

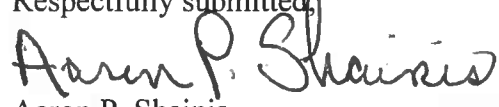
(d) Except as provided in paragraph (e) of this section, the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined in section 1.4(b).¹

The “purported matters” raised by Schum are governed by Section 1.106(b)(2)(ii). Any submission at this time pursuant to Section 1.106(b)(2)(ii) is late.

The Schum submission is also violative of Sections 1.49(b) and (c) of the Commission rules.²

Predicated on Schum’s flagrant disregard for the requirements of Sections 1.115(d), 1.49(b) and 1.49(c) of the Commission’s rules, Schum’s Petition for Leave to File Supplement and Supplement to Application for Review should be summarily denied or dismissed.

Respectfully submitted,


Aaron P. Shainis
Counsel for
Bernard Dallas LLC

Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036
202-293-0011

October 27, 2011

¹ The acceptance for filing of the assignment of Stations KFCD(AM) and KHSE(AM) appeared on Public Notice on February 27, 2007, Report No. 26431 (Attachment A). The grant of the assignment was made pursuant to a February 19, 2008 letter (Attachment B) signed by the Chief, Audio Division. By letter dated May 20, 2009, the Chief, Audio Division denied the Schum Petition for Reconsideration (Attachment C).

² Section 1.49(b) provides as follows: “Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which is computed under this chapter exceeds ten pages, shall include as part of the pleading or document, a table of contents with page references.” Section 1.49(c) of the Commission’s rules requires the inclusion of a summary for pleadings that exceed ten (10) pages. The summary is required to be a “succinct, but accurate and clear condensation of the substance of the filing.” The Schum submission is eleven (11) pages in length. The submission omits both a table of contents and a summary.

ATTACHMENT A

PUBLIC NOTICE

Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 26431

Broadcast Applications

2/27/2007

STATE FILE NUMBER E/P CALL LETTERS APPLICANT AND LOCATION NATURE OF APPLICATION

LOW POWER FM APPLICATIONS FOR AMENDMENT RECEIVED

FL BNPL-20010614AJN NEW 134683 CALVARY EMERALD COAST,
E 101.1 MHZ INCORPORATED
FL, DESTIN Engineering Amendment filed 02/22/2007

OH BLL-20070221AAE WTLL-LP 131964 CALVARY CHAPEL OF
E 98.9 MHZ ZANESVILLE
OH, ZANESVILLE Engineering Amendment filed 02/22/2007

TELEVISION APPLICATIONS FOR AMENDMENT RECEIVED

AK BRCT-20061002B00 KDMD 25221 KETCHIKAN TV, LLC
E CHAN-33 AK, ANCHORAGE Amendment filed 02/22/2007

AM STATION APPLICATIONS FOR ASSIGNMENT OF LICENSE ACCEPTED FOR FILING

TX BAL-20070216ABA KFCD 43757 BERNARD DALLAS LLC
E 990 KHZ TX, FARMERSVILLE Voluntary Assignment of License
From: BERNARD DALLAS LLC
To: PRINCIPLE BROADCASTING NETWORK - DALLAS LLC
Form 314

PUBLIC NOTICE

Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 26431

Broadcast Applications

2/27/2007

<u>STATE</u>	<u>FILE NUMBER</u>	<u>E/P</u>	<u>CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>NATURE OF APPLICATION</u>
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AM STATION APPLICATIONS FOR ASSIGNMENT OF LICENSE ACCEPTED FOR FILING

TX	BAL-20070216ABB		KHSE 133464	BERNARD DALLAS LLC TX, WYLIE	Voluntary Assignment of License From: BERNARD DALLAS LLC To: PRINCIPLE BROADCASTING NETWORK - DALLAS LLC Form 314
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CLASS A TV APPLICATIONS FOR ASSIGNMENT OF LICENSE ACCEPTED FOR FILING

PA	BALTTA-20070222AAZ		WTSD-CA 53579	PRIORITY COMMUNICATIONS MINISTRIES, DEBTOR-IN-POSSESSION PA, PHILADELPHIA	Voluntary Assignment of License From: PRIORITY COMMUNICATIONS MINISTRIES DEBTOR-IN-POSSESSION To: PRIORITY COMMUNICATIONS MINISTRIES, INC. Form 316
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FM TRANSLATOR APPLICATIONS FOR ASSIGNMENT OF PERMIT ACCEPTED FOR FILING

NV	BAPFT-20070220AAB		K268BH 157262	BROADCAST TOWERS, INC. NV, MESQUITE	Voluntary Assignment of Construction Permit From: BROADCAST TOWERS, INC. To: MORNINGSTAR MEDIA COMPANY, LLC Form 345
NV	BAPFT-20070220AAC		K276EY 144580	BROADCAST TOWERS, INC. NV, MOAPA	Voluntary Assignment of Construction Permit From: BROADCAST TOWERS, INC. To: MORNINGSTAR MEDIA COMPANY, LLC Form 345

ATTACHMENT B



Federal Communications Commission
Washington, D.C. 20554

February 19, 2008

DA 08-408
In Reply Refer To:
1800B3-MJW
Released: February 19, 2008

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Re: KFCD(AM) Farmersville, TX
Facility ID No. 43757
File No. BAL-20070216ABA

KHSE(AM), Wylie, TX
Facility ID No. 133464
File No. BAL-20070216ABB

**Applications for
Assignment of License**

**Petition to Deny
Informal Objection**

Dear Counsel:

We have before us the captioned applications (the "Applications") for consent to assign the license of Station KFCD(AM), Farmersville, TX ("KFCD"), and the construction permit of Station KHSE(AM), Wylie, TX ("KHSE") (collectively, the "Station Authorizations") from Bernard Dallas, LLC ("Bernard") to Principle Broadcasting Network - Dallas, LLC. Also before us are a Petition to Deny ("Petition") the Applications filed by David A. Schum *et al.* ("Petitioners")¹ and an Informal Objection

¹ In addition to Mr. Schum, Petitioners include J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders and Richard J. Drendel. The

("Objection") to the Applications filed by Joy Crain Johns ("Johns").² We also have before us an Opposition to Petition to Deny ("Opposition") filed by Bernard,³ a Response to Informal Objection ("Response") filed by Bernard,⁴ and a Consolidated Reply ("Reply") filed by Petitioners.⁵ For the reasons stated below, we deny the Petition and Objection and grant the assignment applications.

Background. Simultaneously with the release of this letter decision we are releasing a related decision that denies reconsideration of our December 28, 2006, action denying Petitioners' Petition to Deny and granting applications to assign the Station Authorizations from DFW Radio License, LLC ("DFW"), to Bernard, the proposed assignor here.⁶ We found that the reconsideration petition was without merit to the extent it raised new matters and otherwise procedurally defective because it merely repeated Petitioners' already-rejected allegations of prohibited foreign ownership and unauthorized transfer of control.⁷

The instant Petition and Objection reiterate the same allegations that were rejected in the *Letter Decision Denying Petition to Deny the DFW-to-Bernard Assignment*. Petitioners and Ms. Johns also submit articles from Bloomberg.com and the New York Post concerning: (1) the discharge of a former employee of D.B. Zwirn & Co., one of Bernard's principal investors; (2) hearsay statements of accounting irregularities at D.B. Zwirn & Co.; (3) the withdrawal of a Securities and Exchange Commission ("SEC") registration by D.B. Zwirn & Co.,⁸ and (4) the Connecticut Attorney General's

Petition was filed March 29, 2007. Petitioners are equity owners of The Watch, the parent company of DFW Radio, a former licensee of KFCD(AM) and former permittee of KHSE(AM). See *Letter to David A. Schum et al. re KFCD(AM) and KHSE(AM)*, 21 FCC Rcd 14996 (MB 2006) ("*Letter Decision Denying Petition to Deny the DFW-to-Bernard Assignment*").

² Ms. Johns filed "individually and as Executrix of the Estate of Albert L. Crain, deceased." Objection at 1. She filed the Objection on May 1, 2007, and supplemented it on May 25, 2007 (the "Supplement").

³ The Opposition was filed on April 11, 2007.

⁴ The Response was filed on June 21, 2007. Bernard represents that counsel for Principle Broadcasting Network LLC - Dallas, the proposed assignee, joins in the Response. *Id.* at 5 n.9.

⁵ The Reply was filed on April 23, 2007.

⁶ *Letter to David A. Schum, et al. re KFCD(AM) and KHSE(AM)*, DA-08-409, (MB, rel. Feb 19, 2008). ("*Letter Decision Denying the DFW-to-Bernard Petition for Reconsideration*") (released simultaneously herewith).

⁷ The Commission will not revisit issues "on which the tribunal has once deliberated and spoken." *Chapman S. Root Revocable Trust*, Memorandum Opinion and Order, 8 FCC Rcd 4223, 4224 (1993), quoting *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967, *rehearing denied*, 384 U.S. 947, *petition to reopen denied*, 4 FCC 2d 608 (1966). ("*WWIZ*") See also, *Pacific Broadcasting of Missouri*, Memorandum Opinion and Order, 19 FCC Rcd 10950, 10952 (2004). The allegations respecting violations of Section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, ("Section 310"), unauthorized transfer of control and other matters were fully considered and rejected in the DFW-Bernard Reconsideration Order. Bernard characterizes the Objection and Supplement as "woefully belated." Opposition at 3. We agree. Pursuant to 47 C.F.R. § 73.3584 ("Section 73.3584") such "untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration." Section 73.3584, however, is discretionary. Thus, given our disposition of this matter, and to forestall repetitious requests for reconsideration, we have addressed Ms. Johns' allegations herein.

⁸ Petitioners request we take official notice of the withdrawal of the SEC registration by D.B. Zwirn & Co. Petition at 11. Bernard has not disputed that the registration was withdrawn. See Fed. R. Evid., Rule 201. Nonetheless, Petitioners' request for official notice is moot because the withdrawal of the registration, taken as true, does not support Petitioners' claim of undisclosed foreign ownership of Bernard. See text accompanying n.14 *infra*.

statements on disclosures made by hedge funds, generally.⁹ Ms. Johns also supplies a copy of a motion filed in an unrelated case in which D.B. Zwirn investors have been characterized as "citizen[s] of New York."¹⁰ The "evidence" respecting unauthorized transfer of control is a statement by Bernard's Texas counsel, in a bankruptcy hearing, that "the debtors [the Petitioners here] no longer own these stations."¹¹ For the reasons set forth below, we find that neither the Petition nor Objection has raised a substantial and material fact warranting further consideration.¹²

Discussion. Petitioners imply that D.B. Zwirn and Co. withdrew its SEC registration because the company was concerned that the registration would disclose foreign ownership of DBZ. We reject this speculative inference because, as disclosed in the submitted news articles, over a hundred other companies also withdrew their registrations when a court invalidated an SEC regulation that had imposed a registration requirement. Moreover, we find: (1) that the Connecticut Attorney General's remarks about hedge fund disclosure do not relate to foreign ownership interests by those funds; (2) the hearsay accounts of accounting irregularities at D.B. Zwirn and Co. are unconnected to foreign investment interests; (3) Petitioners have not established that D.B. Zwirn's former employee's criminal conviction is relevant to a Section 310 violation and; (4) there is no nexus between Petitioners' claim of foreign ownership interests by Bernard and a motion filed in the unrelated U.S. District Court proceeding where D.B. Zwirn & Co. characterized its investors as "citizens of New York."¹³

⁹ See Petition at 3, Objection at 2-3.

¹⁰ See Supplement at 3. Ms. Johns states that a Notice of Removal filed by D.B. Zwirn & Co. in an unrelated case, *Wright Capital Corp. v. D.B. Zwirn & Co. and Brin Investment Corp.*, Case No. 1-07CV-105-C (N.D. Tex.), characterized D.B. Zwirn & Co.'s investors as being "domiciled" in New York, and "citizen[s] of New York" but made no reference to the investors being U.S. citizens. Objection at 3. This, Ms. Johns asserts, raises an issue of whether the "individual investors of D.B. Zwirn are citizens of the United States as opposed to aliens." *Id.*

¹¹ The Bankruptcy Court hearing concerned Petitioners' refusal to execute applications for assignment of the KFCD license and the KHSE construction permit from DFW to Bernard. The Bankruptcy Judge directed Bernard's counsel to draft an order allowing counsel to sign the applications on DFW's behalf. See Objection, Exhibit A at 32.

¹² We note Bernard's claim that Petitioners and Ms. Johns filings "border on abusive," and are "wasteful of Commission resources." Response at 1, 5. Although our denial of the Petition makes it unnecessary to address that claim at this juncture, we remain mindful that petitions to deny "are specifically intended to enable interested parties to provide factual information to the Commission as to whether grant of an application would serve the public interest. To the extent that they are used for other than their intended purpose, e.g., 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." *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, Report and Order, 5 FCC Rcd 3911, 3912 (1990), *recon. denied*, 6 FCC Rcd 3380 (1991).

¹³ See *supra* n.9. The statement that D.B. Zwirn & Co. investors are "citizens of New York" was made to support diversity jurisdiction pursuant to 28 U.S.C. § 1332 which provides, *inter alia*, that U.S. District Courts have original jurisdiction over civil actions brought by "citizens of different states." Hence, the reference does not imply that the investors are not also citizens of the United States.

In sum, as in the *Letter Decision Denying the DFW-to-Bernard Petition for Reconsideration*, (released simultaneously herewith) we find nothing here that rebuts the sworn statement by a DBZ principal that "[t]here is no direct or indirect foreign equity ownership in Bernard Dallas LLC."¹⁴ Moreover, as to Petitioners' assertions of unauthorized transfer of control, we agree with Bernard¹⁵ that the statement to the bankruptcy judge that Petitioners "no longer own the stations" reflected only that the bankruptcy court had approved Bernard's purchase of the stations, not that Bernard prematurely had assumed control.¹⁶

We also decline to consider Petitioners' and Ms. Johns' other allegations concerning unauthorized transfer of control and abuse of process.¹⁷ With the exception of the material discussed *supra*, their allegations here merely replicate those we rejected in connection with the DFW-to-Bernard assignment.¹⁸ We thus agree with Bernard that Petitioners' and Ms. Johns' attempts to reprise arguments already made and rejected is improper.¹⁹ The Commission will not grant reconsideration "merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken."²⁰

Decision. Accordingly, IT IS ORDERED that the Petition to Deny filed March 29, 2007 by David A. Schum, J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin F. Wodka, John W. Saunders and Richard J. Drendel, and the Informal Opposition filed May 1, 2007, as supplemented May 25, 2007, by Joy Crain Johns ARE DENIED. IT IS FURTHER ORDERED, that the Applications for Assignment of License, File No. BAL-20070216ABA and File No. BAL-20070216ABB ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁴ See *DFW-to-Bernard Letter*, 21 FCC Rcd at 15003.

¹⁵ See Opposition at 2-3, citing *WWIZ*, 37 FCC at 686; *WAIT Radio*, 46 RR 2d 1556 (1980).

¹⁶ See *Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395, 397 (D.C. Cir. 1985). (A hearing is required only if "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Id.* at 395, citing *Columbus Broadcasting Coalition*, 505 F.2d 320, 330, (D.C. Cir. 1974).

¹⁷ See Petition at 12-16.

¹⁸ See *DFW-to-Bernard Letter* at 5-6.

¹⁹ See Opposition to Petition for Reconsideration filed by Bernard, Feb. 12, 2007, at 2-3. (The cited Opposition to Petition for Reconsideration was filed in response to Petitioners' Petition for Reconsideration of the *DFW-to-Bernard Letter*. See *supra* n.1.).

²⁰ *WWIZ*, 37 FCC at 686.

ATTACHMENT C



Federal Communications Commission
Washington, D.C. 20554

May 20, 2009

DA 09-1103
In Reply Refer to:
1800B3-RDH
Released: May 20, 2009

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In re: KFCD(AM) Farmersville, TX
Facility ID No. 43757
File No. BAL-20070216ABA

KHSE(AM), Wylie, TX
Facility ID No. 133464
File No. BAL-20070216ABB

**Applications for
Assignment of License**

Petition for Reconsideration

Dear Counsel:

This letter concerns the Petition for Reconsideration (the "Petition") filed by David Schum *et al.* ("Petitioners") on March 20, 2008. The Petition seeks reconsideration of the February 19, 2008, letter decision¹ granting the above-referenced applications (the "Applications") for the assignment of the

¹ Letter to Richard R. Zaragoza, Esq., *et al.*, 23 FCC Rcd 2642 (MB 2008) ("Bernard-to-Principle Decision"). In addition to Mr. Schum, Petitioners include J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders, Richard J. Drendel, and Joy Crain Johns, individually and as executrix of the Estate of Albert Crain. Petition at 1. Petitioners are equity owners of The Watch, Ltd., the parent company of DFW Radio, a former licensee of KFCD(AM) and former permittee of KHSE(AM). *Bernard-to-Principle Decision*, 23 FCC Rcd at 2643 n.1.

license of Station KFCD(AM), Farmerville, TX ("KFCD"), and the construction permit of Station KHSE(AM), Wylie, TX ("KHSE") (collectively, the "Station Authorizations"), from Bernard Dallas, LLC ("Bernard") to Principle Broadcasting Network – Dallas, LLC ("Principle").² For the reasons set forth below, we dismiss the Supplement, deny the Second Supplement, admonish the Petitioners for filing frivolous and obstructive pleadings and deny the Petition.

Background. This is the latest chapter in the saga of Stations KFCD and KHSE. At one time, both stations were licensed to DFW Radio License LLC ("DFW") of which The Watch, Ltd. ("The Watch") was the parent company. The Watch and DFW defaulted on loans with B.B. Zwirn Special Opportunities Fund, L.P. ("Zwirn") and a bankruptcy court ordered that the DFW assets be sold at auction.³ Zwirn prevailed at the auction and its designee, Bernard, became the licensee of Stations KFCD and KHSE.⁴ The Petitioners unsuccessfully sought to deny that transaction⁵ and, currently, the Media Bureau ("Bureau") decision denying reconsideration of that decision⁶ is the subject of an Application for Review filed by Petitioners. Subsequently, the instant Applications were filed seeking consent to the assignment of the Station Authorizations from Bernard to Principle. The Petitioners unsuccessfully sought to deny this transaction too and now seek reconsideration of the *Bernard-to-Principle Decision*.

In support of their reconsideration request, Petitioners initially allege that the Bureau incorrectly determined that Bernard complies with the alien ownership provisions of the Communications Act of 1934, as amended (the "Act")⁷ and assert that Bernard has never disclosed all of its ownership to the Commission.⁸ Additionally, Petitioners contend that Bernard engaged in an unauthorized transfer of control of KHSE(AM), in violation of Section 310(d) of the Act.⁹ Petitioners claim that the foregoing demonstrate that Bernard lacks the basic character qualifications to be a Commission licensee and that, accordingly, the staff could not have lawfully granted the Applications. Petitioners attempt to incorporate

² Also before us are: an Opposition to Petition for Reconsideration ("Opposition") filed by Bernard on April 2, 2008; a Reply to "Opposition to Petition for Reconsideration" ("Reply") filed by Petitioners on April 9, 2008; a Motion for Leave to File "Supplement to Petition for Reconsideration" ("Motion") together with a Supplement to Petition for Reconsideration ("Supplement") filed by Petitioners on May 15, 2008; an Opposition to Motion for Leave to File Supplement, Response to Supplement, and Request for Administrative Sanctions Against Petitioners ("Response") filed by Bernard on June 4, 2008; a Reply ("Reply to Response") filed by Petitioners on June 16, 2008; and a Motion for Leave to File "Second Supplement to Petition for Reconsideration" ("Second Motion") and a Second Supplement to Petition for Reconsideration ("Second Supplement") filed by Petitioners on September 4, 2008.

³ See *Letter to David A. Schum et al.*, 21 FCC Rcd 14996, 14997-98 (MB 2006) ("*DFW-to-Bernard Decision*").

⁴ See *DFW-to-Bernard Decision*, 21 FCC Rcd at 14998.

⁵ *Id.*

⁶ See *Letter to David A. Schum et al. re KFCD(AM) and KHSE(AM)*, Letter, 23 FCC Rcd 2646 (MB, 2008) ("*DFW-to-Bernard Reconsideration Decision*").

⁷ See 47 U.S.C. §§ 310(a) and (b).

⁸ Petitioners state that Bernard disclosed only one principal, David Bernard Zwirn, who is represented to own a 1% equity interest in Bernard. It states that "Bernard has intentionally withheld disclosing the other 99% of its ownership." Petition at 3.

⁹ See 47 U.S.C. § 310(d). Petitioners allege that Zwirn usurped control over the construction of KHSE(AM) and froze DFW out of decision making. Further, they state that Zwirn's agent hired an antenna design engineer, attempted to cancel tower studies that had been made at DFW's request, and otherwise made changes to the station without the consent of DFW.

by reference the “facts and arguments” set forth below and in their Application for Review filed with regard to the assignment of these station licenses from DFW to Bernard.¹⁰

These claims were previously made by Petitioners and have been addressed in the *DFW-to-Bernard Petition Decision*, the *DFW-to-Bernard Reconsideration Decision*, and the *Bernard-to-Principle Decision*. As Bernard argues in its Opposition, and as Petitioners have previously been informed,¹¹ the Commission will not grant reconsideration “merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken.”¹² Because we have already addressed these issues multiple times, we will not address these matters further herein.

Petitioners also claim that newly discovered facts warrant reconsideration. In this regard, they point to articles reporting that the D. B. Zwirn Special Opportunities Fund was liquidating its two largest hedge funds as a consequence of accounting issues.¹³ Additionally, they claim that Zwirn has been under investigation by the Securities and Exchange Commission (“SEC”) since 2006 and that the audit has now been completed. They contend that the Commission must review the results of this investigation before making any decision on Zwirn’s basic qualifications to be a Commission licensee.

In their additional filings, Petitioners expand on these allegations. They now claim that the SEC investigation is for fraud.¹⁴ Additionally, they contend that an August 3, 2006, “Letter of Offer” looking toward the acquisition of shares of Dhandapani Finance Limited demonstrates Zwirn misrepresented its ownership to the Commission.¹⁵ Petitioners also include a March 7, 2008, memorandum in which Zwirn

¹⁰ We have previously informed Petitioners that using incorporation by reference to reprise arguments already made and rejected is improper. *DFW-to-Bernard Reconsideration Decision*, 23 FCC Rcd at 2648. As we noted, the “kitchen sink” approach to filings, as apparently preferred by Petitioners, is disfavored by the Commission and is not permitted. *DFW-to-Bernard Reconsideration Decision*, 23 FCC Rcd at 2648 n.19 citing *Red Hot Radio*, Memorandum Opinion and Order, 9 FCC Rcd 6737, 6745 n.63 (2004). Accordingly, we reject this further attempt by Petitioners to incorporate herein its numerous prior pleadings in this matter and in the DFW to Bernard assignment matter.

¹¹ *DFW-to-Bernard Reconsideration Decision*, 23 FCC Rcd at 2648 n.20.

¹² *WWTZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹³ See “Troubled Firm to Close 2 Funds Worth \$4 Billion,” *NYTIMES.com* (Feb. 23, 2008); *see also* “D.B. Zwirn to liquidate \$4 billion in assets,” *moneycentral.msn.com* (Feb. 22, 2008).

¹⁴ See Reply at 2.

¹⁵ See Supplement at 2 - 5 and Exhibit B. This “Letter of Offer” is a letter pursuant to the requirements of the Securities and Exchange Board of India, by which D.B. Zwirn Mauritius and D.B. Zwirn Special Opportunities Fund, L.P. notify Dhandapani Finance Limited that they were making, at a price-certain-per-share, an offer to purchase shares of Dhandapani. Petitioners state that the Letter of Offer contains the statement that “D.B. Zwirn & Co. is owned by Zwirn Holdings, LLC, DBZ GP, LLC, Dubin & Sweica Asset Management, LLC, and certain individuals.” Petitioners claim that Zwirn/Bernard did not previously inform the Commission of the existence and interests of Dubin & Sweica Asset Management, LLC, and the “certain individuals” mentioned in the “Letter of Offer,” and therefore misrepresented its ownership to the Commission in disclosing only 1% equity principal Daniel Bernard Zwirn in the Applications. In its Response, Bernard states that it has consistently reported to the Commission that D.B. Zwirn & Co. has limited partners that are insulated from involvement in the partnership’s media enterprises pursuant to Commission requirements. Dubin & Sweica, it states, is owned by U.S. citizens and is an insulated limited partner. Accordingly, it states, there is nothing inconsistent between the 2006 Letter of Offer and Bernard’s ownership disclosure in this proceeding. Finally, Bernard alleges that Petitioners are conflating four separate funds managed by D.B. Zwirn & Co., L.P. whereas only one of these funds (*i.e.*, D.B. Zwirn Special Opportunities Fund, L.P.) holds an indirect ownership interest in Bernard.

advises investors that it intends to dissolve the D. B. Zwirn Special Opportunities Fund, L.P.,¹⁶ and a May 9, 2008, article from the *Wall Street Journal* concerning Zwirn's difficulties and the SEC's investigation of them.¹⁷ Petitioners also attempt to rebut Bernard's claim that the newspaper articles Petitioners have filed are hearsay by asserting that courts have ruled that judicial notice may be taken of newspaper articles to determine whether a fact is within public knowledge.¹⁸ Finally, Petitioners submit a newspaper article from the *New York Post* claiming that, on August 20, 2008, the Commission's Enforcement Bureau issued a letter commencing an investigation into whether Straight Way Radio, Bernard Radio LLC, D. B. Zwirn Special Opportunities Fund, L.P. and/or D.B. Zwirn & Co. LP engaged in an unauthorized transfer of control regarding stations in Florida and Georgia.¹⁹ They claim that Zwirn had an obligation under Section 1.65 of the Commission's Rules (the "Rules")²⁰ to report this investigation to the Commission.²¹

Discussion. Procedural Matters. As an initial matter, we will deny Petitioners' Motion and dismiss their first Supplement. Section 1.106(f) of the Rules²² provides that supplements to petitions for reconsideration be filed "within 30 days from the date of public notice of the final Commission action" unless leave to file is granted pursuant to a separate request. Petitioners' Motion is a separate request for leave to file their first Supplement. They have not, however, provided grounds for us to grant such leave. As Bernard points out, the "Letter of Offer" Petitioners proffer is dated August 3, 2006, and, accordingly, was available at the time the Petition was filed. Therefore, the material they present in their first Supplement could have been provided earlier and does not warrant consideration pursuant to Section 1.106(c) of the Rules as set forth above. Additionally, even were we to consider the first Supplement, that material does not contain facts indicating that aliens own or control Bernard in excess of the limits set forth in Section 310(a) and (b) of the Act or that Zwirn misrepresented its ownership. Finally, the fact that Zwirn is dissolving the D. B. Zwirn Special Opportunities Fund is irrelevant to our consideration of the Applications.

We will, however, grant the Petitioners' Second Motion and consider their Second Supplement which pertains to an Enforcement Bureau investigation involving D.B. Zwirn & Co., L.P., the ultimate parent of Bernard. That investigation commenced on August 20, 2008,²³ and, therefore, could not have been known to the Petitioners until subsequent to the expiration of the filing period for supplements to petitions for reconsideration as set forth in Section 1.106(f) of the Rules.

Substantive Matters. Section 1.106(c) of the Rules and established case law provide that, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the

¹⁶ See Supplement at 4-5 and Exhibit C.

¹⁷ *Id.* at 5 and Exhibit D.

¹⁸ Reply at 2-3 citing *United States v. Microsoft, Inc.*, 253 F.3d 34, 108-09 (D.C. Cir. 2001); *Washington Post v. Robinson*, 935 F.2d 282, 291 (D.C. Cir. 1991).

¹⁹ See Second Supplement at 2-3 and Exhibit B.

²⁰ 47 C.F.R. § 1.65.

²¹ See Second Supplement at 3.

²² 47 C.F.R. § 1.106(f).

²³ *Tama Broadcasting, Inc.*, Order, 24 FCC Rcd 1612 (EB 2009); *Tama Broadcasting, Inc.*, Consent Decree, 24 FCC Rcd 1615, 1616 (EB 2009).

original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."²⁴ Petitioners have not met this burden.

In the one new argument raised in the Petition, Petitioners, citing articles from the webpages of *The New York Times*²⁵ and MSN's Moneycentral,²⁶ contend that Zwirn has been under investigation for fraud by SEC since 2006. The Commission, they contend, should review the results of that investigation when available. The *New York Times* article mentioning the investigation was not published until subsequent to the issuance of the *Bernard-to-Principle Decision*. Accordingly, we will assume that the SEC investigation was unknown to Petitioners prior to our grant of the Applications. Nevertheless, we will not grant reconsideration on the basis of that allegation. First, the allegation is supported only by newspaper articles. Hearsay, such as that contained in newspaper articles, is not reliable evidence of the truth of the matters related in the article.²⁷ Second, even if we were to consider the articles, they wholly fail to raise a substantial and material question of fact that requires further inquiry as to whether any of the parties lacks the character necessary to be a Commission licensee. Generally, only if the investigation had resulted in an adjudication, and that adjudication was that Zwirn committed a fraud before the SEC or another governmental agency, would such non-FCC conduct be actionable under our *Character Policy*.²⁸ Neither of these factors is present here.

Additionally, the Enforcement Bureau investigation noted by Petitioners in their Second Supplement does not pertain to the stations involved herein. We have previously determined that there should be no presumption that misconduct at one station is necessarily predictive of the operation of the licensee's other stations.²⁹ Moreover, the Commission has terminated that investigation.³⁰ The parties thereto have entered into a Consent Decree that bars the Commission from considering the facts developed in that investigation in the instant case.³¹ We also find that Petitioners have failed to show that

²⁴ 47 C.F.R. §1.106(c); *WWJZ, Inc.*, Memorandum Opinion and Order, 37 FCC at 686 (1964); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

²⁵ "Troubled Firm to Close 2 Funds Worth \$4 Billion," NYTIMES.com (Feb. 23, 2008).

²⁶ "D.B. Zwirn to liquidate \$4 billion in assets," moneycentral.msn.com (Feb. 22, 2008).

²⁷ *Pikes Peak Broadcasting Co.*, Memorandum Opinion and Order, 12 FCC Rcd 4626, 4630 (1997) citing *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982) and *Rothschild Broadcasting, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 7226, 7227 (1995).

²⁸ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1204 (1985), recon. granted in part, denied in part, 1 FCC Rcd 421 (1986), as modified, 5 FCC Rcd 3252 (1990) ("Character Policy"). The Commission did create an exception to the general rule that non-Commission related misconduct must result in an adjudication before the Commission will consider it. In adopting the *Character Policy* the Commission acknowledged "that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation." In such cases, it indicated, the misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee and might be a matter of Commission concern even prior to adjudication by another body. *Character Policy*, 102 FCC 2d at n.60. We do not believe that the alleged unadjudicated misconduct herein, even if true, "shocks the conscience." Accordingly, it would not fit within this exception to the adjudication requirement.

²⁹ *Character Policy*, 102 FCC 2d at 1223-24.

³⁰ *Tama Broadcasting, Inc.*, 24 FCC Rcd at 1613.

³¹ The Consent Decree provides that, "[t]he Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute any proceeding, formal or informal, or take any action against Tama Broadcasting, Inc., D.B.

the investigation concerned matters that would be of decisional significance in the instant application proceeding. Accordingly, Section 1.65(a) of the Rules³² did not require that the pendency of the investigation be reported to us in this proceeding.

Finally, the staff previously cautioned the Petitioners that pleadings filed with the Commission are not to be "used for other than their intended purpose, *e.g.*, for private financial gain, to settle personal claims or as an emotional outlet."³³ The Petitioners have ignored that caution. The Petition, the Supplement and the Second Supplement are frivolous and obstructive pleadings which are wholly devoid of merit. Accordingly, we admonish the Petitioners³⁴ for their attempts to further delay this proceeding.

Conclusion/Actions. For the reasons set forth above, we find that Petitioners have failed to show a material error or omission in the *Bernard-to-Principle Decision*, and they have failed to demonstrate new facts which would otherwise warrant reconsideration. Accordingly, IT IS ORDERED, that Petitioners' Motion for Leave to File "Supplement to Petition for Reconsideration" IS DENIED and Petitioners' Supplement to Petition for Reconsideration IS DISMISSED. IT IS FURTHER ORDERED, that Petitioners' Motion for Leave to File "Second Supplement to Petition for Reconsideration" IS GRANTED to the extent indicated herein and DENIED in all other respects. IT IS FURTHER ORDERED, that David Schum, J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown Robert E. Howard, Edwin E. Wodka, John W. Saunders, Richard J. Drendel, and Joy Crain Johns, individually and as executrix of the Estate of Albert Crain, ARE ADMONISHED for filing frivolous and obstructive pleadings. IT IS FURTHER ORDERED, that Petitioners' Petition for Reconsideration filed on March 20, 2008, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

Zwirn & Co., L.P., or their affiliates, with respect to their basic qualifications, including character qualifications, to be a Commission licensee." *Tama Broadcasting, Inc.*, 24 FCC Rcd at 1618-19.

³² 47 C.F.R. § 1.65(a).

³³ *DFW-to-Bernard Decision*, 23 FCC Rcd at 2644 n.12 (citing *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, Report and Order, 5 FCC Rcd 3911, 3912 (1990), *recon. denied*, 6 FCC Rcd 3380 (1991)).

³⁴ This admonishment applies only to the Petitioners, not to their counsel. Attorney misconduct associated with frivolous pleadings is referred to the Office of General Counsel under seal.

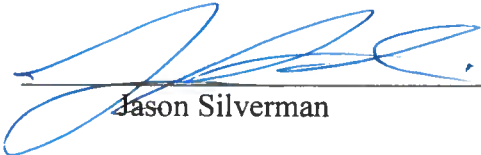
CERTIFICATE OF SERVICE

I, Jason Silverman, hereby certify that I have sent, this 27th day of October, 2011, by First Class U.S. Mail, postage prepaid, copies of the foregoing OPPOSITION TO PETITION FOR LEAVE TO FILE SUPPLEMENT AND SUPPLEMENT TO APPLICATION FOR REVIEW to the following:

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