

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

In the Matter of)
SCOTT SAVAGE, RECEIVER, ASSIGNOR)
Applications for Assignment of Licenses)
For Stations:)
WFJO(FM), Folkston, Georgia1) Facility ID No. 22005
File No. BALH-20090427ABP
WHJX(FM), Baldwin, Florida2) Facility ID No. 52032
File No. BALH-20090427ABP
WSJF(FM), St. Augustine Beach, Florida3) Facility ID No. 53672
File No. BALH-20090427ABP
WTHG(FM), Hinesville, Georgia) Facility ID No. 7816
File No. BALH-20090310ADD

MEMORANDUM OPINION AND ORDER

Adopted: June 11, 2014

Released: June 12, 2014

By the Commission:

1. The Commission has before it a timely Application for Review filed on September 9, 2011,4 by Dr. Glenn W. Cherry (“Cherry”) and Charles W. Cherry, II, (collectively, the “Cherrys”),5

1 This Station is now licensed to serve Jacksonville Beach, Florida. See BLH-20110614AAJ (granted June 30, 2011). Additionally, the Station’s call sign was changed to WJXL-FM on September 24, 2012. For administrative convenience, we will refer to the Stations herein by their prior call signs, which were in effect at the time of the staff actions in this case.

2 This station’s call sign was changed to WJGM(FM) on June 13, 2011.

3 This station’s call sign was changed to WYRE-FM on May 24, 2011.

4 On September 13, 2011, the Cherrys also filed an untimely “Amended Application for Review” that does not differ materially from the original Application for Review. The deadline for filing applications for review “and any supplement thereto” was September 12, 2011. See 47 C.F.R. § 1.115(d) (emphasis added). Accordingly, we will dismiss the Amended Application for Review. See, e.g., Texas Grace Communications, Memorandum Opinion and Order, 20 FCC Rcd 4820 (2005) (dismissing untimely applications for review).

5 Charles W. Cherry, II, was previously denied standing to file a Petition for Reconsideration because he was not a party to the proceeding and had not shown why he could not have participated earlier in the proceeding. The Application for Review contends that, in the initial order granting the captioned applications (the “Applications”), the Bureau made Charles W. Cherry, II, a party. See Application for Review at 1 n.1. We disagree. The Bureau erroneously referred to Charles W. Cherry, II, as Cherry’s “brother William W. Cherry, II, Esq.” in stating that the latter had participated in the filing of a Complaint in the U.S. District Court for the Middle District of Florida, but did not explicitly make him a party. See Percy Squire, Esq., and Mark J. Prak, Esq., Letter, 24 FCC Rcd 10669,

(continued....)

seeking review of the August 9, 2011, decision (“*Staff Decision 2*”) of the Media Bureau (“Bureau”).⁶ *Staff Decision 2* denied Cherry’s Petition for Reconsideration of an earlier Bureau action, which (1) denied Cherry’s Informal Objections to the Applications (the “Objections”); (2) granted the Applications to assign Station WTHG(FM) from Scott Savage, Receiver (“Receiver”) to WRGO-FM Radio, LLC d/b/a Savannah Radio, and Stations WFJO(FM), WHJX(FM), and WSJF(FM) from the Receiver to Family Broadcasting, LLC; and (3) admonished Cherry for filing frivolous and obstructive pleadings in this proceeding.⁷

2. On review, Cherry argues that the Bureau erred in: (1) concluding that Tama Broadcasting (“Tama”)⁸ and its creditor, the D.B. Zwirn Special Opportunities Fund, L.P. (“Zwirn”), possessed the basic qualifications to hold or obtain any broadcast licenses because (a) Zwirn prematurely assumed control of Tama without Commission consent in violation of Section 310(d) of the Communications Act of 1934, as amended, (the “Act”)⁹ and (b) the amount of stock in Zwirn held or voted by aliens exceeds the 25 percent benchmark specified in Section 310(b)(4) of the Act,¹⁰ and (2) admonishing the Cherrys for filing frivolous pleadings.

3. We have carefully reviewed *Staff Decision 2* and the full record of this proceeding. At the outset, we will not entertain arguments regarding Tama and Zwirn. The subject assignments are from the Receiver to unrelated third parties, Savannah Radio and Family Broadcasting. Given that the Commission approved the involuntary assignment from Tama to the Receiver and the Court of Appeals dismissed the Cherrys’ appeal of that decision, we will not consider further arguments regarding the basic qualifications of Tama and Zwirn in this proceeding.¹¹

4. Regarding the appropriateness of the admonishment, we note that *Staff Decision 1* admonished Cherry for filing frivolous and obstructive pleadings that were devoid of merit and intended to delay the assignment of the Tama licenses.¹² In *Staff Decision 2*, the Bureau considered Cherry’s objections to the admonishment.¹³ We believe that the Bureau correctly found that admonishment is

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10670-71 (MB 2009) (“*Staff Decision 1*”). Accordingly, Charles W. Cherry, II, does not have standing to file the Application for Review, and we will dismiss the filing with respect to his participation in it. See 47 C.F.R. § 1.115(a). See *Stop 26 Riverbend, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 6516, 6519-20 (2012) (finding that the staff correctly dismissed a reconsideration petition because the petitioner had not shown why it could not have participated earlier in the proceeding).

⁶ See *Letter to Percy Squire, Esq., and Mark J. Prak, Esq.*, Ref. 1800B3 (MB Aug. 9, 2011); *Public Notice*, Report No. 27075 (Aug. 12, 2011). Scott Savage, court-appointed Receiver for Tama Broadcasting, filed an Opposition to Amended Application for Review (the “Opposition”) on September 26, 2011. Although the Opposition was filed against the Amended Application for Review, the Opposition is timely with respect to the original Application for Review. See 47 C.F.R. § 1.115(d).

⁷ See *Staff Decision 1*, 24 FCC Rcd at 10671-74.

⁸ Tama or its subsidiaries were previously the licensees of the four stations involved in these transactions.

⁹ 47 U.S.C. § 310(d) (requiring prior Commission approval for assignment or transfer of control of a broadcast license or construction permit).

¹⁰ 47 U.S.C. § 310(b)(4).

¹¹ See *Percy Squire, Esq.*, Letter, 24 FCC Rcd 2453 (MB 2009), *app. for rev. dismissed*, Memorandum Opinion and Order, 25 FCC Rcd 7588, 7590 (2010), *app. dismissed sub nom. Cherry v. FCC*, 641 F.3d 394 (D.C. Cir. 2011) (finding that the Receiver had not prematurely assumed control of the Stations and approving the involuntary assignment of the licenses to the Receiver).

¹² See *Staff Decision 1*, 24 FCC Rcd at 10673.

¹³ See *Staff Decision 2* at 4.

within the staff's discretion,¹⁴ and Cherry has not cited any authority to demonstrate that the admonishment was issued in error. Accordingly, we conclude that the Bureau's admonishment of Cherry was proper.

5. ACCORDINGLY, IT IS ORDERED, that (1) the Application for Review filed on September 9, 2011, by Dr. Glenn W. Cherry and Charles W. Cherry, II, IS DISMISSED, pursuant to 47 C.F.R. § 1.115(a), with respect to Charles W. Cherry, II's participation; and (2) the Application for Review IS OTHERWISE DENIED, pursuant to 47 U.S.C. § 155(c)(5) and 47 C.F.R. § 1.115(g).

6. IT IS FURTHER ORDERED, that the Amended Application for Review filed on September 23, 2011, by Dr. Glenn W. Cherry and Charles W. Cherry, II, IS DISMISSED, pursuant to 47 C.F.R. § 1.115(d).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ *Id.* at 4, citing *Richard R. Zaragoza, Esq.*, Letter, 24 FCC Rcd 5743, 5755 (MB 2009) (admonishing petitioners for filing frivolous and obstructive pleadings) ("*Zaragoza Letter*"). See also *Nationwide Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 5654 (1998) (acknowledging that the Commission may sanction parties for filing frivolous pleadings); *Commission Taking Tough Measures Against Frivolous Pleadings*, Public Notice, 11 FCC Rcd 3030 (1996).