

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C. 20554

In re Application of ) WC Docket No. 08-254  
)  
CORONA HOLDINGS, INC. )  
)  
For Transfer of Control of )  
The Following Entities from DB )  
Zwirn Special Opportunities )  
Fund, L.P. to ZM Private )  
Equity Fund II, L.P.: )  
)  
CableCo, LLC d/b/a ghVALLEY LD )  
South Park, LLC d/b/a South )  
Park Telephone Company )  
The Rye Telephone Company )

TO: The Secretary

FOR: The Chief  
Wireline Competition Bureau

**COMMENTS AND PETITION TO DENY**

David A. Schum, J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders Richard J. Drendel and Joy Crain Johns, individually and as executrix of the Estate of Albert Crain (collectively the "Petitioners"), by their attorneys, and pursuant to the Commission's Public Notice, ***Domestic Section 214 Application Filed for the Transfer of Control of Corona Holdings, Inc.***, DA 09-188, released February 4, 2009, hereby respectfully submit their Comments concerning the

above-referenced application. Petitioners urge that these Comments be treated as a formal "Petition to Deny" the above-captioned application. For the reasons stated herein, the Commission must not grant the above-captioned application, but should either deny it or designate it for hearing and consolidate the matter with certain broadcast applications to which the "controlling person" of DB Zwirn Special Opportunities Fund, L.P. ("DBZSOF"), is a party, Daniel Bernard Zwirn ("Zwirn"). In support whereof, the following is shown:

**Background**

1. Petitioners have been raising issues relative to the basic character qualifications of DBZSOF before the Media Bureau, relative to AM Broadcast Stations KFCD, Farmersville, Texas and KHSE, Wylie, Texas. DBZSOF is currently attempting to sell its interests in these licenses to a third party. Although the Commission's Media Bureau staff denied Petitioners' claims so far<sup>1</sup>, Petitioners have

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<sup>1</sup>See letter ruling of the Chief, Audio Division, Media Bureau dated and released December 28, 2006, DA 06-2607, 21 FCC Rcd 14996, denying Petitioners' "Petition to Deny" against BAL-20060117ACU and BAL-20060117ACV and granting said application; (2) the letter ruling of the Chief, Audio Division, Media Bureau, denying their "Petition for Reconsideration", DA 08-409, released February 19, 2008; and (3) the letter ruling of the Chief, Audio Division, Media Bureau, denying the "Petition to Deny" against BAL-20070216ABA and BAL-20070216ABB, DA 08-408, released February 19, 2008.

timely appealed, and the issues relative to DBZSOF's basic character qualifications are at the Commission *en banc* level for review. Petitioners hereby respectfully incorporate by reference all pleadings and materials filed with respect to Media Bureau File Nos. File Nos. BAL-20060117ACU, BAP-20060117ACV, BAL-20070216ABA, and BAL-20070216ABB (the "Zwirn Broadcast Applications").

2. While Petitioners' pleadings have been pending at the Commission, the world's financial press, including **Reuters**, **The Wall Street Journal**, **New York Times** and **Fortune** have reported that the DBZSOF is "closing its doors". According to the website <http://www.money.cnn.com>, **Fortune** magazine reported that, on Thursday February 21, 2008, DBZSOF sent its investors a letter advising them of this result. **Fortune's** story contained the following report:

The funds' demise appears to have little to do with current market volatility. Instead, investors were spooked by a scandal involving a former senior executive at the firm. The fund disclosed last year that Perry Gruss, its former chief financial officer, had improperly transferred client capital between funds in addition to misallocating \$12.2 million in expenses to investors. In one instance, Daniel Zwirn's business travel in a Gulfstream G4 jet was charged to investors.

3. The primary question raised by these facts is, in light of the implosion of the Zwirn organization, who owns DBZSOF? Do non-citizens own more than 20% of it, in violation of 47 U.S.C. §310(a-b)? The Commission has a statutory obligation to find out. In the Zwirn Broadcast

Applications, DBZSOF has been telling the Commission that Zwirn is the only attributable principal, despite owning just one percent (1%) of the equity interests of the controlling entity. DBZSOF has never disclosed the identities of the parties holding the other ninety-nine percent (99%) equity interests in the DBZSOF. It has been the position of the Petitioners that ultimate Commission approval of Zwirn's applications relative to KFCD and KHSE, without a hearing before an independent and impartial Administrative Law Judge to discover the facts relative to DBZSOF, would violate both 47 U.S.C. §310(a-b) and also the Administrative Procedure Act, 5 U.S.C. §551 *et seq.*

4. The Securities and Exchange Commission ("SEC") has been investigating the Zwirn organization since 2006; on information and belief, it is still ongoing.

5. Just yesterday, the Enforcement Bureau of the Commission issued an *Order*, DA 09-225, released February 17, 2009, in a matter involving whether DBZSOF's parent, D.B. Zwirn & Co., L.P., had violated Section 310(d) and Section 73.3540 of the Commission's Rules "by engaging in conduct that exceeded the scope of a local marketing agreement between Tama and Zwirn, thereby effectuating a *de facto* unauthorized transfer of control" (footnote omitted).

6. With respect to the Zwirn/Tama case it is noteworthy to consider a comment made by Dr. Glen Cherry, another Zwirn victim:

The FCC Enforcement Bureau action is very disappointing as they negotiated a deal with D.B. Zwirn Special Opportunities Fund and TAMA without inclusion of the complainants or even investigating the allegations made by the complainants about Dan Zwirn and his companies. In dealing with the FCC, we feel like the people that were trying to tell the SEC about Bernie Madoff for 10 years and no one would listen.

**Argument**

7. It is well settled that an assignor must possess the basic qualifications to be a Commission licensee—if it does not, it has nothing to sell. *Jefferson Radio, Inc. v. FCC*, 340 F.2d 781 (D. C. Cir. 1964).

8. There is a federal investigation ongoing at the Securities and Exchange Commission into Zwirn and DBZSOF. It would be inappropriate for the Wireline Competition Bureau to act on the above-captioned application until the SEC investigation has been concluded.

9. Furthermore, DBZSOF has never been forthcoming with the Commission in disclosing the identities of the other owners of DBZSOF. Likewise, while the recent Enforcement Bureau action did not result in a finding as to the basic qualifications of any of the Zwirn entities, it does reflect that the Zwirn entities were parties to a transaction that resulted in a Commission investigation and Consent Decree. As a result, the Commission has ample

reason to undertake a formal proceeding in which to obtain facts and reach conclusions as to whether DBZSOF is basically qualified to be a Commission licensee, and whether the grant of any applications to DBZSOF would be in the public interest, convenience and necessity.

**Requested Relief**

10. Petitioners request that the Commission either dismiss or deny the above-captioned application, or that the Commission consolidate it with the Zwirn applications filed with the Media Bureau relative to stations KFCD and KHSE for a trial-type hearing before an administrative law judge, on at least the following issues:

- (a) To determine the ownership of D. B. Zwirn Special Opportunities Fund, L.P. and any other parent or affiliate organization, and, based upon the facts adduced, whether said ownership complies with 47 U.S.C. §310(a-b);
- (b) To determine whether Bernard Dallas LLC failed to file a required FCC Form 323 ownership report prior to the filing of Petitioners' Petition to Deny, whether this failure was intentional, whether Bernard Dallas LLC had a motive to deceive the Commission or otherwise withhold information as to its ownership, and, in light of the facts adduced thereto, whether Bernard Dallas LLC is qualified to be a Commission licensee;
- (c) To determine whether D. B. Zwirn Special Opportunities Fund, L.P., a principal in the proposed assignee, perpetrated or otherwise participated in an unauthorized transfer of control of the construction permit of KHSE(AM), Wylie, Texas, and, if so, what effect that would have on the basic qualifications of Bernard Dallas LLC to be a Commission licensee/permittee;
- (d) To determine the facts and circumstances relating to and surrounding threats made by counsel for D. B. Zwirn Special Opportunities Fund, L.P. to DFW Radio Licensee, LLC and to its manager, David Schum;
- (e) To determine whether the conduct of D. B. Zwirn Special Opportunities Fund, L.P. constituted attempts to harass, coerce and intimidate DFW Radio Licensee, LLC and its manager, David Schum, and, if so, what effect such conduct has upon the qualifications of the assignee to be a Commission licensee;
- (f) To determine whether Bernard Dallas LLC's parent organizations violated the securities laws and regulations of the United States and whether such organizations violated any fraud statutes, and, if

- so, what effect such conduct has upon the qualifications of the assignee to become a Commission licensee;
- (g) To determine whether the actions of D.B. Zwirn & Co., L.P., and its subsidiary entities, as described in *Order*, DA 09-225, released February 17, 2009, should be considered in connection with the determination of the basic qualifications of Bernard Dallas, LLC; and
  - (h) Whether, in light of the evidence adduced pursuant to (a-e) above, Bernard Dallas LLC possesses the basic qualifications to be a Commission licensee, and whether the public interest, convenience and necessity would be served by Bernard Dallas, LLC assigning the licenses of KFCD(AM), Farmersville, Texas and KHSE(AM), Wylie, Texas to Principle Broadcasting Group-Dallas LLC; and

**WHEREFORE**, the Petitioners hereby urge that the above-captioned application **BE DISMISSED, DENIED OR DESIGNATED FOR HEARING UPON APPROPRIATE ISSUES.**

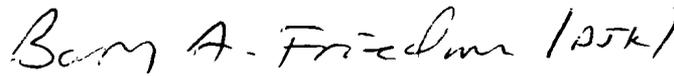
Respectfully submitted,

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February 18, 2009

DECLARATION

David A. Schum, pursuant to Section 1.16 of the Rules of the Federal Communications Commission, hereby declares and states as follows:

1. I reside at 3301 Northwest Parkway, Dallas, Texas 75225.
2. The foregoing pleading was prepared under my direction and has been reviewed by me.
3. All statements contained in the foregoing pleading are true and correct to the best of my knowledge.
4. All statements contained in this Declaration are true and correct and are made under penalty of perjury.

DATED this 18<sup>th</sup> day of February, 2009.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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David A. Schum

## CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Comments and Petition to Deny" were served by e-mail (except as noted by an \*, where they were served by first-class United States mail, postage prepaid, or by a \*\*, indicating first-class mail and e-mail service), on this 18th day of February, 2009, upon the following:

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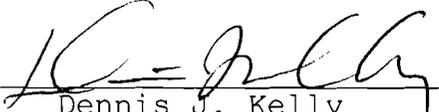
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