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ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

FILED/ACCEPTED  
APR - 4 2008  
Federal Communications Commission  
Office of the Secretary

In re Application of )  
)  
DFW RADIO LICENSE, LLC )  
(Assignor) ) File Nos. BAL-20060117ACU-ACV  
)  
and )  
)  
BERNARD DALLAS LLC )  
(Assignee) )  
)  
For Consent to the Assignment of )  
Licenses of Radio Stations )  
KFCD(AM), Farmersville, Texas ) Facility ID #43757  
KHSE(AM), Wylie, Texas ) Facility ID #133464

To: Secretary, Federal Communications Commission  
Attn: The Commission

**OPPOSITION TO APPLICATION FOR REVIEW**

Bernard Dallas LLC ("Bernard"), by its attorney and pursuant to Section 1.115(d) of the Commission's rules, hereby opposes the Application for Review (the "Application") filed on March 20, 2008, by David A. Schum *et al.* (the "Petitioners"). Petitioners seek Commission review of the Audio Division's February 19, 2008 letter decision (the "Decision") in the captioned matter.<sup>1</sup> The Decision denied reconsideration of the Audio Division's December 28, 2006, decision granting the captioned application.<sup>2</sup> As set forth below, the Application is yet another in a long line of repetitious and frivolous appeals by Petitioners in this matter, the

<sup>1</sup> Letter to Dennis J. Kelly, Esq. and Gregory L. Masters, Esq. from Peter H. Doyle, Chief, Audio Division, Media Bureau, DA 08-409 (Med. Bur. Feb. 19, 2008).

<sup>2</sup> Letter to David A. Schum *et al.* from Peter H. Doyle, Chief, Audio Division, Media Bureau, 21 FCC Rcd 14996 (Med. Bur. 2006) (the "Grant Decision").

primary effect of which has been the waste of scarce Commission resources. To the extent the Application is even proper for Commission consideration, it is entirely repetitious and devoid of any ground for disturbing the Audio Division's rulings. The Application should be dismissed or denied summarily.

Petitioners comprise nine individuals who are purported shareholders and/or creditors of The Watch, Ltd. ("Watch"). Watch's subsidiary, DFW Radio License, LLC ("DFW"), is the former licensee of KFCD(AM) and KHSE(AM). Watch and DFW entered Chapter 11 bankruptcy in 2005. Following a public auction mandated and supervised by the bankruptcy court, the court approved the sale of Watch/DFW's assets to D.B. Zwirn Special Opportunities Fund, L.P. ("DBZ"), the high bidder at auction.<sup>3</sup> Pursuant to the court-approved sale, the captioned application was filed in January 2006 for consent to the assignment of the KFCD(AM) and KHSE(AM) authorizations to Bernard, DBZ's designee. The Petitioners filed a petition to deny that application. On December 28, 2006, the Audio Division issued the Grant Decision, which thoroughly considered and rejected Petitioners' contentions and approved the stations' assignment to Bernard.<sup>4</sup>

The Decision denied reconsideration of the Grant Decision. It found Petitioners' reconsideration petition to be procedurally defective because it merely repeated Petitioners'

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<sup>3</sup> The Fifth Circuit Court of Appeals dismissed Petitioner Schum's appeal of that sale approval order on December 7, 2007. See Schum v. Zwirn Special Opportunities Fund L.P. (In re The Watch, Ltd.), Case No. 06-11367, 2007 WL 4328801 (5<sup>th</sup> Cir. 2007).

<sup>4</sup> The assignment was consummated in January 2007. In February 2007, Bernard filed an application for Commission consent to its assignment of the KFCD(AM) and KHSE(AM) authorizations to Principle Broadcasting Network-Dallas, LLC ("Principle") (File Nos. BAL-20070216ABA-ABB). Petitioners filed a petition to deny that application, mainly reiterating the same grounds on which they challenged the assignment here. In a ruling issued concurrently with the Decision, the Audio Division denied the Petitioners' petition to deny (and a late-filed informal objection) and approved the Bernard/Principle assignment. See Letter to Richard R. Zaragoza, Esq. et al., from Peter H. Doyle, Chief, Audio Division, Media Bureau, DA 08-408 (Med. Bur. Feb. 19, 2008). Concurrently with their Application, the Petitioners filed a petition for reconsideration of that decision. Bernard opposed the petition for reconsideration separately on April 2, 2008.

already-rejected allegations of prohibited foreign ownership, unauthorized transfer of control, and retention of a prohibited revisionary interest.<sup>5</sup> In addition, it found various news articles submitted in the petition for reconsideration to be irrelevant to Petitioner's contentions regarding DBZ's alleged non-compliance with Section 310 of the Communications Act.<sup>6</sup>

The Application entirely fails to establish any error in either the Decision or the Grant Decision that it affirmed. Far from showing the existence of any of the Section 1.115(b)(2) factors that it recites, the Application mostly lifts and repeats Petitioners' prior pleadings on their contentions regarding foreign ownership, unauthorized transfer of control, and reversionary interest.<sup>7</sup> The Grant Decision dealt in detail with these arguments; the instant Decision found Petitioners' reconsideration petition repetitious and otherwise irrelevant; and the Application does no more than rehash the Petitioners' tired arguments once more. Nothing in the Application provides any basis for disturbing the Audio Division's decisions below.

Petitioners also "reference" a "companion petition for reconsideration" that they filed in the proceeding involving Bernard's subsequent application to assign the KFCD(AM) and KHSE(AM) licenses to Principle.<sup>8</sup> That petition appends additional hearsay news articles regarding DBZ.<sup>9</sup> The Petitioners themselves concede that this new material has not previously been supplied to the Media Bureau and is therefore improper in an application for review,<sup>10</sup> but

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<sup>5</sup> Decision at 3 ("We agree with Bernard that using incorporation by reference to reprise arguments already made and rejected is improper.") (footnotes omitted).

<sup>6</sup> Id. at 2.

<sup>7</sup> See Application at 4-13.

<sup>8</sup> Id. at 13-14.

<sup>9</sup> "The Commission has consistently held that newspaper articles are the equivalent of hearsay." Decision at 2 n.13 (citing Letter to Joseph Isabel, 22 FCC Rcd 18630, 18361 (Med. Bur. 2007)).

<sup>10</sup> Application at 13. Section 1.115(c) states that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."

request that the Commission “withhold action in this matter” until the Audio Division has ruled on their petition for reconsideration. There is no need for the Commission to do so, however.

As Bernard has noted in opposing that petition, Petitioners fail entirely to show the relevance of these articles to their alien ownership argument or to prove any other fact affecting Bernard’s qualifications as a licensee and seller.

Bernard has noted throughout the course of this proceeding that Petitioners are unhappy stakeholders in a bankrupt former station owner, who are filing frivolous appeals in an attempt to have the Commission undo a sale that a bankruptcy court ordered and approved. In its concurrent decision regarding Bernard’s application to assign the subject licenses to Principle, the Audio Division noted Bernard’s observations and pointedly cited Commission policy that “[to] the extent [petitions] are used . . . for private financial gain, to settle personal claims, or as an emotional outlet, the public interest is disserved. . . . Beyond the costs to licensees and the public, consideration of meritless challenges wastes Commission resources.”<sup>11</sup> The Petitioners and Johns have ignored that admonition, have persisted in repetitive and wasteful appeals, and in the process have stepped well over the line into abuse of the Commission’s processes. The

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<sup>11</sup> Decision at 3 n.12 (citing Amendment of Sections 1.420 and 73.3584 of the Commission’s Rules Concerning Abuses of the Commission’s Processes, 5 FCC Rcd 3911, 3912 (1990), recon. denied, 6 FCC Rcd 3380 (1991)).

Application, like its predecessor and concurrent filings, should be dismissed or denied expeditiously and its proponents sanctioned.<sup>12</sup>

Respectfully submitted,

**BERNARD DALLAS LLC**

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By: 

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Gregory L. Masters

Its Attorney

April 4, 2008

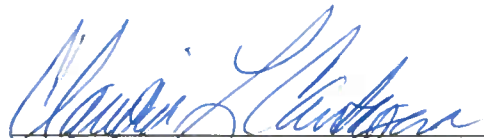
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<sup>12</sup> See, e.g., Evan Doss, Jr. Corporation, 18 FCC Rcd 22557, 22558 (2003) (Commission subjects further pleadings by petitioner against applications to assign petitioner's former licenses to "rigorous scrutiny under our abuse of process policies," stating that "[t]he Commission is not required to entertain frivolous, redundant pleadings").

**CERTIFICATE OF SERVICE**

I, Claudia L. Cartagena, a secretary in the law firm of Wiley Rein LLP, hereby certify that on this 4<sup>th</sup> day of April, 2008, I caused copies of the foregoing **“Opposition to Application for Review”** to be mailed via first-class postage prepaid mail to the following:

Dennis J. Kelly, Esq.  
Law Office of Dennis J. Kelly  
Post Office Box 41177  
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Claudia L. Cartagena