



**Federal Communications Commission  
Washington, D.C. 20554**

April 7, 2016

*In Reply Refer to:*  
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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 for Reconsideration**

Dear Counsel and Mr. Schum:

We have before us a Petition for Reconsideration (Petition) filed by David Schum (Schum) on October 15, 2015.<sup>1</sup> Schum challenges our grant of 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).<sup>2</sup> For the reasons set forth below, we dismiss in part and deny in part the Petition.

**Background.** Schum is the majority owner and manager of The Watch, Ltd. (The Watch). The Watch is the sole owner of DFW Radio License, LLC (DFW), which held the Stations' authorizations prior to Bernard.

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<sup>1</sup> Bernard filed an Opposition to Petition for Reconsideration (Opposition) on October 29, 2015. Schum filed a Reply to "Opposition to Petition for Reconsideration" on November 2, 2015.

<sup>2</sup> *Bernard Dallas LLC*, Letter Order (MB Sept. 16, 2015) (*Letter Decision*).

Bernard acquired the Stations authorizations after The Watch and DFW defaulted on loans and agreements with D.B. Zwirn Special Opportunities Fund, L.P. (Zwirn)<sup>3</sup> and a bankruptcy court ordered that DFW's assets be sold at auction.

Schum—along with other equity owners of The Watch—contested the assignment of the Stations' authorizations to Bernard. The Bureau approved the assignments after considering and rejecting the arguments made by Schum and the Commission affirmed this decision.<sup>4</sup> 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.<sup>5</sup> The assignments, however, were not consummated.

Instead, Bernard reached an agreement to assign the Stations' authorizations to ACM. Bernard and ACM then filed the Applications. Schum, in turn, filed a Petition to Deny. Therein, he reprised many of the arguments made in opposition to the DFW-to-Bernard and Bernard-to-Principle assignment applications. Schum also argued that Bernard had lacked candor in its dealings with the Commission and made false certifications in the Applications. In addition to urging us to deny the Applications, Schum also requested that we overturn our grant of the DFW-to-Bernard assignment applications.

In the *Letter Decision*, we denied Schum's Petition to Deny and granted the Applications. We found that many of Schum's allegations related to either Zwirn, which was not a party to the Application by virtue of being an insulated member of Bernard's parent, or to Jeffrey Epstein, an individual that allegedly held an interest in Zwirn and also was not a party to the Application. We rejected a number of Schum's arguments on the grounds that they constituted an indirect challenge to either our approval of the DFW-to-Bernard assignments or our approval of a *pro forma* transfer of control of Bernard that occurred in 2009. Likewise, we found no merit to Schum's argument that Bernard had lacked candor, noting our findings that Bernard had not failed to disclose any ownership or funding information that it was required to disclose. Finally, we rejected Schum's arguments that Bernard had made false certifications in the Applications. Schum seeks reconsideration of the *Letter Decision*. We address his Petition below.

**Discussion.**<sup>6</sup> Section 1.106(c) of the Commission's rules and established case law provide that "reconsideration is appropriate only when the petitioner either shows a material error or omissions in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."<sup>7</sup> A petition for reconsideration that reiterates arguments that were

<sup>3</sup> 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.

<sup>4</sup> *KFCD(AM), Farmersville, TX*, Letter, 21 FCC Rcd 14996 (MB 2006) (*DFW-to-Bernard Decision*), *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 dismissed Schum v. FCC*, Nos. 14-1026 & 14-1027, 2015 U.S. App. LEXIS 16693 (D.C. Cir. Sept. 18, 2015), *reh'g denied* 2015 U.S. App. LEXIS 19542 (D.C. Cir. Nov. 9, 2015), *reh'g, en banc, denied* 2015 U.S. App. LEXIS 19540 (D.C. Cir., Nov. 9, 2015), *pet. for cert. filed* Feb. 8, 2016.

<sup>5</sup> *KFCD(AM), Farmersville, TX*, Letter, 23 FCC Rcd 2642 (MB 2008) (*Bernard-to-Principle Decision*), *recons. denied* 24 FCC Rcd 5743 (MB 2009), *review denied DFW Order*, 29 FCC Rcd 804, *appeal dismissed Schum v. FCC*, Case Nos. 14-1026 & 14-1027, 2015 U.S. App. LEXIS 16693 (D.C. Cir. Sept. 18, 2015), *reh'g denied* 2015 U.S. App. LEXIS 19542 (D.C. Cir., Nov. 9, 2015), *reh'g, en banc, denied* 2015 U.S. App. LEXIS 19540 (D.C. Cir., Nov. 9, 2015), *pet. for cert. filed* Feb. 8, 2016.

<sup>6</sup> Bernard argues that service of the Petition was defective. However, it appears that Bernard received a copy of the Petition within several days of filing and timely filed the Opposition. Given the lack of prejudice to Bernard and to facilitate a speedy resolution of this proceeding, we dispose of the issues raised by Schum.

<sup>7</sup> 47 CFR § 1.106(c); *WWJZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorrain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 US 967 (1966).



previously considered and rejected will be denied.<sup>8</sup> Schum presents a number of repetitious arguments that have been thoroughly considered and rejected, and thus do not support reconsideration of the *Letter Decision*. Specifically, Schum reprises his allegations regarding Bernard's failure to fully disclose its ownership, its foreign funding, the *pro forma* transfer of control of Bernard that occurred in 2009, and a lack of candor on Bernard's part.<sup>9</sup> We considered and rejected these arguments in the *Letter Decision*.<sup>10</sup> As Schum does not raise any new information reflecting changed circumstances, does not present additional facts not known at the time of his Petition to Deny, and does not attempt to show anything more than a disagreement with our findings on these points, we dismiss those portions of the Petition setting forth these unsupported and repetitious arguments.

We consider and reject Schum's argument that we erred in finding Zwirn was not a party to the Applications because it was an insulated member of Bernard's parent. Schum specifically takes issue with our statement that he had not "disputed Bernard's statement that Zwirn is an insulated member of Bernard's parent nor has he submitted any evidence that contradicts Bernard's statement."<sup>11</sup> According to Schum, in each of his filings, he "disputed Zwirn's insulated status and ask [sic] the Bureau to define insulated as it applied to Zwirn."<sup>12</sup> We have reviewed all of Schum's earlier pleadings, however, but cannot find any support for his position. Indeed, not once in these pleadings did Schum even use the term "insulated" or "attributable." Accordingly, we deny reconsideration on this issue.

To the extent that Schum asserts for the first time in the Petition that "Zwirn was not an insulated member,"<sup>13</sup> we dismiss this claim.<sup>14</sup> Under Section 1.106(c) of the Commission's rules, a petition for reconsideration that relies on new facts or arguments may be granted only if (1) the facts or arguments "relate to events that have occurred or circumstances that have changed since the last opportunity to present such matters," (2) "the petition relies on facts or arguments unknown to the petitioner until after its last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity," or (3) consideration of the new facts or arguments is in the public interest. None of those circumstances was present when Schum filed the Petition or at any time thereafter.<sup>15</sup>

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<sup>8</sup> *Saga Communications of Illinois, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 5954, 5956-57 para. 9 (MB 2011), citing *WWJZ, Inc.*, 37 FCC at 686, and *William L. Carroll*, Order 8 FCC Rcd 6279, 6279 para. 2 (1993).

<sup>9</sup> Petition at 7, 8, 9.

<sup>10</sup> *Letter Decision* at 2-6.

<sup>11</sup> Petition at 4.

<sup>12</sup> Petition at 4.

<sup>13</sup> Petition at 5, 6.

<sup>14</sup> Schum also argues that Bernard should have, but did not, disclose the identity of Zwirn's general partner, asserting that general partners "cannot be insulated." Petition at 5, 7-8. While it is true that the general partner of an entity cannot be insulated with respect to that entity, it can be – and in this case was – insulated with respect to its relationship to another entity farther down the ownership chain. Put another way, because Zwirn's interest in Bernard was insulated, any entity holding a direct or indirect interest in Zwirn also held an insulated interest in Bernard. This holds true for all of Zwirn's owners, including the individual that we previously found was not a party to the Applications.

<sup>15</sup> In any event, Schum contradicts himself by implicitly acknowledging that Zwirn qualified as insulated under the applicable general broadcast attribution standards. Petition at 6. To get around this, he argues that the Commission should refine these standards just as it did in the context of the eligibility standards for new entrant bidding credits. Petition at 6, citing *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Memorandum Opinion and Order, 14 FCC Rcd 12541 (1999). We reject this argument as misplaced for two reasons. First, the Commission refined the attribution standards in that context in order to address concerns that are not relevant here. Specifically, the Commission sought to ensure "that the scope of any special incentives, such as bidding credits, be properly limited to those applicants intended to benefit from the incentive" and noted that attributing the media interests held by

We likewise dismiss Schum's argument, made for the first time in the Petition, that we must take into account that ACM is a hedge fund that plans to sell the Stations' authorizations for a profit.<sup>16</sup> He asserts that allowing such an entity to hold Commission authorizations is not in the public interest.<sup>17</sup> We note that, even were we to consider this argument, we would reject it. Schum has not alleged that ACM lacks any of the qualifications required of a Commission licensee. The mere fact that ACM is a hedge fund does not disqualify it from holding Commission licenses.<sup>18</sup>

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by David Schum on October 15, 2015, IS DISMISSED IN PART and otherwise DENIED.

Sincerely,

  
Peter H. Doyle

Chief, Audio Division  
Media Bureau

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substantial investors in bidders claiming new entrant status "should reduce the likelihood of bidder manipulation of the eligibility standards for the bidding credit." *Id.* at 12543 para. 6; see also *id.* at 12544 para. 8 ("[W]e feel that a stricter attribution policy is warranted in determining eligibility for a special measure that confers a significant governmental benefit."). Second, Schum advocates changes to the general broadcast attribution standards applicable to all broadcast applicants and licensees. The Commission adopted these standards via notice-and-comment rulemaking. Any refinements or modifications to those standards should occur through that same process, not through an adjudication. See *University of San Francisco*, Memorandum Opinion and Order, 30 FCC Rcd 10530, 10533 n.18 (2015); *Sholders of Renaissance Comm. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 11866, 11887-88 para. 50 (1997); *Cnty. Television of S. Cal.*, 459 U.S. 498, 511 (1983).

<sup>16</sup> Petition at 9-10.

<sup>17</sup> Petition at 10.

<sup>18</sup> See, e.g., *Existing Shareholders of Clear Channel Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 1421 (2008) (approving transfer of control to entity owned by private equity funds); *Paxson Management Corp.*, Memorandum Opinion and Order, 27 FCC Rcd 22224 (2007) (same); *Shareholders of Univision Communications, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 5842 (2007) (same).