



Federal Communications Commission
Washington, D.C. 20554

May 26, 2005

DA 05-1537

In Reply Refer to:

1800B3-CNZ

NAL/Acct No: MB20051810040

FRN: 0003474947

WJZD, Inc.
c/o Dennis J. Kelly, Esq.
Law Offices of Dennis J. Kelly
P.O. Box 41177
Washington, D.C. 20018

Capstar TX Limited Partnership
c/o Gregory L. Masters, Esq.
Wiley, Rein & Fielding, L.L.P.
1776 K Street, N.W.
Washington, D.C. 20006

Golden Gulf Coast Broadcasting, Inc.
c/o Alan C. Campbell, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036

Mr. Douglas A. Hutcheson
1024 Christy Dr.
Niceville, FL 32578

Re: WQYZ(FM), Ocean Springs, MS
Facility ID No. 24513
File No. BALH-20031125ALX
Application for Assignment of License
File No. BRH-20040202AHI
Application for Renewal of License

Dear Counsel:

We have before us the above-captioned application (the "Assignment Application") to assign the license of broadcast station WQYZ(FM), Ocean Springs, Mississippi, from Golden Gulf Coast Broadcasting, Inc. ("GGCB") to Capstar TX Limited Partnership, a subsidiary of Clear Channel Communications, Inc. (collectively, "Clear Channel"). We also have before us a January 5, 2004, Petition to Deny or Designate for Hearing the Assignment Application ("Sale Petition") filed by WJZD, Inc. ("WJZD"),¹ licensee of WJZD(FM), Long Beach, Mississippi, and a December 20, 2004, informal

¹ Clear Channel filed an Opposition to the Sale Petition on January 21, 2004 ("Clear Channel Opposition"). GGCB filed an Opposition to the Sale Petition on January 21, 2004 ("GGCB Opposition"). WJZD filed a Reply on February 5, 2004 ("WJZD Reply"). WJZD also filed a "Statement for the Record" on June 9, 2004 (requesting, *inter alia*, that the Commission examine Clear Channel's basic character qualifications).

objection (“Objection”) filed by Douglas A. Hutcheson (“Hutcheson”).² In addition, we have before us the above-referenced application of GGCB for renewal of license for WQYZ(FM) (“Renewal Application”) and a May 3, 2004, Petition to Deny or Designate for Hearing the Renewal Application, filed by WJZD (“Renewal Petition”).³ For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to GGCB for violation of Section 73.1125 of the Commission’s Rules⁴ due to GGCB’s failure to maintain the requisite presence at its main studio. We also grant the Assignment Application and Renewal Application, and deny the Sale Petition, the Renewal Petition, and the Objection.

WQYZ(FM) Assignment Application

Background. Capstar and GGCB originally filed an application to assign the WQYZ(FM) license to Capstar on December 24, 2002.⁵ In the public notice announcing its acceptance,⁶ the staff “flagged” the application pursuant to the Commission’s then-existing Interim Policy of noting applications that proposed a level of local radio ownership concentration deemed to implicate public interest concerns.⁷ WJZD petitioned to deny this transaction on February 6, 2003. Before the Bureau acted on the original assignment application, pursuant to GGCB’s request, the staff dismissed the application on November 18, 2003. GGCB resubmitted the Assignment Application on November 25, 2003. Subsequently, on April 23, 2004, the staff sent GGCB a letter of inquiry (“LOI”) seeking information germane to the Assignment Application.⁸ GGCB responded on May 13, 2004.⁹

² Clear Channel filed an Opposition to the Objection on January 10, 2005.

³ GGCB filed an Opposition to the Petition to Deny or Designate for Hearing on June 2, 2004 (“GGCB Renewal Opposition”). On June 22, 2004, pursuant to Section 1.46 of the Commission’s rules (47 C.F.R. § 1.46), WJZD filed a Motion to Accept Late-Filed Pleading, or, in the Alternative, Motion for One Day Extension of Time. WJZD filed a Reply to Opposition to Petition to Deny or Designate for Hearing on June 23, 2004. Motions for extension of time are not routinely granted. Nevertheless, because WJZD’s delay of one day does not prejudice any parties in this proceeding, and as counsel for GGCB and Clear Channel have not objected, we grant WJZD’s motion and consider the WJZD Reply herein.

⁴ 47 C.F.R. § 73.1125.

⁵ File No. BALH-20021224ACR.

⁶ *Public Notice*, “Broadcast Applications,” Report No. 25396 (rel. Jan. 7, 2003).

⁷ See *AMFM, Inc.*, 15 FCC Rcd 16062, 16066 n.10 (2000); see also *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, 16 FCC Rcd 19861 (2001). Under this policy, the Commission flagged proposed transactions that would result in one entity controlling 50% or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70% or more of the advertising revenues in that market.

⁸ As discussed *infra*, WJZD alleges that GGCB’s actions resulted in an unauthorized transfer of control of WQYZ(FM), and the LOI sought information on whether GGCB has retained ultimate responsibility for essential station matters.

⁹ *Letter from Alan C. Campbell, Esq.*, May 13, 2004 (“LOI Response”).

Hutcheson objects to the grant of the Assignment Application asserting that, because Clear Channel is currently operating WTKE(FM), Holt, Florida, “in violation of FCC rules,” it should not be able to acquire WQYZ(FM).¹⁰ Specifically, Hutcheson contends that Clear Channel did not timely file a license application for WTKE(FM) as the FCC rules require. Hutcheson fails to establish any connection between this allegation, which involve a station in a different market, and the operation of WQYZ(FM). Moreover, Hutcheson fails to raise a substantial and material question of fact as to Clear Channel’s qualifications.¹¹ WTKE(FM) is neither associated with the instant application nor located in the same market (Arbitron’s Gulfport-Biloxi-Pascagoula Metro Survey Area (the “Biloxi Metro”). Accordingly, we find that Hutcheson’s assertions are not relevant to our review of the Assignment Application, and his Objection is denied.

WJZD makes three arguments. First, it argues that GGCB has taken actions which resulted in an unauthorized transfer of control of station WQYZ(FM) to Clear Channel in violation of Section 310(d) of the Communications Act of 1934, as amended (the “Act”). Second, WJZD asserts that grant of the Assignment Application would result in Clear Channel having undue concentration of market power in the Biloxi Metro. Finally, WJZD contends that the Commission must hold a hearing on Clear Channel’s basic character qualifications before making a determination whether grant of the Assignment Application would serve the public interest.

Unauthorized Transfer of Control. According to WJZD, the evidence demonstrates that GGCB has ceded control of WQYZ(FM) to Clear Channel. GGCB counters that it has maintained proper licensee control of WQYZ(FM) and Clear Channel has exercised appropriate programming and operational functions under a Local Programming and Marketing Agreement (the “LMA”) that Clear Channel assumed in February 2003.¹²

In ascertaining whether an unauthorized transfer of control has occurred, we look to whether a party other than the station’s licensee has the right to determine the station’s basic operating policies, with particular attention to three areas: programming, personnel, and finances.¹³ Licensees are permitted under Section 310(d) of the Act to delegate day-to-day operations relating to those three areas, as long as they continue to set the policies guiding those operations and remain ultimately in control of them.¹⁴ The Commission has expressly found that LMAs, properly conditioned, do not by themselves establish that a

¹⁰ Objection at 1.

¹¹ See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179 (1986), *recon. granted in part and denied in part*, 1 FCC Rcd 421 (1986) (subsequent history omitted).

¹² See GGCB Opposition at 6. GGCB and Star Broadcasting, Inc. (“Star”) originally entered into a Local Programming and Marketing Agreement dated December 12, 2002 with respect to Station WQYZ(FM). Star assigned all of its rights, title, benefits and interest in this agreement to Clear Channel, effective February 16, 2003. The LMA was filed with the Commission on February 14, 2003.

¹³ See, e.g., *Secret Communications II, LLC*, 18 FCC Rcd 9139, 9145 (2003).

¹⁴ See, e.g., *WGPR, Inc.*, 10 FCC Rcd 8140, 8142 (1995).

transfer of control has taken place.¹⁵ The facts alleged by WJZD do not establish a *prima facie* case that GGCB has engaged in an unauthorized transfer of control of WQYZ(FM).

First, the LMA comports with Commission policy. Section 7, for example, expressly provides for complete licensee control of the station and for direct licensee payment of station expenses. In addition, GGCB states that its president and 50 percent stockholder, Lawrence Edward Steelman (“Steelman”), serves as the primary contact with Clear Channel regarding management of the station pursuant to the LMA and maintains an office near the WQYZ(FM) main studio.¹⁶ Debra Sanford (“Sanford”), the other 50 percent stockholder of GGCB, lives near the studio and “monitors the operations of WQYZ and its programming on a regular basis.”¹⁷ Moreover, in March 2004, GGCB hired a full-time station manager/program director who continues to serve in that capacity at the WQYZ(FM) studio.¹⁸ Section 7 of the LMA specifies that the licensee maintains full authority and control over all of the GGCB finances. Steelman handles the accounting and bookkeeping for the licensee and writes checks to cover station expenses, such as electricity, tower rent, and insurance, as well as regulatory fees.¹⁹ In addition, Steelman has been personally involved in station programming issues under the LMA, and discussed with Clear Channel in advance, and ultimately approved, a change in the station’s format.²⁰ GGCB’s conduct indicates that it has maintained appropriate licensee control of WQYZ(FM) under the LMA.

WJZD also argues that Clear Channel “holds itself out as if it owns” WQYZ(FM).²¹ As an example, WJZD states that Reggie Bates, a Clear Channel employee, is listed as the general manager on the station’s website. Clear Channel’s assumption of the LMA, however, provides a legitimate basis for its employee’s involvement with the station. An LMA broker is entitled to employ its own personnel at the brokered station, as long as such employees are subject to the ultimate control of the station licensee.²² In this instance, the listing of a Clear Channel employee as general manager on the station’s website is insufficient to support WJZD’s claim regarding an unauthorized transfer of control.

Similarly, WJZD alleges that Clear Channel uses its own “icons” and logos to promote WQYZ(FM).²³ Clear Channel’s usage of icons and logos reading “KISS 92.5” on a website and a

¹⁵ See *Solar Broadcasting Company, Inc.*, 17 FCC Rcd 5467, 5486 (2002) (licensee’s participation in LMA does not *per se* constitute a premature transfer of control); *WGPR, Inc.*, 10 FCC Rcd at 8141 (participation in LMA not *per se* violative of the Act or any Commission rule or policy).

¹⁶ GGCB Opposition at 3.

¹⁷ *Id.*

¹⁸ LOI Response at 3.

¹⁹ GGCB Opposition at 3-5.

²⁰ *Id.* at 5.

²¹ Sale Petition at 6.

²² See *WGPR, Inc.*, 10 FCC Rcd at 8143 (recognizing necessity for time broker’s staff to become involved with licensee’s facilities); *Michael R. Birdsill*, 7 FCC Rcd 7891 (MMB 1992) (sharing of staff between brokered station and broker permitted).

²³ Sale Petition at 6-7.

promotional vehicle are not necessarily probative of WJZD's unauthorized transfer of control claim, in light of the LMA. In fact, GGCB states that it approved the use of the KISS logo in identifying WQYZ(FM).²⁴ In addition, contrary to WJZD's claim, the WQYZ(FM) promotional vehicle is titled to Genesis Broadcasting Services, Inc. ("Genesis"), a company 100 percent owned by Steelman that provided operating services to WQYZ(FM).²⁵

WJZD also alleges that WQZY(FM)'s main studio move to a Clear Channel building and GGCB's failure to notify the Commission demonstrate that an unauthorized transfer of control has taken place. GGCB states that it discussed the move with Clear Channel and approved in advance the relocation within the station's principal community contour.²⁶ GGCB admits, however, that it failed to notify the Commission.²⁷ By letter dated January 21, 2004, GGCB corrected this oversight.²⁸ Furthermore, WJZD contends that GGCB and Clear Channel are using an unauthorized studio-transmitter link ("STL") to transmit programming from the relocated main studio.²⁹ Again, GGCB notes that it discussed the STL relocation with Clear Channel in advance, and once the failure to file an STL modification application was discovered, an application to operate the STL from the new location was submitted on November 15, 2004.³⁰ This omission does not support the claim that Clear Channel unlawfully controls WQYZ(FM). We find all of WJZD's allegations inadequate to raise a substantial and material question of fact concerning abdication of control of WQYZ(FM) by GGCB. We also find, however, that GGCB's acknowledged tardiness and lack of diligence with respect to filing the requisite application and notifying the Commission warrants admonishment.

Competition. WJZD argues that grant of the Assignment Application would result in Clear Channel having undue concentration of ownership of radio stations in the Biloxi Metro. Relying on the former Interim Policy,³¹ WJZD argues that post-consummation, Clear Channel and Triad Broadcasting Co., the next largest radio group in the Biloxi Metro, will control at least 72 percent of the total revenues in the Biloxi Metro, which it contends is *prime facie* not in the public interest.³²

²⁴ GGCB Opposition at 5.

²⁵ *Id.* According to GGCB, Clear Channel asked if it could use the vehicle under the LMA; GGCB and Genesis consented.

²⁶ *See* 47 C.F.R. § 73.1125(a).

²⁷ GGCB Opposition at 6; 47 C.F.R. § 73.1125(d).

²⁸ *See* GGCB Opposition at Attachment 3.

²⁹ Sale Petition at 7-9.

³⁰ *See* FCC Form 601, File No. 0001937602. The STL modification required frequency coordination, so GGCB filed an STA request on January 30, 2004, pending the filing of STL the application. *See* GGCB Renewal Opposition at 6.

³¹ *See supra* note 7 and accompanying text.

³² Sale Petition at 17.

Under the new local radio ownership rule now in effect,³³ the Biloxi Metro is the presumptive geographic market for determining compliance with the rule's numerical limits.³⁴ A geography-based market definition was adopted to better serve the public interest "as it relates to competition."³⁵ As the Commission stated, "[b]y applying the numerical limits of the local radio ownership rule to a more rational market definition, we believe that, *in virtually all cases*, the rule will protect against excessive concentration levels in local radio markets that might otherwise threaten the public interest."³⁶ WJZD does not present any evidence other than advertising revenues and does not even attempt to explain why the new radio ownership rule is inadequate to protect against competitive harm in this case.³⁷ Accordingly, we reject WJZD's competition claim and analyze this transaction using the Biloxi Metro as the relevant geographic market.

Multiple Ownership. BIA reports 23 commercial and noncommercial stations as "home" to the Biloxi Metro. Clear Channel currently has an attributable interest in the following four stations in the Biloxi Metro: WBUV(FM), Moss Point, MS; WQYZ(FM), Ocean Springs, MS; WKNN-FM, Pascagoula, MS; and WMJY(FM), Biloxi, MS. Clear Channel operates three of these – WQYZ(FM), WKNN-FM, and WMJY(FM) – pursuant to LMAs. WJZD claims that two additional Clear Channel stations, WRKH(FM) and WMXC(FM), should be included in Clear Channel's multiple ownership study.³⁸ Neither of these two stations, however, is home to or geographically located in the Biloxi Metro. Thus, after the proposed acquisition of WQYZ(FM), Clear Channel would own two commercial FM stations and operate two commercial FM stations under LMAs in the Biloxi Metro, an arrangement that complies with the local radio ownership rule.³⁹

Character Qualifications. WJZD argues that in light of a Notice of Apparent Liability for Forfeiture ("NAL") issued to various Clear Channel subsidiaries,⁴⁰ Clear Channel does not have the

³³ See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13711-47 (2003) ("Ownership Report and Order"), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004) ("Prometheus Remand Order"), *stay modified on reh'g*, No. 03-3388 (3d Cir. Sept. 3, 2004) ("Prometheus Rehearing Order"). See also *Prometheus Radio Project, et al. v. F.C.C.*, No. 03-3388, slip op. at 3 (3rd Cir. Sept. 3, 2003) (*per curiam*) (granting initial motion for stay of effective date of the new ownership rules) and *Prometheus Remand Order*, 373 F.3d at 435.

³⁴ *Ownership Report and Order*, 18 FCC Rcd at 13724-28.

³⁵ *Id.* at 13712-13.

³⁶ *Id.* at 13813 (emphasis added).

³⁷ In the *Ownership Report and Order*, the Commission explained that it intends to "rely, where possible, on measures other than . . . advertising [shares] in order to reflect the decreasing relevance of advertising market shares as a barometer of competition." *Id.* at 13642.

³⁸ WJZD Reply at 6. WJZD also claims that the multiple ownership study submitted with the Assignment Application is "unintelligible." Sale Petition at 20. We find the study to be in compliance with Commission requirements.

³⁹ 47 C.F.R. § 73.3555(a)(1)(iv) (in a market with 15 to 29 stations, one owner may hold up to six commercial stations, no more than four of which are in the same service).

⁴⁰ See *Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd 1768 (2004).

necessary character qualifications to be a station licensee.⁴¹ The cited NAL concerned whether certain Clear Channel stations (not WQYZ(FM)) had broadcast obscene, indecent, or profane material in violation of the Act and the Commission's indecency rules.⁴² However, all complaints then outstanding against Clear Channel for possible violations of the Act and the Commission's indecency rules were resolved with the June 4, 2004, adoption of a Consent Decree between the Commission and Clear Channel.⁴³ The Commission found that there were no substantial and material questions of fact as to whether Clear Channel possesses the basic qualifications, including character qualifications, to hold or obtain any FCC licenses or authorizations.⁴⁴ Therefore, the issue has been resolved by the Commission with respect to those particular complaints and will not be further addressed.

We have reviewed the Assignment Application and the evidence of record and find that Clear Channel is qualified to be the licensee of WQYZ(FM) and that grant of the Assignment Application is consistent with the public interest, convenience and necessity.

Section 73.1125 Violation

For the reasons set forth below, we issue a Notice of Apparent Liability for a Forfeiture ("NAL") to GGCB for violation of Section 73.1125 of the Commission's rules.⁴⁵ The violation involves GGCB's failure to maintain the requisite meaningful presence at the WQYZ(FM) main studio. We are proposing a forfeiture amount in this case in accordance with Section 503(b) of the Act,⁴⁶ Section 1.80 of the Commission's rules,⁴⁷ and the Commission's *Forfeiture Policy Statement*.⁴⁸ Under Section 1.80 of the Commission's rules, the base forfeiture amount for violation of the main studio rule is \$ 7,000, and we issue an NAL for this amount.

In adopting Section 73.1125, the Commission stated that a station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.⁴⁹ To fulfill this function, a station must, among other things, maintain a meaningful presence at its main

⁴¹ WJZD Reply at 6-8.

⁴² See 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.

⁴³ See *Clear Channel Communications, Inc.*, 19 FCC Rcd 10880 (2004).

⁴⁴ *Id.* at 10881.

⁴⁵ 47 C.F.R. § 73.1125.

⁴⁶ 47 U.S.C. § 503(b).

⁴⁷ 47 C.F.R. § 1.80.

⁴⁸ *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁴⁹ *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15693 (1998), *recon. granted in part*, 14 FCC Rcd 11113, 11116 (1999).

studio.⁵⁰ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁵¹ The licensee need not have the same personnel at the studio each day, as long as there is management and staff presence during normal business hours.⁵² Although management personnel need not be "chained to their desks," they must "report at the main studio on a daily basis, spend a substantial amount of time there and . . . use the studio as a home base."⁵³

By its own admission, GGCB did not meet the Commission's standard during a certain period. On April 23, 2004, the staff sent GGCB an LOI concerning GGCB's responsibility for essential station matters. The LOI asked, *inter alia*, whether any GGCB officer or employee worked at the WQYZ(FM) main studio and the average hours per week such individuals were present.⁵⁴ GGCB filed its LOI Response on May 13, 2004. According to that response, on February 16, 2003, Clear Channel both assumed the LMA and moved the WQYZ(FM) main studio to its current location at 286 DeBuys Road, Biloxi, Mississippi.⁵⁵ On March 22, 2004, GGCB hired Brian Rust ("Rust") as the WQYZ(FM) Station Manager/Program Director and he continues to serve in that capacity on a full-time basis at the station's main studio.⁵⁶ However, from February 16, 2003, until the hiring of Rust on March 22, 2004, GGCB had no meaningful managerial presence at the WQYZ(FM) studio. In the LOI Response, GGCB implies that Steelman's involvement with WQYZ(FM) satisfied the main studio staffing obligations. As president and 50 percent stockholder of GGCB, Steelman qualifies as managerial,⁵⁷ but there is no evidence that he has maintained a full-time presence at the main studio. GGCB explains that Genesis, a company 100 percent owned by Steelman that provided operating services to WQYZ(FM), maintains an office in D'Iberville and Steelman visits this office once a week.⁵⁸ On the one day Steelman travels to the office, he either visits the WQYZ(FM) studio or contacts Clear Channel's local general manager by phone.⁵⁹ The Genesis office, however, is not located at the WQYZ(FM) main studio. Moreover, in the instant case, a one-day-a-week visit by a GGCB principal to the studio facility is not the "meaningful

⁵⁰ *Id.* Even in an LMA arrangement, the licensee must maintain a meaningful management and staff presence at its main studio. See *WGPR, Inc.*, 10 FCC Rcd at 8143.

⁵¹ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991) ("*Jones Eastern*"), *clarified*, 7 FCC Rcd 6800 (1992) ("*Jones Eastern II*").

⁵² *Jones Eastern*, 6 FCC Rcd at 3616, n.2. The Commission has defined the phrase "normal business hours" as generally an eight-hour period between the hours of 8 a.m. and 6 p.m. See *Bulletin EB-18FM, Nov. 1, 2001, Mar. 2003, June 18, 2003, and May 2004 Editions*, all at 6, Sec. 1, G.

⁵³ *Jones Eastern II*, 7 FCC Rcd at 6802.

⁵⁴ LOI at 2.

⁵⁵ LOI Response at 3.

⁵⁶ *Id.*

⁵⁷ *Jones Eastern II*, 7 FCC Rcd at 6802.

⁵⁸ LOI Response at 2.

⁵⁹ *Id.* GGCB does not indicate when Steelman began these weekly visits or if they have continued since the hiring of Rust.

management presence” we require.⁶⁰ Accordingly, prior to the hiring of Rust on March 22, 2004, GGCB was in violation of Section 73.1125 because there was no meaningful managerial presence at the WQYZ(FM) main studio.⁶¹

As noted above, in addition to a full-time managerial presence, the rule requires there to be a “meaningful staff presence” at the main studio. GGCB’s staffing arrangements do not meet this standard. GGCB neglected to explain the non-managerial personnel it employed from February 2003 to January 2004, and thus we have no evidence that GGCB was in compliance with the staff-level requirement. GGCB states that on January 19, 2004, until March 22, 2004, when it hired Rust, it employed Sanford’s spouse “to be at the studio as much as possible.”⁶² GGCB did not indicate in what capacity Sanford’s spouse was employed, or whether he was present at the main studio full-time during normal business hours. The LOI Response indicates that since the hiring of Rust, Sanford’s spouse has not been employed by GGCB.⁶³ In addition, GGCB indicates that since January 21, 2004, one of Clear Channel’s non-managerial employees, Beth Broussard (“Broussard”), is “available to GGCB on a shared-use basis.”⁶⁴ GGCB neglects to explain if Broussard is compensated by GGCB or is present at the WQYZ(FM) main studio on a full-time basis. Based on the record before us, GGCB now has one full-time manager present at the studio, but no full-time staff-level employee.

Thus, we find that GGCB was and continues to be in violation of Section 73.1125 and that the above-discussed NAL is warranted. If the Assignment Application is not consummated within thirty days, GGCB must notify promptly the Chief, Audio Division that it has brought the operation of the station into compliance with Section 73.1125 with regard to the presence of a full-time non-managerial employee at the WQYZ(FM) main studio. Failure to come into compliance with Section 73.1125 could subject GGCB to further penalties.

WQYZ(FM) Renewal Application

GGCB timely filed its Renewal Application on February 2, 2004. In its Renewal Petition, WJZD raises several arguments as to why the Renewal Application should be denied or designated for hearing. First, WJZD incorporates by reference its allegations in the Sale Petition that an unauthorized transfer of control has taken place. As already fully discussed above, we find that the facts alleged by WJZD do not establish a *prima facie* case that GGCB has engaged in an unauthorized transfer of control of WQYZ(FM). WJZD also argues that a renewal hearing is warranted because GGCB failed to disclose in the Renewal Application its unauthorized move of the WQYZ(FM) main studio and its unauthorized STL operations from the relocated main studio. By letter dated January 21, 2004, GGCB notified the

⁶⁰ See *supra* note 51. See also *Miles J. Carter*, DA 99-2258, 1999 WL 965630 (MMB, rel. Oct. 22, 1999) (finding violation of 47 C.F.R. § 73.1125 where, under an LMA, licensee’s employees failed to staff the studio).

⁶¹ GGCB’s reliance in the LOI Response on a 1995 enforcement investigation and resulting April 9, 1997, letter decision is unavailing. The 1995 investigation did not involve WQYZ(FM)’s operation under the main studio rule, and is not pertinent to the instant proceeding.

⁶² LOI Response at 3.

⁶³ *Id.*

⁶⁴ *Id.* We assume that because Clear Channel’s staff level employee is shared with GGCB, this individual does not qualify as a GGCB full-time staff employee.

Commission of WQYZ(FM)'s main studio move.⁶⁵ On January 30, 2004, GGCB filed an application for STA to operate the STL from its relocated site.⁶⁶ Thus, at the time GGCB filed the Renewal Application on February 2, 2004, GGCB had already filed the requisite STL modification application and main studio change notification and had reported these oversights to the Commission in connection with the Assignment Application. GGCB did not need to repeat this information in the Renewal Application. Accordingly, we reject WJZD's argument that a renewal hearing is warranted. As discussed above, however, we issue an NAL for GGCB's violation of Section 73.1125.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.⁶⁷ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity, (2) there have been no serious violations of the Act or the Commission's rules, and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁶⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁶⁹

We find that GGCB's Section 73.1125 violation does not constitute a serious violation of the Commission's rules warranting designation for hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WQYZ(FM) served the public interest, convenience, and necessity during the subject license term. We therefore grant the Renewal Application.⁷⁰

Conclusion

Based on all the evidence before us, we find no substantial and material questions of fact that warrant further inquiry. For the reasons set forth above, and pursuant to 47 U.S.C. Section 503(b) and 47 C.F.R. Sections 0.283 and 1.80, GGCB is hereby advised of its apparent liability for a forfeiture of \$7,000 for willfully and repeatedly violating 47 C.F.R. Section 73.1125. Accordingly, IT IS ORDERED, that pursuant to 47 C.F.R. Section 1.80, within thirty days of the release of this Notice, GGCB SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

⁶⁵ GGCB Renewal Opposition at 6.

⁶⁶ *Id.*

⁶⁷ 47 U.S.C. § 309(k).

⁶⁸ The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 11 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁶⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁷⁰ *See* 47 U.S.C. 309(k).

Payment of the forfeiture may be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment MUST INCLUDE the NAL/Acct. No. MB20051810040 and the FCC Registration Number 0003474947 referenced in the caption of this document. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷¹

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. MB20051810040 and the FCC Registration Number 0003474947 referenced in the caption of this document.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns from the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

IT IS FURTHER ORDERED, that the January 5, 2004 Petition to Deny or Designate for Hearing the Assignment Application filed by WJZD, Inc. and the December 20, 2004 Objection filed by Douglas A. Hutcheson ARE DENIED. IT IS FURTHER ORDERED, that the application to assign the license for station WQYZ(FM), Ocean Springs, Mississippi, from Golden Gulf Coast Broadcasting, Inc. to Capstar TX Limited Partnership IS GRANTED. IT IS FURTHER ORDERED, that the May 3, 2004 Petition to Deny or Designate for Hearing the Renewal Application filed by WJZD, Inc. is DENIED. IT IS FURTHER ORDERED, that the application of Golden Gulf Coast Broadcasting, Inc. for renewal of license for Station WQYZ(FM), Ocean Springs, Mississippi, IS GRANTED. Furthermore, GGCB is HEREBY ADMONISHED for its failure to file the requisite STL modification application with the Commission.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

⁷¹ See 47 C.F.R. § 1.1914.