station WQYZ,  
Ocean Springs, Mississippi

To: The Secretary, FCC  
Attn.: The Commission

File No. BALH-20031125ALX  
Facility ID No. 24513

**OPPOSITION TO APPLICATION FOR REVIEW**

Capstar TX Limited Partnership (“Capstar”), a licensee subsidiary of Clear Channel Communications, Inc. (collectively with Capstar, “Clear Channel”), by its attorney and pursuant to Section 1.115(d) of the Commission’s Rules, hereby opposes the April 11, 2007 Application for Review (the “Application”) filed by WJZD, Inc. (“WJZD”) in connection with the captioned application. As shown below, the Application is repetitious and meritless, and it should be denied.

The subject application, which sought consent for the assignment of WQYZ(FM), Ocean Springs, Mississippi, from Golden Gulf Coast Broadcasting, Inc. (“GGCB”) to Capstar, was filed in November 2003. WJZD filed a Petition to Deny the application, alleging, among other things, that GGCB had abdicated control of WQYZ(FM).<sup>1</sup> After issuing a letter of inquiry to GGCB

<sup>1</sup> See WJZD’s “Petition to Deny or Designate for Hearing” (Jan. 5, 2004) at 4-13.

and Capstar<sup>2</sup> and considering their responses thereto<sup>3</sup> (as well as WJZD's unauthorized reply to those responses<sup>4</sup>), the Audio Division, Media Bureau (the "Division"), issued an eleven-page letter decision on May 26, 2005, denying WJZD's petition to deny and granting consent to the WQYZ(FM) license assignment.<sup>5</sup> After thorough discussion and analysis of the facts, the Division—while admonishing GGCB for the late filings of an STL modification application and main studio change notification, and fining GGCB for a period of inadequate staffing at WQYZ(FM)'s main studio<sup>6</sup>—found that "[t]he facts alleged by WJZD do not establish a *prima facie* case that GGCB has engaged in an unauthorized transfer of control of WQYZ(FM)."<sup>7</sup>

The parties consummated the assignment of WQYZ(FM) on July 5, 2005. WJZD, meanwhile, filed a petition for reconsideration of the Division Decision.<sup>8</sup> Once more, WJZD maintained that an unauthorized transfer of control had occurred. WJZD complained that the Division had wrongly reached a contrary conclusion on the facts, faulted the Division for not discussing and distinguishing a host of unauthorized transfer cases that it had string-cited without any type of analysis, and claimed that the assignment application should be set for evidentiary hearing. It also alleged that the Division had failed to consider its unauthorized "reply" in connection with the inquiry letter responses, particularly assertions regarding an individual that

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<sup>2</sup> See Letter to GGCB and Capstar from Peter H. Doyle, Chief, Audio Division, Media Bureau (Apr. 23, 2004).

<sup>3</sup> See GGCB's response to letter of inquiry in BALH-20031125ALX (May 13, 2004) and Clear Channel Communications, Inc.'s response to same letter (May 13, 2004).

<sup>4</sup> See WJZD's "Consolidated Reply to Responses to April 23, 2004 FCC Letter of Inquiry" (May 25, 2004).

<sup>5</sup> See Letter to WJZD, Inc. *et al.*, from Peter H. Doyle, Chief, Audio Division, Media Bureau, DA 05-1537 (Audio Div. May 26, 2005) (the "Division Decision").

<sup>6</sup> *Id.* at 5, 7-9.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> See WJZD's Petition for Reconsideration in File No. BALH-20031125ALX (Jul. 25, 2005).

GGCB employed as WQYZ(FM)'s general manager for a period of time in 2004.<sup>9</sup> Additionally, rehashing a complaint it initially raised in an unauthorized June 2004 "statement for the record," WJZD's petition for reconsideration speculated about purported *ex parte* contacts between Clear Channel and Commission staff in connection with a 2004 indecency consent decree.<sup>10</sup>

In its March 12, 2007, decision on reconsideration,<sup>11</sup> the Division disagreed with WJZD on all counts. It declined WJZD's invitation "simply to resume a debate as to whether an unauthorized transfer took place, an issue correctly resolved in the [Division Decision]."<sup>12</sup> It ruled that it was "not required to discuss and distinguish each of the cases cited by WJZD," because the Division Decision had applied the "correct legal standard" and had not been shown to be erroneous in applying the facts of this case to that standard.<sup>13</sup> The Recon Decision found that designation for hearing was inappropriate because WJZD's petition to deny "was an amalgam of conclusion, speculation, supposition, trade press articles, and other material that did not raise a substantial and material question of fact."<sup>14</sup> It held that WJZD's "Consolidated Reply," even if it was considered, provided no evidence that GGCB ceded control of WQYZ(FM).<sup>15</sup> Finally, the Recon Decision rejected WJZD's contention as to *ex parte* contacts in connection with the Clear Channel indecency consent decree.<sup>16</sup>

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<sup>9</sup> *Id.* at 9-12.

<sup>10</sup> *Id.* at 13-14.

<sup>11</sup> See Letter to Mr. Lawrence E. Steelman *et al.* from Peter H. Doyle, Chief, Audio Division, Media Bureau, DA 07-1240 (Mar. 12, 2007) (the "Recon Decision").

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Id.* at 6.

WJZD's current application for review is dressed up with the customary "questions for review" and factors warranting Commission consideration, but in reality it is a recycled version of its petition for reconsideration. WJZD sounds all the familiar themes once more, providing neither any new facts nor any colorable grounds for finding error in the Division's two thoroughly considered decisions.<sup>17</sup> For example, WJZD continues to rail against the supposedly unaddressed "legal standard" and the decisions' claimed contrariness to "statute . . . and Commission case precedents," while merely copying and pasting its same string-cite of cases with absolutely no discussion of their applicability to these facts.<sup>18</sup>

On the facts, WJZD continues to raise the same matters: relocation of the WQYZ(FM) main studio, temporarily insufficient staffing by GGCB at the studio, usage of an STL path for which authorization was untimely sought. The Division carefully considered those facts, however. It found (and reaffirmed on reconsideration) that those facts, while constituting rule violations warranting admonishment of GGCB (and, in the case of main studio staffing, a forfeiture), "did not evidence a wholesale abdication of control."<sup>19</sup> The Division determined that notwithstanding the main studio staffing violation, GGCB's 50% shareholder at all pertinent times served as Clear Channel's primary contact regarding WQYZ(FM)'s management, handled GGCB's accounting and bookkeeping, wrote checks to cover station expenses, was personally involved in station programming issues, and ultimately approved a change in the station's format.<sup>20</sup> WJZD's Application spews forth a host of rhetorical, conclusory and occasionally

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<sup>17</sup> It is worth noting that, while WJZD's Application purports to seek full Commission review of both the Division Decision and the Recon Decision (see Application at 1-2), the pleading is untimely with respect to the former. As a procedural matter, the Application is properly brought only with respect to the Recon Decision.

<sup>18</sup> See Application at 3-5.

<sup>19</sup> See Recon Decision at 3.

<sup>20</sup> Id. at 5.

reckless statements assailing the Division's conclusion, but it provides no evidence and no shred of a cognizable basis for overturning it.

The same is true with respect to WJZD's remaining contentions. The Recon Decision dealt directly with WJZD's unauthorized "Consolidated Reply" and its allegations regarding the WQYZ(FM) manager that GGCB employed for a period of time in 2004. The Division found that, even if WJZD's "Consolidated Reply" warranted consideration, "[t]here would be nothing violative of Commission regulations or necessarily indicative of an unauthorized transfer of control" if that individual was employed by GGCB as a general manager while still performing announcing duties for Clear Channel.<sup>21</sup> It also ruled that any discussions leading to the consent decree with Clear Channel fell within a specific exemption from the *ex parte* rules.<sup>22</sup> WJZD has nothing new to add on either point; the Application merely lifts, verbatim, the same arguments contained in WJZD's petition for reconsideration.

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<sup>21</sup> Id. at 6.

<sup>22</sup> Id.

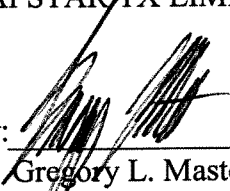
**Conclusion**

As with applications for review that the Commission has denied in the past, WJZD's Application "presents no new arguments, no new facts, and no new circumstances that warrant the Commission reopening the substantive determinations already made."<sup>23</sup> The Application is nothing more than a rehash of WJZD's prior pleadings, and it should be denied summarily.

Respectfully submitted,

CAPSTAR TX LIMITED PARTNERSHIP

By: \_\_\_\_\_

  
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Dated: April 26, 2007

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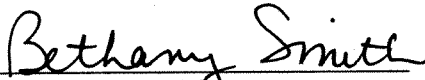
<sup>23</sup> See Communications and Control, Inc., 18 FCC Rcd 13448 (2003). See also Scioto Broadcasters, Limited Partnership, 5 FCC Rcd 5902 (1990) (noting summary denial of application for review because "we had found the argument to be without merit, and it gains nothing from repetition").

**CERTIFICATE OF SERVICE**

I, Bethany Smith, a secretary in the law firm of Wiley Rein LLP, hereby certify that on this 26<sup>th</sup> day of April, 2007, I caused copies of the foregoing “**Opposition to Application for Review**” to be mailed via first-class postage prepaid mail to the following:

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