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In re: **Bernard Dallas LLC and ACM Dallas
V LLC**

KFCD (AM) Farmersville, TX
Facility ID No. 43757
File No. BAL-20150408AAC

KHSE(AM), Wylie, TX
Facility ID No. 133464
File No. BAL-20150408AAD

**Applications for Assignment of
License**

Petition to Deny

Dear Counsel and Mr. Schum:

We have before us the above-referenced applications ("Applications") for consent to assign the licenses of KFCD(AM), Farmersville, Texas, and KHSE(AM), Wylie, Texas ("Stations"), from Bernard Dallas, LLC ("Bernard") to ACM Dallas V LLC ("ACM"). Also before us is a Petition to Deny ("Petition") the Applications filed by David Schum ("Schum").¹ For the reasons set forth below, we deny the Petition and grant the Applications.

Background. This is the latest chapter in the Stations' saga. At one time, DFW Radio License, LLC ("DFW"), held each Station's authorization. DFW is a wholly-owned subsidiary of The Watch, Ltd. ("The Watch"). Schum is the majority owner and manager of The Watch. In 2005, The Watch and DFW

¹ Bernard filed an Opposition to Petition to Deny on June 8, 2015. Schum filed a Reply to "Opposition to Petition to Deny" on June 22, 2015.

defaulted on loans and agreements with D.B. Zwirn Special Opportunities Fund, L.P. (“Zwirn”)² and a bankruptcy court ordered that DFW’s assets be sold at auction.³ Zwirn prevailed at the auction and the Stations authorizations were assigned to Zwirn’s designee, Bernard.⁴

Schum – along with other equity owners of The Watch – unsuccessfully opposed the assignment of the Stations’ authorizations to Bernard, arguing Bernard had failed to disclose foreign ownership interests in Zwirn in violation of Section 310 of the Communications Act of 1934, as amended, and Bernard had prematurely assumed control of KHSE(AM).⁵ The Bureau – and ultimately the Commission – rejected these arguments.⁶ Subsequently, in 2007, Bernard and Principle Broadcasting Network Dallas LLC (“Principle”) filed applications seeking consent to the assignment of the Stations’ authorizations from Bernard to Principle. Schum and other equity owners of The Watch challenged these applications too. The Bureau – and later the Commission – rejected the challenges and approved the proposed assignments.⁷ The assignments, however, were not consummated.

Bernard now seeks our consent to assign the Stations’ authorizations to ACM. Schum urges us to deny the Applications. He reprises many of the arguments made in opposition to the DFW-to-Bernard and Bernard-to-Principle assignment applications. Specifically, Schum argues that Bernard “has never fully disclosed its ownership,”⁸ that Zwirn “never disclosed their foreign funding,”⁹ Zwirn “prematurely took control of the Stations using the bankruptcy process,”¹⁰ and there was an unauthorized transfer of control of Bernard on June 1, 2009.¹¹ Schum also argues that Bernard has lacked candor in its dealings with the Commission and made false certifications on the Applications.¹² In addition to urging us to deny the Applications, Schum also requests that we overturn our grant of the applications by which the Stations authorizations were assigned from DFW to Bernard.¹³

Discussion. *Parties to the Applications.* Many of Schum’s allegations relate to Bernard’s purported failure to disclose ownership information regarding Zwirn or the indirect ownership interest

² On June 1, 2009, Zwirn converted to a limited liability company and changed its name to Fortress Value Recovery Fund I, LLC. To simplify matters and avoid confusion, we will refer to the fund as Zwirn herein.

³ See *KFCD(AM), Farmersville, TX*, Letter, 21 FCC Rcd 14996, 14997-98 (MB 2006) (“*DFW-to-Bernard Decision*”).

⁴ See *DFW-to-Bernard Decision*, 21 FCC Rcd at 14998. Construction of KHSE(AM) was completed – and a license to cover the station’s facilities – was issued in 2006. See Broadcast Actions, Report No. 46358, Public Notice (MB Nov. 8, 2006).

⁵ *Id.*

⁶ *DFW-to-Bernard Decision*, 21 FCC Rcd 14996, *recons. denied*, 23 FCC Rcd 2646 (MB 2008), *review denied*, *DFW Radio License, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 804 (2014) (“*DFW Order*”), *appeal pending*, *Schum v. FCC*, Case Nos. 14-1026 & 14-1027 (D.C. Cir. 2014).

⁷ *KFCD(AM), Farmersville, TX*, Letter, 23 FCC Rcd 2642 (MB 2008) (“*DFW-to-Principle Decision*”), *recons. denied* 24 FCC Rcd 5743 (MB 2009), *review denied DFW Order*, 29 FCC Rcd 804, *appeal pending Schum v. FCC*, Case Nos. 14-1026 & 14-1027 (D.C. Cir. 2014).

⁸ Petition at 13.

⁹ *Id.* at 18.

¹⁰ *Id.* at 22.

¹¹ *Id.* at 23.

¹² *Id.* at 19-20.

¹³ *Id.* at 31.

that Jeffrey Epstein (“Epstein”) allegedly holds in Zwrn.¹⁴ Before considering the substance of these allegations, we must determine whether they are relevant to our consideration of the Applications. Put another way, we must decide if Zwrn and/or Epstein are parties to the Applications.

Zwrn is a member of Rocklynn Radio, LLC, the sole member of Bernard. However, Bernard has indicated that Zwrn is an insulated member.¹⁵ The instructions to FCC Form 314 (Application for Consent to Assignment of Broadcast Station Construction Permit or License) state that “[g]enerally, insulated limited partners or members of a limited liability corporation ... are not considered parties to the application.”¹⁶ Schum has not disputed Bernard’s statement that Zwrn is an insulated member of Bernard’s parent nor has he submitted any evidence that contradicts Bernard’s statement. Accordingly, we find that Zwrn is not a party to the Applications. We also conclude that Epstein – who Schum asserts indirectly holds an interest in Zwrn – is not a party to the Applications. Given our finding that Zwrn and Epstein are not parties to the Applications, we reject Schum’s argument that Bernard should have disclosed the ownership of Zwrn –and Epstein’s alleged indirect interest in Zwrn – in the Applications.

Finally, Schum reprises his argument regarding the failure of Bernard to disclose ownership information regarding Zwrn in earlier applications. Indeed, Schum goes so far as to request that we dismiss or deny the DFW-to-Bernard assignment applications or designate them for hearing.¹⁷ The deadline for filing petitions for reconsideration of the Commission’s denial of the application for review related to the DFW-to-Bernard assignment applications expired well before Schum filed the Petition. Because the time period for filing petitions for reconsideration is prescribed by statute,¹⁸ the Commission may not, with one extremely narrow exception not applicable here, waive or extend the filing period.¹⁹ We find – as the Commission has – that indirect challenges to Commission decisions adopted in proceedings in which the right to review has expired are impermissible collateral attacks and are properly denied.²⁰ Accordingly, we will not consider Schum’s argument regarding the DFW-to-Bernard assignment applications.

Ownership Reports. Schum asserts that Bernard failed to disclose Epstein and another individual in its ownership reports.²¹ These individuals allegedly hold equity in Zwrn. As previously discussed, Zwrn is an insulated member of Bernard’s parent. Zwrn’s indirect interest in Bernard is not attributable and neither are the interests of any individuals holding equity in Zwrn. Bernard is only required to file an

¹⁴ Petition at 13-16, 21 (basing claims that “Bernard has never fully disclosed the ownership as required” on allegations related to Epstein and Zwrn), 17-19 (alleging that Zwrn “never disclosed [its] foreign funding”).

¹⁵ See File No. BTC-20090520ACD, Exh. 2 at n.1; File No. BAL-20060117ACU, Attach. 14 at n.1.

¹⁶ FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, Instructions, Section III – Assignee, Item 4: Parties to the Application.

¹⁷ Petition at 31.

¹⁸ 47 U.S.C. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of.”).

¹⁹ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 95, (D.C. Cir. 1986) (“[W]e conclude that the Commission acted beyond its lawful authority when it entertained the belated petition for reconsideration.”). See also *Metromedia Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909, 909-10 ¶ 2 (1975) (Commission may not waive 30-day filing period to accept a petition for reconsideration filed one day late); *Fortuna Systems Corp.*, Order on Reconsideration, 3 FCC Rcd 5122, 5123 ¶ 9 (CCB 1988). Specifically, the courts have held that the Commission may not accept untimely reconsideration petitions in the absence of extremely unusual circumstances. See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993).

²⁰ See, e.g., *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n.38 (1990), *recon. denied*, 5 FCC Rcd 3463 (1990), *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (*per curiam*).

²¹ Petition at 16.

ownership report for entities or individuals that hold attributable interests in it.²² Thus, we find that Bernard was not required to include either Zwirn or the individuals on its ownership reports.

Foreign Funding. Schum again asserts that Bernard failed to disclose information about Zwirn's funding.²³ Schum acknowledges that this issue was raised in the petitions to deny lodged against the DFW-to-Bernard and Bernard-to-Principle assignment applications.²⁴ However, he claims to have discovered new information about Zwirn that demonstrates that Zwirn had "foreign funding."²⁵ Schum argues that this foreign funding rendered both Zwirn and Bernard ineligible to hold Commission licenses.²⁶ He asserts that "the Commission should have denied the license transfer from DFW ... to Bernard ... or set the applications for hearing years ago."²⁷ Schum himself acknowledges that his foreign funding argument relates to the applications to assign the Stations' authorizations to Bernard not the applications before us now. We will not consider his indirect challenge to our grant of these earlier assignment applications here.²⁸

Unauthorized Transfer of Control. Schum also reprises his arguments regarding unauthorized transfers of control.²⁹ He asserts that the Commission never approved a change in "ownership and control" of Bernard that occurred in 2009.³⁰ Schum is incorrect. Bernard filed *pro forma* transfer of control applications regarding these changes, which involved the removal of D.B. Zwirn & Co., L.P., DBZ GP, LLC, and Zwirn Holdings, LLC – entities ultimately controlled by Daniel B. Zwirn – from the ownership chain of Bernard.³¹ These entities were replaced with RL Transition Corp. The Bureau granted these applications on May 27, 2009.³² As the Commission noted,³³ petitions for reconsideration of these grants were due 30 days thereafter. To the extent that Schum seeks to challenge the Bureau's

²² See 47 C.F.R. § 73.3615(a) (requiring that biennial ownership reports be filed by each licensee of a commercial AM station and "each entity that holds an interest in the licensee that is attributable for purposes of determining compliance with the Commission's multiple ownership rules"), and (c) (requiring that ownership reports be filed within 30 days of consummating authorized assignments of permits and licenses and providing for submission of the same information as required for biennial ownership reports). See also FCC Form 323 (Ownership Report for Commercial Broadcast Stations), General Instructions, Item 2: Filing Requirements: Non-Biennial Ownership Reports ("Licensees or Permittees ... must file Form 323 to report all attributable interests in the Licensee or Permittee"), General Instructions, Item 4: Filing Requirements: Biennial Reports ("Licensee must include all attributable interests on FCC Form 323.").

²³ Petition at 12-16.

²⁴ Petition at 12 ("Petitioner raised the Zwirn undisclosed ownership issue with the FCC in a Petition to Deny filed February 23, 2006 and again in a Petition to Deny filed March 29, 2007."), 13 ("Petitioner and others objected to Bernard becoming an FCC licensee in the previous filings and Petitioner reaffirms that position with this filing").

²⁵ Petition at 18-19, 24-26.

²⁶ Petition at 17.

²⁷ Petition at 13.

²⁸ While we need not consider the substance of Schum's foreign funding arguments herein, we note that the Commission previously considered and rejected them, finding that "Section 310(b) does not proscribe debt interests held by foreign entities, and Schum has not made prima facie showing that the transactions at issue in this proceeding involve foreign debt that should be treated as equity." *DFW Order*, 29 FCC Rcd at 822 n. 129, citing *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5714, 5719-21 ¶¶ 13-18 (1995).

²⁹ Petition at 14, 22-23.

³⁰ Petition at 14.

³¹ See File Nos. BTC-20090520ACD and BTC-20090520ACE.

³² See *Broadcast Actions*, Public Notice, Report No. 46996 (MB June 1, 2009).

³³ *DFW Order*, 29 FCC Rcd at 820 n. 115.

grant of these *pro forma* transfer applications, this constitutes an impermissible collateral attack and is properly denied. Likewise, we will not consider Schum's argument that "Zwirn prematurely took control of the licenses using the bankruptcy process."³⁴ The Commission previously rejected this argument too.³⁵ We will not consider it further here. Finally, we reject Schum's assertion that Bernard needed to seek Commission approval for changes in ownership and control of Zwirn that occurred in 2009.³⁶ As we have noted, Zwirn does not hold an attributable interest, much less a controlling interest, in Bernard.

Character Qualifications. Schum claims that Bernard has lacked candor, "purposely concealing" its alleged foreign funding and failing to disclose its shareholders.³⁷ As detailed above, we find that Bernard has not failed to disclose any ownership or funding information which it was required to disclose. Thus, we reject Schum's lack of candor allegations to the extent that they are grounded in a failure to disclose such information.

Schum also argues that Bernard falsely certified that there are no adverse findings related to it or any party to the Applications.³⁸ Schum bases this claim on the fact that Epstein allegedly is a convicted felon. Schum asserts that Bernard should have disclosed this in the Applications. Epstein, however, is not a party to the Applications. Accordingly, Bernard was not required to report adverse findings related to Epstein. Further, to the extent that Schum argues that Bernard's character qualifications are impacted by Epstein's alleged felony conviction, we note that the Commission has stated that wrongdoing by a shareholder of a parent corporation is relevant only if that individual has "an interest in the parent corporation which is recognized and attributed under the multiple ownership rules."³⁹ The Commission has also stated that, for such an individual's non-FCC misconduct to be considered, the individual "must actually be involved in some fashion in the day-to-day operations of the broadcast subsidiary."⁴⁰ Schum has not alleged that Epstein holds an attributable interest in Bernard nor has he alleged that Epstein is involved in the day-to-day operations of Bernard.

Schum also contends that Bernard falsely certified that there are no unresolved character issues related to it or any party to the application.⁴¹ Schum asserts that it has appealed the Commission's denial of its applications for review of the Bureau's grant of the DFW-to-Bernard and Bernard-to-Principle assignment applications and that this appeal involves character issues. Thus, according to Schum, Bernard should have noted its appeal and should not have certified that there were no unresolved character issues. We find this argument meritless. Until allegations of character issues "are determined to have merit and are designated for hearing, no 'unresolved' issue is pending 'against' the applicant."⁴² The Bureau considered the allegations made in the petitions to deny the DFW-to-Bernard and Bernard-to-Principle

³⁴ Petition at 22.

³⁵ *DFW Order*, 29 FCC Rcd at 813-15 ¶¶ 21-25.

³⁶ Zwirn converted from a limited partnership to a limited liability company and changed its name. *See supra* note 2. The managing member of Zwirn also changed. However, ultimate ownership and control of Zwirn remains vested in Daniel B. Zwirn.

³⁷ Petition at 19.

³⁸ Petition at 20, 29.

³⁹ *Character Policy Statement*, ¶ 80 (finding that "[i]f the individual's role in the parent is not such as to confer an attributable interest, the Commission finds no basis on which to consider his or her nonbroadcast actions for character purposes").

⁴⁰ *Id.*

⁴¹ Petition at 19-20, 27-28

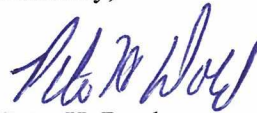
⁴² *Coosa Valley News, Inc.*, Letter, 23 FCC Rcd 9146, 9149 (MB 2008), *citing Greater Muskegon Broadcasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15464, 15472 ¶ 22 (1996).

assignment applications and found that Bernard was qualified to hold Commission authorizations.⁴³ The Commission ultimately denied the challenges lodged against these Bureau's decisions. At the time Bernard and ACM filed the Applications, there were no unresolved character issues related to Bernard nor were there any character issues designated for hearing. This remains the case.

Conclusion/Actions. Based on the evidence presented in the record, we find that Schum has not raised a substantial and material question of fact warranting further inquiry. Accordingly, IT IS ORDERED, that the Petition to Deny filed on May 13, 2015, by David A. Schum IS DENIED.

We further find that ACM Dallas V LLC is qualified as an assignee and that grant of the Applications is consistent with the public interest, convenience and necessity. Thus, IT IS ORDERED that the applications (File Nos. BAL-20150408AAC and BAL-20150408AAD) to assign the licenses for KFCD(AM), Farmersville, Texas, and KHSE(AM), Wylie, Texas, from Bernard Dallas, LLC, to ACM Dallas V LLC, ARE GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴³ *DFW-to-Bernard Decision*, 21 FCC Rcd 14996; *DFW-to-Principle Decision*, 23 FCC Rcd 2642.