

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)

Petition for Declaratory Ruling Seeking Foreign)
Ownership Ruling Pursuant to Section 310(b)(4))
of the Communications Act of 1934, as Amended,)
filed by Zoo Communications, LLC and Anco)
Media Group, LLC)

MB Docket No. 17-359

Accepted / Filed

FEB - 2 2018

Federal Communications Commission
Office of the Secretary

To: Office of the Secretary

Attn: Chief, Audio Division, Media Bureau

REPLY COMMENTS FILE COPY ORIGINAL

Zoo Communications, LLC ("Zoo"), licensee of Stations WZFL, Islamorada, Florida, WBGF, Belle Glade, Florida, W228BV, Fort Lauderdale, Florida and W228BY, Belle Glade, Florida and Anco Media Group, LLC ("Anco"), by their attorneys, hereby file their Reply Comments to the January 18, 2018 Comments filed by JVC Media of South Florida, LLC ("JVC Media"), opposing the Zoo and Anco Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act, as amended ("Declaratory Petition").¹ The Declaratory Petition was filed by Zoo and Anco at the same time as their Transfer of Control App. In support of their position, Zoo and Anco submit the following:

1. As noted, Zoo and Anco have filed their Transfer of Control App. seeking FCC consent to transfer ownership of Zoo from Zoo's current members to Anco and its members. Zoo's ownership is currently composed of three individuals: Marcella Manca (40% ownership interest), Kimberly Bianchini Scudellari (40% ownership interest) and Claudio Dompe (20% ownership interest). Mr. Dompe is an Italian citizen. Anco is composed of four individuals:

¹ See *Public Notice*, "Zoo Communications, LLC and Anco Media Group, LLC Seek Foreign Ownership Ruling Pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended," D.A. 17-1221, released December 19, 2017. JVC Media has also filed a Petition to Deny opposing the November 28, 2017 application consent to transfer of control of Zoo from Zoo's current members to Anco (BTCH-20171128AAW) ("Transfer of Control App."). Zoo and Anco, on January 29, 2018, filed an Opposition to the JVC Petition to Deny.

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Claudio Dompe (40% ownership interest), Marco Mazzoli (40% ownership interest), Claudia Dompe (10% ownership interest) and Stefania Pittaluga (10% ownership interest). All of the Anco principals are Italian citizens.

2. In their Declaratory Petition, Zoo and Anco request that the FCC permit Anco to acquire 100 percent indirect ownership of Zoo, thereby, permitting Anco to exceed the 25 percent non-citizen ownership benchmark contained in Section 310(b)(4) of the Communications Act of 1934, as amended (the “Act”). They also request that the FCC permit each of the Anco principals to increase their voting and equity interest in Anco at a future time. JVC Media has filed its Comments opposing the Declaratory Petition.

3. A review of the JVC Media Comments shows it does not provide any justification for the relief which JVC requests, the Commission’s denial of the Declaratory Petition. Just as with its Petition to Deny objecting to the Transfer of Control App., JVC Media does not make any specific relevant factual allegations to establish that grant of the Declaratory Petition would be inconsistent with the public interest. JVC Media’s Comments, like its Petition to Deny, are motivated by and are concerned with a private ongoing commercial lawsuit between JVC Media and Zoo. As such, JVC Media’s Comments result from an abuse of the FCC’s processes.

4. The Commission has previously found abuses of the Commission’s processes when FCC filings are used as part of threats, even when made in settlement negotiations.² The Commission has stated that “[a]buse of process is a broad concept and that includes use of Commission processes to achieve a result that the process was not intended to achieve, or use of that process to subvert the purpose the process was intended to achieve.”³ The FCC has further defined “abuse of process” as “serious willful misconduct *which directly threatens the integrity of the Commission’s licensing processes.*”⁴

² See e.g. *Gulf Coast Communications, Inc.*, 8 FCC Rcd 499, 513 (Rev. Bd. 1980), *review denied*, FCC 82-128 (1982); *James C. Sliger*, 70 FCC 2d 1565 (Rev. Bd. 1979), *aff’d sub nom. Cumberland v. FCC*, 647 F.2d, 1341 (D.C. Cir. 1980).

³ *Ronald Brasher*, 15 FCC Rcd 16326, 16331 (2000) (citing *Broadcast Renewal Applicants*, 3 FCC Rcd 5179, 5199 n. 2 (1988) (“use of the term ‘abuse of process’ is confined to abuses resulting from the filing of competing applications, *petitions to deny* or from the use of other similar mechanisms.”) (emphasis added).

⁴ *Saga Communications of New England, Inc.*, 19 FCC Rcd 2741, 2745 (Enf. Bur. 2004) (citing *Policy Statement on Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986) (emphasis added).

5. In this case, as the attached affidavit of Bernard L. Egozi makes clear, JVC Media has used a Commission's licensing proceeding in a tawdry effort to advance its own private agenda in non-FCC related State civil litigation. Mr. Egozi serves as Zoo's counsel in private civil litigation being conducted in Florida.⁵ On or about December 12, 2017, Mr. Egozi held a telephone conversation with William Pincus, counsel for JVC Media, concerning the private Florida civil suit between JVC Media and Zoo,⁶ in which the attorneys discussed the prospect for settlement of the suit. During the course of their conversation, Mr. Pincus reminded Mr. Egozi of Zoo's pending Declaratory Petition filed at the FCC relating to foreign ownership. Mr. Pincus stated to Mr. Egozi that if the Florida Litigation could not be resolved immediately, JVC would file "an objection" against the Zoo Declaratory Petition at the FCC. Mr. Egozi inquired of Mr. Pincus whether a settlement of the Florida Litigation would obviate the need for JVC to assert its objection at the FCC and would operate as a "global settlement." Mr. Pincus replied affirmatively that it would.⁷

6. Shortly thereafter, on December 19, 2017, Mr. Egozi again spoke with Mr. Pincus at which time the prospect of settlement of the Florida Litigation occurred. During this second conversation, Mr. Pincus again stated to Mr. Egozi that if the parties did not resolve the Florida Litigation quickly, JVC would be filing its objection to the Zoo Declaratory Petition at the FCC.⁸ Ten days later, on December 29, 2017, Mr. Egozi emailed Mr. Pincus requesting an extension of time to respond to a Complaint filed in the Florida Litigation and to consider JVC's latest settlement demand. Mr. Pincus agreed in his email to the requested extension, but added that "however, JVC is filing an objection to Zoo's Petition. Just thought you should know."⁹

⁵ Affidavit of Bernard L. Egozi, p. 1 (Attachment A).

⁶ The action is styled *JVC Media of South Florida v. Zoo Communications, LLC*, Case No. 502017CA01275XXXXMB, pending in the 15th Judicial Circuit Court of Palm Beach County, Florida (the "Florida Litigation"). The JVC Media Comments are supposedly filed with respect to the FCC's enforcement of Section 310(b)(4) of the Act regarding indirect ownership of U.S. broadcast stations by non-U.S. citizens, however, JVC Media spends an entire page in its Comments opposing the Declaratory Petition by providing a detailed description of its contractual litigation with Zoo. This strange behavior provides additional evidence of JVC Media's real motives behind filing its Comments opposing the Declaratory Petition and is consistent with JVC Media's threat to do just that.

⁷ Affidavit of Bernard L. Egozi, p. 1.

⁸ *Id.*

⁹ *Id.*, p. 2.

7. Similar to the *Gulf Coast Communications* decision, where the Commission's Review Board disqualified an applicant for engaging in an improper abuse of process,¹⁰ here, JVC Media has sought to utilize the Commission's licensing processes to enhance its own private interests in private civil litigation conducted in Florida State Court. That Florida Litigation is completely unrelated to the FCC's Section 310(b)(4) process or the pending Declaratory Petition seeking relief under Section 310 of the Act, filed with and to be decided by the FCC. The subject of the Florida Litigation, on the other hand, is a private cause of action to determine whether Zoo is liable financially to JVC Media for an alleged breach of contract and is to be decided by a State Court. What can the current issue before the FCC under Section 310(b)(4) of the Act regarding the proposed ownership of the licensee of Stations WZFL and WBGF by Italian citizens, who own the proposed parent company, Anco, possibly have to do with an action before a Florida State Court to determine who possibly owes whom money under a contract?¹¹

8. The Commission has consistently held that it does not wish to involve itself in the resolution of private civil litigation involving contractual disputes by broadcast companies.¹² Here, however, JVC Media has threatened Zoo with the filing of an objection to Zoo's foreign ownership request unless Zoo is willing to accept the JVC settlement offer in an unrelated civil action. And true to its word, when Zoo did not agree to JVC Media's settlement offer in the Florida Litigation, JVC Media immediately filed both a Petition to Deny objecting to the grant of Zoo's Transfer of Control App. and Comments objecting to FCC approval of Zoo's Declaratory Petition to allow indirect station ownership by Anco's principals.

9. JVC Media's disingenuous efforts to threaten Zoo with the filing of Comments opposing the Declaratory Petition, so that JVC Media might leverage a beneficial private

¹⁰ 8 FCC Rcd at 513.

¹¹ No doubt, JVC Media will posture that the contract involving Florida civil litigation is an Asset Purchase Agreement previously filed with an Assignment Application at the FCC. But, the issue before the Florida Court has nothing to do with licensing issues before the Commission under Section 310(b)(4) of the Act. The contract before the Florida Court and the issues to be decided by that Court are similar to other contract cases resolved in local courts, and constitute private business disputes in which the FCC does not involve itself.

¹² *Nameloc, Inc. and ABC, Inc.*, 23 FCC Rcd 14295, n. 13 (2008); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622 (1992); *John R. Runner, Receiver (KBIF)*, 36 RR 773, 778 (1976).

settlement in a completely unrelated civil action in Florida State Court, constitutes a serious abuse of the FCC's processes which "threatens the integrity of the Commission's licensing processes."¹³ Reaching settlement of unrelated local contract litigation is clearly not the result that the FCC licensing procedures were intended to achieve under the Act. Rather, JVC Media's conduct subverts the purpose of the Commission's licensing process.¹⁴ That JVC Media's Comments and its earlier-filed Petition to Deny may be considered comparatively insignificant substantively is irrelevant. As the Review Board noted in *Gulf Coast Communications*, "the misconduct does not depend upon the substance of the material, but rather the manner in which the material is used."¹⁵ JVC Media has abused the Commission's processes by using the FCC's licensing process as a lever to manipulate Zoo's conduct in the Florida Litigation and, as such, JVC Media must be sanctioned for its highly improper conduct. Zoo and Anco, pursuant to Section 1.41 of the FCC's rules,¹⁶ have already requested and again, here, respectfully request that JVC Media's license for Station WSWN, Belle Glade, Florida, be designated for hearing for revocation of license based on JVC Media's plain abuse of process here.

10. Further proof of JVC Media's intention to threaten Zoo with delays in FCC approval of the Declaratory Petition is amply demonstrated by JVC Media's inability to find anything of note regarding Zoo or Anco with which to seriously complain about. JVC's assertions are, to be charitable, extremely light on facts, relying heavily on speculation, conjecture and surmise in the absence of substance, with a dose of nitpick, conclusory facts and general allegations thrown in for good measure.

11. JVC Media attacks Zoo's ownership as "a convenient sham" and states that the transfer "has already occurred."¹⁷ JVC Media also attacks the Purchase Agreement attached to the Zoo Transfer of Control Application. According to JVC Media, the fact that a Schedule to the Purchase Agreement dealing with contracts has not been supplied as part of the filing is of major interest to JVC Media, again, in view of its claim in the Florida Litigation that Zoo, allegedly,

¹³ See note 5, *supra*.

¹⁴ See note 4, *supra*.

¹⁵ *Gulf Coast Communications*, 8 FCC Rcd at 515.

¹⁶ 47 C.F.R. §1.41.

¹⁷ *Comments* filed by JVC Media of South Florida, LLC, January 18, 2018, pp. 2-3.

has defaulted previously on a contract obligation. According to JVC, it “has a significant interest in knowing from precisely which contracts the proposed transferee plans to release Zoo.”¹⁸

12. JVC Media criticizes Zoo principals Kimberly Bianchini Scudellari and Marcella Manca because they have ownership in other businesses unrelated to Zoo. JVC Media criticizes them for transferring their interest in the Zoo Media properties, and because they are not employed in the broadcasting business on a day-to-day basis, whereas Marco Mazzoli, a proposed principal of Anco, has broadcast experience and is a station manager of Zoo broadcast properties.¹⁹ What this has to do with Section 310(b)(4) and the Declaratory Petition is left unexplained and provides additional evidence that JVC Media has no interest other than its own private interest in securing a beneficial outcome in its private litigation against Zoo.

13. In support of its Petition, JVC Media provides no supporting affidavits for the Commission to evaluate in determining if JVC Media has provided specific allegations of fact sufficient to demonstrate that a grant of the Declaratory Petition would be *prima facie* inconsistent with the public interest. JVC Media’s allegations consist, instead, wholly of ultimate conclusory facts and general allegations solely premised on information or belief to establish its case.

14. Moreover, as noted, it is quite obvious from JVC Media’s own language in its Comments, which parrot its language in its Petition to Deny, that JVC Media has no interest in advancing the public interest, but is, instead, fixated on pursuing its own private interests in its Florida Litigation against Zoo. JVC Media claims standing to object to the Zoo application based, in large part, on its Florida contract complaint²⁰ and acknowledges that it “has a significant interest in knowing” which of the Zoo contracts Anco will agree to release Zoo from.²¹ That private interest has no relationship to any FCC determination under Section 310(d)(4) of the Act with respect to the ownership of a Commission licensee.

¹⁸ *Id.* at p. 3. What JVC Media’s “interest” in those Zoo contracts, which will or will not be assigned to Anco at closing, has to do with the FCC’s Section 310(b)(4) enforcement obligations is left unclear and, apparently, is beyond JVC Media’s ability to explain.

¹⁹ *Id.* at pp. 5-7.

²⁰ *Id.* at p.2.

²¹ *Id.* at p.3.

15. Likewise, JVC Media's attack on Ms. Scudellari and Ms. Manca, as well as Mr. Mazzoli, consists of ultimate, conclusionary facts and general allegations based on mere information and belief. These individuals have seen their reputations and character attacked for no reason other than they have been connected to radio stations. Zoo's principals were attacked because Zoo has refused to pay JVC Media off by agreeing to JVC Media's settlement terms in the Florida Litigation.

16. Moreover, JVC Media's assertion that a station's principals must be the ones to serve as the managers of a broadcast station is just plain wrong. In *Bechtel v. FCC*²² and *Bechtel v. FCC II*,²³ the Court observed that the Commission's policy for choosing between applicants to own new broadcast stations could not be approved, since the Commission had never spelled out why an owner-manager would be more sensitive to community needs than an owner who hires a professional manager, such as Mr. Mazzoli. As the Court observed, the fact that corporate America generally does not insist upon integration of ownership and management casts doubt on the Commission's speculations about any benefits involving owners serving as managers, as advocated by JVC Media.²⁴ In fact, "the Commission is reluctant to impose on applicants any one view of what constitutes a well managed broadcast venture."²⁵ As noted by the *Bechtel* Court, business "executives routinely supervise a variety of [business] activities...without being the least bit apathetic about the performance of any."²⁶

17. Additionally, the JVC Media complaints about the Zoo/Ancos application contain no specific allegations of fact demonstrating that a grant of the instant application would be *prima facie* inconsistent with the public interest. JVC Media's general conclusory allegations are based solely on speculation and surmise. Neither does JVC Media demonstrate in its pleading that there is any substantial material question of fact which it has presented calling for further inquiry. JVC Media obviously is aware that what is proposed is a transfer of control from the

²² 957 F.2d 873 (D.C. Cir. 1992).

²³ 10 F.3d 875 (D.C. Cir. 1993).

²⁴ *Id.* at 880. Moreover, the issue in the *Bechtel* decisions concerned which radio station applicant was best qualified. No one ever concocted a theory, like JVC Media has, that any station licensee principal who spends a great deal of time operating another non-broadcast business should be viewed with suspicion as a radio station owner.

²⁵ *Id.* at 881 (quoting *Omaha TV 15, Inc.*, 4 FCC Rec. 730, 732-33 (1988)).

²⁶ *Id.* at 884.

current members of Zoo to Anco, since, as previously cited in the Zoo and Anco Opposition to Petition to Deny, JVC Media has related that fact in the heading of its Petition to Deny. As previously noted, Zoo expressly stated in its application that the "Legal Name of the Transferor" was the Zoo Communications, LLC current members.²⁷ The Transfer of Control App. lists Anco as the Transferee and contains a copy of the Declaratory Petition, which describes why Anco should be approved as Zoo's parent.

18. As noted, the JVC Media Comments, to a substantial extent, are a word-for-word repeat of its unfortunate Petition to Deny the Zoo-Anco Transfer of Control App.²⁸ However, JVC Media does add one paragraph at footnote 3 on page 6 of its Comments, where JVC Media attempts to defame Marco Mazzoli, because of his allegedly questionable (according to JVC Media) Italian broadcast record. And where does JVC Media find disparaging information about Mr. Mazzoli? It cites Wikipedia, then compounds its misinformation effort by asserting that the Commission should investigate Mr. Mazzoli's alleged "history of regulatory compliance with Italian broadcasting authorities," solely based on JVC Media's hatchet job.

19. JVC Media provides not one shred of factual evidence to support its speculative assertions demeaning Mr. Mazzoli. Instead, JVC Media cites to Mr. Mazzoli's Wikipedia page as evidence, but, Wikipedia, itself, has noted that it should not be cited as a source. "We advise special caution when using Wikipedia as a source for research projects...Remember that Wikipedia is a wiki. Anyone in the world can edit an article, deleting accurate information or adding false information, which the reader may not recognize. Thus, you *probably shouldn't be citing Wikipedia*."²⁹ In view of the fact that any individual can post anything about anyone on Wikipedia, there is no legal basis for according JVC Media's attack on Mr. Mazzoli any validity. Moreover, the Commission has previously stated that Wikipedia citations can not be used to support proper allegations of fact.³⁰

²⁷ See note 2, *supra*.

²⁸ See, for example, *JVC Media's Comments* in which JVC Media refers to the "above-captioned application for consent to transfer of control of Zoo" despite the fact that the above-caption has to do with the Declaratory Petition.

²⁹ Wikipedia, https://en.wikipedia.org/wiki/Wikipedia:Citing_Wikipedia. (last visited Feb. 2, 2018) (emphasis in original). See Attachment B.

³⁰ "It is well settled that news reports, whether from newspapers or the Internet, and Wikipedia citations do not satisfy the requirement in Section 309(d) of the Act that a petitioner must support its allegations of

In view of the above, JVC Media has failed to present any specific factual allegations sufficient to show that approval of the Declaratory Petition would be *prima facie* inconsistent with the public interest and has also failed to raise a substantial and material question of fact warranting further inquiry. Anco and its principals are fully qualified to be the owners of Commission licensee Zoo and grant of the Declaratory Petition will serve the public interest, convenience and necessity.


Respectfully submitted,

ZOO COMMUNICATIONS, LLC

and

ANCO MEDIA GROUP, LLC

By:



Aaron P. Shainis and
Lee J. Peltzman
Its Attorneys

Shainis & Peltzman, Chartered
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Washington, DC 20036

February 2, 2018

fact, other than those of which official notice can be taken, with affidavits of persons with first-hand knowledge of those facts." *Los Angeles Social Justice Radio Project*, 31 Rcd 7506, 7510 n. 36(2016) citing *DFW Radio License, LLC*, 29 FCC Rcd 804,810 (2014).

ATTACHMENT A

AFFIDAVIT OF BERNARD L. EGOZI

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

BEFORE ME, an officer duly authorized to take oaths and administer acknowledgments, personally appeared Bernard L. Egozi who, under oath, stated the following:

1. I am over the age of 18 years and have personal knowledge of all of the facts stated herein.

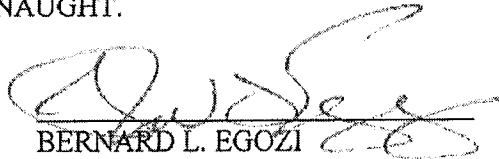
2. I am an attorney licensed to practice law by the State of Florida and serve as counsel to Zoo Communications, LLC ("Zoo") in the action styled *JVC Media of South Florida, LLC v. Zoo Communications, LLC*, Case No. 502017CA012075XXXXMB, pending in the 15th Judicial Circuit Court of Palm Beach County, Florida (the "Florida Litigation").

3. On or about December 12, 2017, I had a telephone conversation with counsel for JVC Media of South Florida, LLC ("JVC"), William Pincus, regarding the Florida Litigation and the prospect of settlement. During the course of this conversation, Mr. Pincus advised me of Zoo's pending petition filed with the Federal Communications Commission (the "FCC") relating to foreign ownership (the "Zoo Petition"). Mr. Pincus stated that if the Florida Litigation could not be resolved immediately, JVC would be filing "an objection" to the Zoo Petition. I asked Mr. Pincus whether a settlement of the Florida Litigation would remove the need for JVC to assert its objection and would operate as a "global settlement" and Mr. Pincus replied affirmatively.


4. One week later, on December 19, 2017, I had a second telephone conversation with Mr. Pincus during which we again discussed the prospect of settling the Florida Litigation. During this second conversation, Mr. Pincus reminded me that if we did not resolve the Florida Litigation quickly, JVC would be filing its objection with the FCC.

5. Ten days later, on December 29, 2017, I emailed Mr. Pincus to request an extension of time to respond to the Complaint filed in the Florida Litigation and to further consider JVC's latest settlement demand. Mr. Pincus replied to my email by agreeing to the requested extensions, but also added "[h]owever, JVC is filing an objection to Zoo's FCC Petition. Just thought you should know."

FURTHER AFFIANT SAYETH NAUGHT.


BERNARD L. EGOZI

SWORN TO AND SUBSCRIBED before me this 26th day of January, 2018, by Bernard L. Egozi, who personally appeared and _____ is personally known to me or produced _____ as identification. The affiant took an oath.


Notary Public



GALE GOLDSTEIN TUCKER
MY COMMISSION # FF 934771
EXPIRES: March 9, 2020
Bonded Thru Budget Notary Services

Printed Name or Notary Stamp

ATTACHMENT B

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CERTIFICATE OF SERVICE

I, Michael Nuell, hereby certify that I have sent, this 2nd day of February, 2018, copies of the foregoing REPLY COMMENTS to the following:

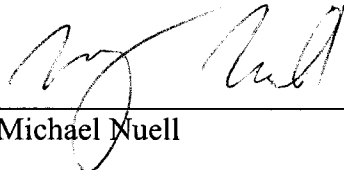
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