

2018 FEB -6 PM 2:44

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

In re Application of)
)
ZOO COMMUNICATIONS, LLC,)
)
Licensee of)
WZFL, Facility ID No. 189556, Islamorada, FL)
WBGF, Facility ID No. 59661, Belle Glade, FL)
W228BV, Facility ID No. 138576, Fort)
Lauderdale, FL)
W228BY, Facility ID No. 140483, Miami, FL)
)
For Consent to Transfer of Control from)
Zoo Communications, LLC, Current Members to)
Anco Media Group, LLC)

File No. BTCH-20171128AAW
File No. BTCH-20171128AAX
File No. BTCFT-20171128AAY
File No. BTCFT-20171128AAZ

Accepted / Filed

FEB - 5 2018

Federal Communications Commission
Office of the Secretary

Directed to: Office of the Secretary
Attention: Chief, Audio Division, Media Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

JVC Media of South FLA, LLC (“JVC Media”), by its attorneys, hereby submits its Reply to the Opposition to Petition to Deny submitted by Zoo Communications, LLC (“Zoo”) with regard the above-captioned application for consent to transfer of control of Zoo to Anco Media Group, LLC (“Anco”). With respect thereto, the following is stated:

Perhaps the best description of Zoo’s Opposition, along with its other recent filings directed against various JVC Media applications, is a Shakespearean one, in that the Opposition is “full of sound and fury, signifying nothing.”¹ Zoo has assumed an attitude of righteous indignation because JVC Media informed it ahead of time that JVC Media would be filing an objection to its application for consent to transfer of control. Zoo begins its Opposition with numerous case citations, including those supporting the most basic of points, but it has not

¹ Shakespeare, William. “MacBeth,” Act V, Scene V.

provided any further information in response to the questions raised by JVC Media regarding the legitimacy of the transaction proposed in the above-captioned application. Instead, claiming to have perceived some sort of threat related to ongoing litigation in Florida state court involving the prior assignment of the WBGF to Zoo, Zoo has claimed that JVC Media has somehow abused the Commission's processes. Additionally, it has submitted a belated Informal Objection with regard to JVC Media's proposed sale of unrelated station WSWN, Belle Glade, Florida, and a Petition for Reconsideration of the grant of a construction permit to JVC Media for W296DN, Belle Glade, Florida. What Zoo has not done, however, is to provide any evidence whatsoever that the proposed transfer is anything but a sham transaction designed to bring the theoretical ownership structure into line with what has long been the actual reality.

Zoo attempts to distract with irrelevant discussion of past integration considerations related to comparative hearings and a protest that JVC Media did not submit a declaration to support the factual showings made in its Petition to Deny. What Zoo ignores, however, is that the facts sufficient to call its proposed transfer of control into question are those reflected in its own application, which Zoo itself submitted. Clearly, the Commission is able to take official notice of facts contained in an application that was filed with the Commission, which Zoo itself asked the Commission to consider in connection with its application.

It is that very application which demonstrates that the current majority owners of Zoo are to receive no compensation whatsoever in connection with relinquishing their alleged membership interests in the Zoo station. Apparently, they will simply walk away from valuable assets out of the goodness of their hearts. This fact alone raises serious doubt as to whether the previously claimed ownership structure was ever anything more than a convenient sham. Likewise, while Zoo is correct that there is no requirement that an owner participate in the

management of a broadcast station, the lack of any connection whatsoever with station operations further demonstrated the fictional nature of the claimed interests. If, however, the current ownership structure is nothing but a sham, then a willingness to walk away from ownership interests that never really existed except in theory becomes understandable.

Zoo has provided nothing whatsoever to demonstrate that either Kimberly Bianchini Scudellari or Marcella Manca, its purported current members, ever either contributed funds or work in exchange for their ownership interests or that they received payment of any consideration as a return on investment. It can only be concluded that neither of them ever had any actual ownership interest but rather they were only figureheads who could provide a sufficiently American face to a company actually always controlled by foreign nationals. The Commission must not now allow Zoo to revise its theoretical ownership structure to match what reality has always been by ignoring the false façade which Zoo initially presented to the Commission. Thus, because Zoo initially denied the Commission the opportunity to know the true identity of its licensee, the above-captioned application cannot cure that defect and must be denied.

Zoo has complained that JVC Media's local counsel informed Zoo's counsel in advance that JVC Media would be submitting an objection to its transfer application. The conversations during which this information was imparted took place in connection with settlement discussions related to the local lawsuit JVC Media filed against Zoo in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida, *JVC Media of South FLA, LLC v. Zoo Communications, LLC*, Case No. 502017CA012075XXXXXMB, with regard to Zoo's default in making required payments under contracts assumed from JVC Media in connection with the assignment of the WBGF license. Zoo has alleged that these conversations constituted threats to

make a Commission filing, a threat which JVC Media then carried out, and the Petition to Deny is thus an abuse of process contrary to Commission policy.

JVC Media, however, contests this characterization of the conversations. As set forth in the attached Affidavit of JVC Media's local counsel, William Pincus, the information with regard to planned FCC filings was conveyed only in the interest of full disclosure. *See* Exhibit 1 hereto. As Mr. Pincus has noted, he did not see any necessary connection between the Florida litigation and any FCC filings. The fact that Mr. Pincus indicated that settling the Florida litigation could not hurt in convincing JVC Media not to pursue FCC filings does not convert information about future actions into a threat. Rather, it is simply a reflection of human nature.

As the Commission has recognized, private parties are not required to act as private attorneys general and inform the Commission of each and every negative fact which they might know or suspect about another applicant. *Gulf Coast Communications, Inc.* 81 FCC2d 499, 515 (Rev.Bd. 1980). If all other disputes with a competitor have been settled, a party simply does not have the same interest in expending legal fees to stir up a new controversy by bringing its concerns to the Commission's attention. Conversely, the existence of a local dispute with regard to a station gives a party an incentive to look closely at a competitor's FCC application related to the same station and alert the Commission to issues raised by the application. Bringing such matters to the Commission's attention does not then run contrary to the proper purpose of a petition to deny but rather advances it.

Furthermore, the cases which Zoo has cited as demonstrating that JVC Media's actions constitute an abuse of process undermine rather than support its contentions. For example, *Saga Communications of New England, Inc.*, 19 FCC Rcd 27141 (Enf. Bur. 2004) involved the unauthorized broadcast of a telephone call and a competing station's threat to file a complaint

with the FCC if the broadcasting station did not follow particular apology procedures. When the broadcasting station refused and the competing station did, in fact, file a complaint, the Commission found that the complaint did not threaten, but rather upheld, the Commission's licensing process and thus was not an abuse of process. *Id.* at 2745. Likewise, in this instance, pointing out serious doubts about the accuracy of an application's ownership information upholds the integrity of the Commission's licensing procedures. It is the false ownership picture identified in JVC Media's Petition to Deny that represents a threat to the integrity of that process, not the Petition itself.

Similarly, *Gulf Coast Communications*, 81 FCC2d 499, turn as much on withholding of relevant information related to a competitor's FCC application as it does on then threatening to file and actually filing that information against later, unrelated FCC applications. *Id.* at 515. Here, JVC Media has not withheld the concerns which it recognized solely as a result of close examination of Zoo's above-captioned application. Alerting the Commission about the legitimate issues raised by that information cannot be an abuse of process as such an action merely aids in focusing the Commission's attention on the very matters it is required to consider. Whatever decision the Commission reaches, considering the issues raised by JVC Media will better inform the Commission's analysis of the application under review.

Moreover, JVC Media came to review Zoo's application due to a dispute related to one of the stations listed in that application and which arose out of the assignment of the license for the very same station from JVC Media to Zoo. JVC has simply raised concerns regarding the necessary implications of information contained in the above-captioned application, and it has not gone afield from that topic. Zoo has provided no information whatsoever to resolve the

issues raised but has simply engaged in rhetorical jumping up and down and wild, if repeated, allegations of wrong-doing.

Repeating the allegations in every conceivable forum does not, however, make them true. As set forth above, Zoo was never improperly threatened, nor did JVC Media engage in any abuse of process. Zoo, on the other hand, has taken its substantially overblown claim and has filed it in unrelated proceedings involving other JVC Media stations, including an unrelated application for assignment of license. Even if the Commission were to find that JVC Media's Petition were problematic in nature, there is no necessary or logical connection with its other stations. Thus, pursuant to the policy enunciated in *Gulf Coast Communications*, 81 FCC Rcd 499, it is Zoo that has engaged in an abuse of process by repeatedly filing objections and petitions against JVC Media. Such excess smacks of only revenge as a motive. Revenge against another party for raising hard questions is an improper reason for filing, as it sheds no light on the merits or demerits of an unrelated station's application. Thus, it is Zoo's actions that would undermine the integrity of the Commission's licensing process and constitute an abuse of process.

In sum, JVC Media has demonstrated that the transaction described in the above-captioned application, as well as Zoo's current, claimed ownership structure, are nothing more than a convenient sham. Zoo has submitted no information to rebut that showing, but rather has simply made unsupported claims of abuse of process against JVC Media. It is only Zoo, however, which has been engaged in abusing the Commission's processes, both in its prior applications to acquire the licenses of WZFL and WBGF and in its current pleadings filed against JVC Media.

WHEREFORE, the premises considered, JVC Media respectfully requests that the above-captioned application for consent to transfer of control be dismissed or denied.

Respectfully submitted,

JVC MEDIA OF SOUTH FLA, LLC

By: Anne Goodwin Crump
Francisco R. Montero
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street – Eleventh Floor
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(703) 812-0400

February 5, 2018

Exhibit 1

AFFIDAVIT OF WILLIAM H. PINCUS

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

BEFORE ME, in officer duly authorized to take oaths and administer acknowledgments, personally appeared William H Pincus who, under oath, stated the following:

1. My name is William H. Pincus, I am over 18 years of age and *sui juris*. I have personal knowledge of the averments set forth below

2. I am an attorney licensed to practice law by the State of Florida.

3. I have been practicing law for over 22 years.

4. I represent JVC Media of South FLA, LLC ("JVC Media") in that certain litigation styled: *JVC Media of South FLA, LLC v. Zoo Communications, LLC*, Case number 50217CA012075XXXXMB AA, pending in the 15th Judicial Circuit Court in and for Palm Beach County, Florida (the "Florida Litigation").

5. On December 6, 2017, Mr. Bernard L. Egozi, Esq., counsel for Zoo Communications, LLC ("Zoo"), first appeared in the Florida Litigation by filing a Motion for Extension of Time to respond to JVC Media's Complaint.

6. On December 11, 2017, I telephoned Mr. Egozi to request that he submit an Agreed Order to the court granting him his requested extension of time to respond to the Complaint.

7. During our telephone conversation, Mr. Egozi suggested early mediation. I told him that would be acceptable but also advised him, in the interest of full disclosure, that JVC Media's Washington attorneys were evaluating Zoo's recent Petition (the "Petition") to the Federal Communications Commission (the "FCC") and were considering

filing an Objection to the Petition. Mr. Egozi asked whether settlement of the Florida Litigation would obviate the need for JVC Media to file an Objection to the Petition. I told him that I did not practice FCC law and that it was up to the Washington Attorneys but that settlement "couldn't hurt."

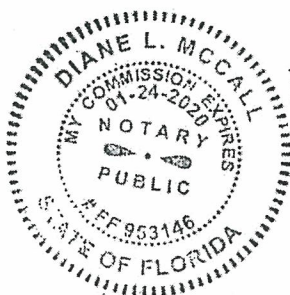
8. On December 19, 2017, I again spoke with Mr. Egozi at which time Mr. Egozi extended a settlement offer. The only discussion of the Petition was that I understood the deadline to object was fast approaching and that Washington counsel "would be filing an Objection." To my mind, this communication should have made clear to Mr. Egozi that there was no connection between settlement of the Florida Litigation and JVC Media's intention to object to the Petition.


9. On December 29, 2017, Mr. Egozi emailed me to request a further extension of time to respond to the Complaint. I replied by email that I agreed to the requested extension of time and, as a courtesy, added that JVC Media was filing its Objection to the Petition. (I was under the impression that the Objection to the Petition was being filed on December 29th although it was not actually filed until January 2, 2018). Again, I would have thought that this communication made clear that there was no connection between the Florida Litigation and the FCC proceedings.

FURTHER AFFIANT SAYETH NAUGHT.


WILLIAM H PINCUS

Sworn to and subscribed before me this 5TH day of February 2018 by William H. Pincus, who is personally known to me, and who did take an oath.

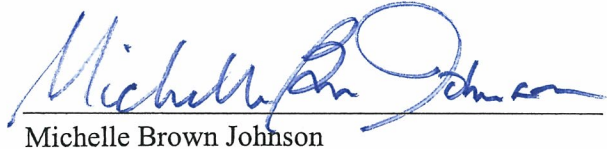



Notary Public
State of Florida

CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, an Assistant with the office of Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing “Reply to Opposition to Petition to Deny” was sent on this 5th day of February, 2018, via First-Class United States mail, postage pre-paid, to the following:

Aaron P. Shainis, Esquire
Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036-2003


Michelle Brown Johnson