

ACCEPTED/FILED

OCT 31 2017

Before the
Federal Communications Commission
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In re Application of

DTV AMERICA CORPORATION

For Transfer of Control of DTV America Corporation

To: **Office of the Secretary**
Attn: **Chief, Video Division, Media Bureau**

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) **File No. BTCDTL-20170714ABI**
) **Facility No. 181949 et al.**
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) **File No. BTCDTL-20170713AAT**
) **Facility No. 125684 et al.**
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INFORMAL OBJECTION

Batuta Capital Advisors LLC ("Batuta"), a minority stockholder and warrant holder of DTV America Corporation ("DTV America"), hereby objects to the above-referenced applications for transfer of control to HC2 Broadcasting Inc. of the listed approximately 350 licenses and permits currently owned by DTV America. For the reasons stated herein, due to the enormity of the licenses being proposed to be transferred, and the scarcity information that has been provided concerning the proposed transferee, Batuta hereby petitions that the FCC require the disclosure of additional information pertinent to the qualification of the proposed transferee and its principals. With respect thereto, the following is stated:

Batuta is a current stockholder of DTV America. According to the Securities Purchase Agreement attached as Attachment 4 to the pending applications, there are 30,542,581 shares of Common Stock of DTV America outstanding; warrants to purchase 3,653,228 shares of the Common Stock of the DTV America outstanding; and options to purchase 3,690,000 shares of Common Stock of the 3,690,000 shares of DTV outstanding. Batuta currently owns through different entities a total of 278,319 shares. Therefore, its current ownership is 0.91% prior to

giving effect to the warrants. In this case Batuta also has in its possession warrants for the purchase of additional shares of stock. Upon exercise of the warrants in its possession, Batuta would own 1,355,254 shares for 4.28% of the company. In the event of a transfer of control of DTV America, DTV America claims that, under the terms of the warrant that have been issued, the warrants expire.

A. Insufficient Information Has Been Provided to Allow Grant of the Transfer of Control Applications

In the present cases, it is proposed that control of over 350 licenses and permits change hands to a new corporation. It should be noted that an FCC Form 345 has been used for this transaction. The FCC Form 345 does not on its face require disclosure of any of the principals of the new party taking control.

It should be determined that under these circumstances, additional information should be requested, and a full disclosure of the principals involved in the transaction should be disclosed. In the original FCC Form 346 under which each of the licenses were originally acquired, a disclosure of information concerning each and every attributable owner was required. The same information should be required in this case. This ownership information is necessary for the FCC to engage in a complete and thorough determination of the qualifications of the proposed assignee to allow a determination as to whether the grant of the applications would be in the "public interest." Such a determination cannot be made by the Commission at this time.

There is little doubt that more information should be required. Under Section 310(d) of the Communications Act:

(d) Assignment and transfer of construction permit or station license —

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the

public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 of this title for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

47 U.S.C. § 310(d). Therefore, under the terms of the Communication Act of 1934, allowing these applications to go forward should not be allowed **UNLESS AND UNTIL** there is a full disclosure of all of the attributable principals that will be involved in "HC2 Broadcasting Inc.". Virtually nothing is known about HC2 Broadcasting Inc. at the present time. A search of the Commission's database reveals absolutely no prior broadcast station ownership. As noted above, were the proposed transferee in this case making an application for the licenses in question, a full disclosure of ownership information would have been required. No less a disclosure should be required in this case.

Therefore, in this case, the applications should not be granted at this time. At the present time, the public has been utterly left in the dark with respect to the future ownership of over 350 licenses. As a result, there is no ability for the public to meaningfully assess the applications without a disclosure of the principals to the applications.

B. Excessive Information Has Been Redacted from the Securities Purchase Agreement

The parties are not providing full information to the Commission. This is evident even through a cursory review of the applications. Section III, Question 8 of the FCC Form 345 requests information concerning whether the proposed assignee or any party to the application:

- a. any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the a application;
or
- b. any pending broadcast application in which character issues have been raised.

At the present time, because “HC2 Broadcasting Inc.” is a brand new corporation (which evidently formed on June 6, 2017, just prior to the filing of this transaction), and since there is no disclosure concerning the persons owning of this corporation, there is no ability on the part of the public the research and assess the accuracy of HC2 Broadcasting’s response. Similarly, Section II, Question 7 of the FCC form 345 requires that the proposed transferee certify with respect to the assignee/transferee and any party to the application, that:

no adverse finding has been made, nor has an adverse final action been taken by any court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to any of the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another government unit; or discrimination.

FCC Form 345, Section II, Question 7. Here again, because at the present time “HC2 Broadcasting Inc.” is a brand new corporation, and since there is no disclosure concerning the persons owning of this corporation, there is no ability on the part of the public the research and assess the accuracy of HC2 Broadcasting’s response.

This problem is compounded by the lack of disclosure on the part of the parties in its filing of the Asset Purchase Agreement in this proceeding. As noted, under certain circumstances, the FCC allows the redaction of certain proprietary information. *LUJ, Inc. (WYVR-FM Transfer)*, 17 FCC Rcd 16980 (2002). Therein, the Commission stated:

applicants that submit complete and final copies of all transaction documents may continue to respond “Yes” to the applicable certification Item. Applicants -- both Assignors/ Transferors/Licensees and Assignees/ Transferees alike -- that choose to omit transaction documents which contain information that is not material for Commission processing purposes, whether such information is proprietary or not, must respond “No” to the applicable certification Item.

Id. at 16983.

Massive amounts of materials were been intentionally redacted from the version of the Securities Purchase Agreement filed with the Commission on July 17, 2017. Despite this clear directive, DTV America and HC2 Broadcasting each initially certified that the Securities

Purchase Agreement constituted the “complete and final understanding between licensee/permittee and assignee/transferee.” That assertion obviously was never correct, and was only corrected very recently, by amendment dated October 4, 2017.

The following materials have been intentionally omitted by the parties’ filing:

SCHEDULE A - NUMBER OF SHARES
SCHEDULE B - AMOUNT OF COMMON STOCK AND PURCHASE OPTIONS
SCHEDULE C - WARRANTS TO PURCHASE SHARES OF COMMON STOCK, ETC.
SCHEDULE D - THIRD PARTY CONSENTS
SCHEDULE 3.1 - EXCEPTIONS TO OPTIONS, WARRANTS, ETC.

EXHIBIT A - FORM OF EMPLOYMENT AGREEMENT (GARRIGA)
EXHIBIT B - FORM OF EMPLOYMENT AGREEMENT (PODHAJSER)
EXHIBIT C - FORM OF EMPLOYMENT AGREEMENT (DONNER)
EXHIBIT D - FORM OF CONSULTING AGREEMENT (KING FORWARD)
EXHIBIT E - FORM OF CONSULTING AGREEMENT (BELLA SPECTRA)
EXHIBIT F - FORM OF NON-COMPETE AGREEMENT (KYLE)
EXHIBIT G - FORM OF NON-COMPETE AGREEMENT (BRUNI)
EXHIBIT I - FORM OF INVESTOR RIGHTS AGREEMENT

LUI, Inc. 17 FCC Rcd at FCC Form 345, Exhibit 4. It is claimed that these materials that have intentionally been redacted from the Securities Purchase Agreement, “contain proprietary information and/or are not germane to the commission's consideration of this application.”

However, no showing has been made to support that bald claim. The parties’ cite the *LUI* case, yet the *LUI* case specifically requires the following:

[parties should] submit an Exhibit describing each of the omitted documents, stating both the specific reason(s) for omitting them and the basis upon which the applicants contend that the omitted documents are not material to the Commission's consideration of the subject application. We believe that such explicit reference to any omitted schedules, exhibits, or other related documents will enable both the public and the Commission to determine whether any such documents should in fact be submitted.

LUI, Inc., 17 FCC Rcd 16983-84. In this case, only titles of Schedules and Exhibits have been provided. No documents, no “Exhibit describing each of the omitted documents” or “specific reason(s) for omitting them and the basis upon which the applicants contend that the omitted documents are not material to the Commission's consideration of the subject application” have

been provided.

These documents, and the explanations that are required to accompany them, are especially pertinent in a case such as this where *such a large* transaction is involved; *so little information* is available about the transferee; and *no information* is available about the principals to the transaction.

For all these reasons, the Informal Objection should be granted.

WHEREFORE, it is requested that this Informal Objection be granted, and the pending applications for transfer of control of DTV America Corporation be denied.

Respectfully submitted,

**BATUTA CAPITAL ADVISORS
LLC**

By: 
Alexandre Zyngier
Managing Director

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October 31, 2017

CERTIFICATE OF SERVICE

I hereby certify that the forgoing "Informal Objection" is being served by First Class Mail to the following:

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