

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

In the Matter of)
)
Entercom Communications and CBS Radio) MB Docket No. 17-85
Seek Approval to Transfer Control of and)
Assign FCC Authorizations and Licenses)
)
Subsidiaries of CBS Corporation) BTCH-20170320AAV
(Transferors)) BTC-20170320AAZ, et al.,
and) BTCH-20170320ACR
Shareholders of Entercom Communications) BTCH-20170320AEVOpp
Corporation (Transferees)) BTCH-20170320AFU
) BTC-20170320AGG
For Consent to Transfers of Control) BTCH-20170320AGZ
) BTCH-20170320AHB, et al.,
) BTCH-20170320ACM
) BTCH-20170320ACT, et al.,
) BTCH-20170320AFS
) BTCH-20170320AFV, et al.,
) BTC-20170320AGE, et al.,
) BTCH-20170320AGP
) BTCH-20170320ACS
) BTC-20170320ACV, et al.,
) BTC-20170320AFI, et al.,
) BTCH-20170320AFT
) BTC-20170320AGD
) BTC-20170320AGO
) BTCH-20170320AHA
) BTCH-20170320AHD
)
)
Joseph M. Field (Transferor)) BTCH-20170320AHE, et al.,
and) BTCH-20170320AAW
Shareholders of Entercom Communications) BTC-20170320AGQ, et al.,
Corporation (Transferees)) BTCH-20170320AAX, et al.,
) BTC-20170320AAR, et al.,
For Consent to Transfers of Control) BTC-20170320AGH, et al.,
) BTC-20170320AFX, et al.,
) BTCH-20170320ACN, et al.,
) BTC-20170320AEW, et al.,
)
)
Subsidiaries of CBS Corporation) BALH-20170320AMP, et al.,
(Assignors)) BALH-20170320AMR,
and) BALH-20170320AMT,
The Entercom Divestiture Trust) BALH-20170320ANE, et al.
(Assignee))
)
)
)

For Consent to Assignment of Licenses)	BALH-20170320ALF, <i>et al.</i> ,
)	BALH-20170320ALH,
Subsidiaries of Entercom Communications Corporation)	BALH-20170320ALJ, <i>et al</i>
(Assignors))	
and)	
The Entercom Divestiture Trust)	
(Assignee))	
)	
For Consent to Assignment of Licenses)	

ORDER ON RECONSIDERATION

Adopted: July 3, 2019

Released: July 8, 2019

By the Commission:

1. We have before us a joint “Petition for Further Reconsideration” (Second Petition) filed on November 26, 2018, by Edward R. Stolz II (Stolz) and Deborah J. Naiman (Naiman) (collectively, Petitioners) seeking reconsideration of our decision denying their joint Petition for Reconsideration (PFR) in this proceeding¹ and related pleadings.² The Petitioners again ask the Commission to rescind the captioned transfer of control and assignment of license applications, as amended (Merger and Divestiture Applications), and designate for hearing CBS Corporation’s (CBS) basic character qualifications to assign its radio stations to Entercom.³ For the reasons set forth below, we deny the Second Petition.

2. **Background.** Entercom, CBS, and CBS’s wholly-owned subsidiary CBS Radio, Inc. (CBSR) filed the Merger and Divestiture Applications, pursuant to which they sought to transfer control of the CBSR radio stations to Entercom. The Media Bureau (Bureau) granted the Merger and Divestiture Applications over the Petitioners’ objections,⁴ and the Commission subsequently denied both Petitioners’ Application for Review of the *Bureau Order*⁵ and their Petition for Reconsideration of the *AFR Order*.

3. In the Second Petition, Petitioners seek reconsideration of the *PFR Order* based on a development they argue occurred after the PFR pleading cycle closed, which they believe justifies reconsideration, *i.e.*, the resignation of CBS Chairman and CEO Leslie Moonves following allegations of

¹ See *Entercom Communications and CBS Radio Seek Approval to Transfer Control and Assign FCC Authorizations and Licenses to Subsidiaries of CBS Corporation (Transferors) and Shareholders of Entercom Communications Corporation (Transferee)*, Order on Reconsideration, FCC 18-152 (Oct. 25, 2018) (*PFR Order*).

² On December 6, 2018, Entercom filed an Opposition to Petition for Further Reconsideration (Opposition), to which Petitioners replied on December 18, 2018 (Reply).

³ Petition at 5.

⁴ See *Entercom Communications and CBS Radio Seek Approval to Transfer Control and Assign FCC Authorizations and Licenses to Subsidiaries of CBS Corporation (Transferors) and Shareholders of Entercom Communications Corporation (Transferee)*, Memorandum Opinion and Order, 32 FCC Rcd 9380 (MB 2017) (*Bureau Order*).

⁵ *Entercom Communications and CBS Radio Seek Approval to Transfer Control and Assign FCC Authorizations and Licenses to Subsidiaries of CBS Corporation (Transferors) and Shareholders of Entercom Communications Corporation (Transferee)*, Memorandum Opinion and Order, 33 FCC Rcd 6621 (2018) (*AFR Order*).

sexual misconduct.⁶ Citing *Melody Music*,⁷ Petitioners argue that CBS must be treated as a “similarly situated” party to two licensees who had their broadcast licenses revoked for sexual misconduct and racial discrimination, respectively,⁸ and they reiterate their previous claim that there are questions regarding CBS’s basic qualifications to be a broadcast licensee that require an evidentiary hearing.⁹

4. In Opposition, Entercom argues that the precedent relied upon in the Petition is inapplicable, as here, there is no criminal conviction or other adjudication of the alleged non-FCC misconduct, and thus, the Commission’s *Character Policy Statement*¹⁰ is not implicated.¹¹

5. In Reply, Petitioners argue that the actions of Moonves were in fact Commission-related misconduct because: (1) Moonves was chairman and chief executive officer of a corporation whose wholly-owned subsidiaries owned numerous radio and television stations; and (2) CBS’s internal investigation revealed instances of “harassment and retaliation” in its employment practices,¹² and the Commission specifically has held that employment discrimination is a factor to be considered in licensing broadcast stations.¹³ Accordingly, Petitioners once again reiterate their claim that there are questions regarding CBS’s – and Entercom’s -- basic qualifications to be a broadcast licensee that require an evidentiary hearing and assert that the Commission should rescind the Bureau’s grant of the applications pending further proceedings, which Petitioners claim would be consistent with action in other cases.¹⁴

⁶ Petition at 2-3 and Appendix A, citing Ronan Farrow, *As Leslie Moonves Negotiates His Exit from CBS, Six Women Raise New Assault and Harassment Claims*, *The New Yorker*, Sept. 9, 2018, <https://www.newyorker.com/news/news-desk/as-leslie-moonves-negotiates-his-exit-from-cbs-women-raise-new-assault-and-harassment-claims>.

⁷ See *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (*Melody Music*).

⁸ Petition at 3-4, citing, respectively, *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000) (*Contemporary Media*) and *Catocin Broadcasting Corporation of New York*, Memorandum Opinion and Order, 2 FCC Rcd 2126 (Rev. Bd. 1987), *aff’d*, Memorandum Opinion and Order, 4 FCC Rcd 2553 (1989), *aff’d in unpublished opinion*, 920 F.2d 1039 (D.C. Cir. 1990) (*Catocin*).

⁹ *Id.* at 3 (citing *Jefferson Radio Co., Inc. v. FCC*, 340 F.2e 781 (1964)).

¹⁰ Opposition at 2 and n.4, citing *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1205, para. 48 (1986) (emphasis added) (citation omitted) (“We will not take cognizance of non-FCC related misconduct . . . unless it is adjudicated. In this regard, there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations.”) (emphasis in original).

¹¹ Opposition at 2.

¹² Petitioners submit a December 17, 2018, press statement from the CBS Board of Directors in which CBS states that, after an internal investigation, it had determined that there are grounds to terminate Mr. Moonves for cause. The report also summarizes findings regarding the company’s corporate culture, stating that “harassment and retaliation are not pervasive at CBS,” but “employees cited past incidents in which HR and the Company did not hold high performers accountable for their conduct and protect employees from retaliation,” Reply at Exhibit A.

¹³ *Id.* at 2-3, citing *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018 (2002) (*Review of Commission’s EEO Policies Second R&O*) and *Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices*, Memorandum Opinion and Order and Notice of Proposed Rule Making, 13 FCC Rcd 766 (1968).

¹⁴ Reply at 3-5 (citing *Michigan Television Network, Inc.*, 72 FCC 2d 732 (1979) and *Seraphim Corporation*, 2 FCC Rcd 7177 (1987)). Petitioners state that the Commission should investigate whether the CBS Board of Directors adequately supervised Moonves and should “obtain and review the CBS Corporation investigation report before it can finalize its ruling that CBS Corporation and its radio subsidiaries had the basic character qualifications required by *Jefferson Radio Co. Inc. v. FCC*, 340 F.2d 781 ([D.C. Cir.] 1964).” Reply at 3.

6. **Discussion.** It is important to note as a preliminary matter that the Rules do not authorize serial petitions for reconsideration and limit the circumstances under which a party may seek reconsideration of a Commission order denying reconsideration.¹⁵ Even were we to accept that the CBS CEO's resignation after the *PFR Order* pleading cycle had closed is a new development within the meaning of section 1.106(b)(2)(i), we conclude, as we have several times previously in this proceeding, that the Petitioners provide no evidence or other basis to support a finding that the conduct cited by Petitioners is relevant to CBS's qualifications to assign or transfer control of its radio station licenses. As we found in the *AFR and PFR Orders*, Petitioners' allegations of improper conduct at CBS do not involve any CBSR station involved in this transaction.¹⁶

7. We also conclude that even if we accepted Petitioners' argument that the alleged conduct somehow triggered review under the Commission's *Character Policy Statement*, Petitioners have failed to allege facts that, if true, would show that grant of the applications is not in the public interest. Under the *Character Policy Statement*, even if there were adjudicated findings of wrongdoing, the Commission would not find the conduct to be relevant unless additional facts show a close connection between the parent and subsidiary licensees as to the operation of the licensees. In that case, the Commission would examine any aggravating or mitigating factors, including remedial steps taken by the parent and would determine, in light of the particular facts of the case, whether the parent-level misconduct impugns the trustworthiness and reliability of the licensee going forward.¹⁷ Here, however, Petitioners failed to even allege that Moonves was involved in the day-to-day operations of the station licensees, nor have they proffered any other factual allegations or evidence that otherwise would tie the conduct of CBS to its subsidiary licensees. Moreover, Petitioners' argument ignores the fact that CBS addressed the allegations against Moonves by removing him from management of the company.¹⁸ Because Petitioners could have

¹⁵ See *Great Lakes Broadcast Academy, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 11655, 11656, para. 5 (2004) (observing that "neither [the Communications Act of 1934, as amended, nor the Commission's rules] provides for the filing of a second petition for reconsideration should the original petition be denied" and that "[i]f the 'tacking' of petitions were permitted, Commission actions might never become final and the rule would become nugatory") (citing *Brainerd Broadcasting Co.*, 25 RR 297, 298 (1963)). section 1.106(b)(2) of the Rules specifies such a petition for reconsideration will be entertained only if the petition: (i) relies on facts or arguments which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; and/or (ii) relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity. 47 CFR § 1.106(b)(2).

¹⁶ See, e.g., *AFR Order* at 3, para. 5 (citations omitted) ("Stolz notably does not allege that the purported improper actions occurred at a CBSR radio station subject to the transaction. Rather, he asserts that his unadjudicated, unsubstantiated, and conclusory news distortion claim against CBS's *television* stations presents sufficient circumstances to investigate CBSR's qualifications to be a Commission licensee. We disagree. Under established Commission policy, there is 'no presumption that misconduct at one station is necessarily predictive of the operation of the other stations.'"); see also *Serafyn v. FCC*, 149 F.3d 1213, 1216-17 (D.C. Cir. 1998).

¹⁷ *Character Policy Statement*, 102 FCC 2d at 1218-1220. paras. 79-80 (there must be a "close ongoing relationship" between the parent and subsidiary, with common principals "actively involved in the day-to-day operations" of the licensee; (the parent company officer or director "must actually be involved in some fashion in the day-to-day operations of the broadcast subsidiary."); *id.* at 1227-28, para. 102 (Commission also examines mitigating factors, including remedial measures already undertaken). Petitioners chose not to examine the many factors discussed in the *Character Policy Statement* and how they would apply to the character analysis, such as whether there are common officers and directors between CBS and the licensees; whether the alleged misconduct extended to the licensees; the extent to which principals at CBS were involved in the day-to-day operations of the licensees; or the adequacy of the remedial action CBS took in response to findings of its internal investigation.

¹⁸ *Id.* at 1217, n.91, citing *RKO General, Inc. v. FCC*, 670 F.2d 215, 227, n.33 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982) ("It is, however, the case that 'corporate misconduct often can be cured by replacing management and directors'").

addressed these points in its filings here but did not, if Petitioners attempt to raise these issues regarding Moonves in future filings in this proceeding, we will find them untimely.¹⁹

8. Although we find that denial of the Petition by the Bureau, rather than the Commission, would have been appropriate under section 1.106(p) of the Rules,²⁰ we have decided to act on the Petition in order to discourage any further requests for reconsideration or review filed by Petitioners in the interest of promoting administrative finality.

9. Accordingly, **IT IS ORDERED** that, pursuant to section 405(a) of the Communications Act of 1934, as amended,²¹ and section 1.106 of the Rules,²² the November 26, 2018, joint Petition for Further Reconsideration filed by Edward R. Stolz II and Deborah J. Naiman **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁹ See 47 CFR § 1.106(b)(2).

²⁰ 47 CFR §§ 1.106(p) (“petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau...Examples include, but are not limited to”); 1.106(p)(1) (failure to identify any material error, omission or reason warranting reconsideration).

²¹ 47 U.S.C. § 405(a).

²² 47 CFR § 1.106.