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

**April 18, 2013**

**DA 13-783**
*In Reply Refer to:*
**1800B3-CEG**
Released: **April 18, 2013**

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In re: **WVKO(AM), Columbus, Ohio**
Facility ID No. 22341
File No. BR-20120529AHE

**WVKO-FM, Johnstown, Ohio**
Facility ID No. 58633
File No. BRH-20120529AHG

**WASN(AM), Youngstown, Ohio**
Facility ID No. 72100
File No. BR-20120529AHH

**WGFT(AM), Campbell, Ohio**
Facility ID No. 74164
File No. BR-20120529AHJ

**Applications for Renewal of License**

**WRBP(FM), Hubbard, Ohio**
Facility ID No. 63498
File No. BRH-20120529AHK
**Application for Renewal of License**

File No. BALH-20120612AAP
**Application for Assignment**

File No. BMLH-20120710AAS
**Application to Modify License**
**Request for Waiver of Main Studio Rule**

**Petition for Reconsideration**

Dear Counsel and Petitioner:

We have before us a Petition for Reconsideration ("Petition") filed by Percy Squire ("Squire") on February 8, 2013, seeking reconsideration of the grant of the above-referenced applications for renewal of stations WVKO(AM), Columbus, Ohio; WVKO-FM, Johnstown, Ohio; WASN(AM), Youngstown, Ohio; WGFT(AM), Campbell, Ohio; and WRBP(FM), Hubbard, Ohio (the "Stations").[1] Squire also seeks reconsideration of the grant of the assignment of the license for station WRBP(FM), Hubbard, Ohio, from Bernard Ohio, LLC ("Bernard") to Educational Media Foundation ("EMF"). Finally, Squire seeks reconsideration of the above-captioned application filed by EMF for modification of the license for station WRBP(FM) to operate as a noncommercial educational ("NCE") station[2] and accompanying main studio waiver request to operate WRBP(FM) as a "satellite" of co-owned NCE station KLVR(FM), Middletown, California (collectively, the "Applications").[3] We also have before us Bernard's Opposition to Petition for Reconsideration, filed February 27, 2013 ("Opposition"). For the reasons stated below, we deny the Petition.

**Background.** Squire was the Managing Member and CEO of the former licensee of the five Stations, Stop 26 Riverbend Licenses, LLC ("SRL").[4] In 2004, SRL entered into a loan agreement with the predecessor of D.B. Zwirn Special Opportunity Fund, LP ("DBZ Onshore Fund"), a hedge fund then managed by another Zwirn entity, D.B. Zwirn & Co. L.P. In July 2005, SRL filed for Chapter 11 bankruptcy. As a result of the bankruptcy, on January 22, 2007, the Stations were assigned to Bernard, an indirect affiliate of DBZ Onshore Fund.[5] In 2009, Fortress Investment Group ("Fortress") took over management of Zwirn's various hedge funds, including DBZ Onshore Fund.

Over Squire's Petitions to Deny, the Bureau granted Bernard's Applications by a letter decision released January 11, 2013 ("*Letter Decision*").[6] In the 10-page *Letter Decision*, the Bureau addressed at length Squire's two primary objections: (1) that DBZ Onshore Fund, which has an indirect equity interest in the licensee, Bernard, has a prohibited level of foreign ownership due to alleged improper cash transfers between the DBZ Special Opportunities Fund, Ltd. ("DBZ Offshore Fund") and the DBZ Onshore Fund; and (2) that the Stations are *de facto* controlled by Fortress, manager of the DBZ Onshore Fund, without Commission authorization. The Bureau found that Squire had not presented any evidence regarding, respectively, the foreign ownership percentages of DBZ Onshore Fund or Fortress's alleged unauthorized control over the personnel, finances, and programming of the Stations.[7] As part of its analysis, the Bureau stated that the Declarations of Dr. Glenn Cherry and David A. Schum, attached as exhibits to Squire's Petitions to Deny, related to different transactions, different licensees, and different stations, and therefore were not relevant to the Applications.

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[1] Squire filed a substantially identical Amended Petition for Reconsideration on February 15, 2013.

[2] 47 C.F.R. § 73.1690(c)(9).

[3] A "satellite" station meets all of the Commission's technical rules. However, it originates no programming and instead rebroadcasts the parent station's programming. *See Amendment of Multiple Ownership Rules*, Memorandum Opinion and Order, 3 R.R.2d 1554, 1562 (1964).

[4] *See Shareholders of Stop 26 Riverbend, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 6516, 6517 (2012).

[5] *See* File Nos. BAL-20060301ACU; BALH-20060301ACV; BALH-20060301ACW; BAL-20060301ACX; and BAL-20060301ACY. Bernard's sole member is Rocklynn Radio, LLC ("Rocklynn") (previously Bernard Radio LLC). Rocklynn's managing and sole voting member is RL Transition Corp and Rocklynn's insulated non-managing member (100 percent equity member) is DBZ Onshore Fund. Daniel B. Zwirn ("Zwirn") is the sole shareholder of RL Transition Corp. *See* File No. BTC-20090520ACI, Exhibit 1.

[6] *Aaron P. Shainis, Esq.*, Letter, 28 FCC Rcd 126 (MB 2013).

[7] *Letter Decision* at 8.

In the Petition, Squire claims that the Bureau "misapprehended" his two primary arguments. First, Squire contends that the Bureau "incorrectly focused on whether DBZ's ownership structure was changed by the cash transfers instead of whether DBZ violated the Communications Act by utilizing foreign funds in excess of 25% to purchase radio licenses."[8] Such use of "foreign capital" to purchase domestic radio stations is, according to Squire, "a flagrant violation of §310 [of the Communications Act] and a threat to national security."[9] Second, Squire argues that the Bureau erred by disregarding his unauthorized transfer of control arguments relating to other, different licensees and stations, because "[t]he Petition to Deny alleged . . . repeated and serious violations by DBZ of the Act. There is no requirement to prove violations only in connection with the licenses up for renewal."[10]

In its Opposition, Bernard argues that because Squire's submission was not sent to the correct Commission contact, it is "fatally flawed" and should be dismissed on procedural grounds.[11] On the merits, Bernard argues that Section 310 places a limit only on foreign *ownership*, not on the use of foreign capital to finance license acquisitions. Moreover, Bernard claims, Squire's facts on this point are purely speculative. Bernard also states that the Declaration of Dr. Glenn Cherry has no relevance to Bernard, as it concerns a different transaction, different stations, and a different licensee.[12]

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.[13] Squire has not met this burden.

*Procedure*. Although Squire did not use the correct mailing address,[14] the Petition was received and date-stamped by the Commission mail room—and therefore considered "filed" under Section 1.7 of the Commission's rules—on February 8, 2013, well before the statutory deadline of February 11, 2013.[15] Accordingly, we will consider Squire's arguments on the merits.

*Foreign Ownership*. Squire contends that the purchase of a domestic radio station using "foreign capital"—whether or not it results in an equity interest—is prohibited by Section 310 of the Act. We do not agree. Section 310 is clear: A station license shall not be held by "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the *capital stock* is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country. . . ."[16] Petitioner has adduced no evidence, either below or on reconsideration, that more than 25 percent of DBZ Onshore Fund's capital stock is or was "owned of record or voted by aliens," as prohibited by Section 310. Monies that merely pass through the channels of international commerce, or are exchanged into or out of a foreign currency, do not trigger Section 310 if they are not invested as equity capital—an *ownership* interest—in a U.S.

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[8] Petition at 3.

[9] *Id*. (referring to 47 U.S.C. § 310(b)(4) ("Section 310")).

[10] Petition at 5.

[11] Opposition at 2-3 (citing 47 U.S.C. §405(a); 47 C.F.R. §§ 1.4(b)(5), 1.106(f), 1.7; *FCC Announces Change in Filing Location for Paper Documents*, Public Notice, 24 FCC Rcd 14312 (2009) ("*Filing Public Notice*")).

[12] Opposition at 6.

[13] *See* 47 C.F.R § 1.106(c),(d). *See also WWIZ, 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).

[14] *See Filing Public Notice*, 24 FCC Rcd at 14312.

[15] 47 C.F.R. § 1.7. Staff also entered into the CDBS database that the Petition had been filed on February 8, 2013.

[16] 47 U.S.C. § 310(b)(4) (emphasis added).

radio station. Therefore, in the *Letter Decision*, the Bureau correctly examined whether DBS Onshore Fund's ownership structure was affected by the alleged cash transfers from DBZ Offshore Fund when assessing Bernard's compliance with Section 310, finding that Squire had failed to demonstrate that the transfers resulted in an impermissible level of foreign ownership.

*Unauthorized transfer of control*. Squire argues that the Bureau should have taken into account his factual allegations regarding transactions involving a different licensee and different stations when assessing the Stations' renewal applications. Under the plain terms of section 309(k)(1) of the Act, the Commission cannot deny a renewal based on violations that occurred at a different station. Rather, section 309(k)(1) states that the relevant findings must be made specifically "with respect to" the station seeking renewal of its license.[17] We also note that the particular allegations contained in the Declarations of Dr. Glenn Cherry and David A. Schum were separately considered by the Bureau in another proceeding and did not result in a finding of any rule violation.[18] Accordingly, we find that the Bureau properly rejected those materials submitted by Squire that did not relate to the Stations seeking renewal.

**Conclusion/Actions**. We find that grant of the Applications was not in error and was consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Percy Squire on February 8, 2013, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

[17] 47 U.S.C. §309(k)(1).

[18] *See Urban Radio I, LLC, Debtor-in-Possession*, Letter, Ref. No. 1800B3-MFW (MB Sept. 12, 2012).